



March 23, 2017

The Honorable Mike Dunleavy, Chair  
Senate State Affairs Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

*Sent by email:* Senator.Mike.Dunleavy@akleg.gov

**Re: Committee Substitute for Senate Bill 34, 30-GS1781\O**

Dear Chair Dunleavy:

Thank you for hearing testimony on Tuesday from the American Civil Liberties Union of Alaska about Senate Bill 34, concerning the Federal REAL ID Act. We appreciate the work you are doing to ensure that Alaska enshrines in law meaningful privacy protections if it is going to proceed to issue licenses and identity cards that comply with the Act.

During our testimony we agreed to share additional comments with you about the Committee Substitute bill you introduced. As mentioned on Tuesday, we are encouraged by the changes proposed in the CS. We appreciate that Congress has put Alaska in a very difficult position: either it accepts the privacy-eroding provisions of the Act or it burdens Alaskans seeking to enter federal buildings, military bases, and checkpoints. In the event Alaska opts to comply with the Act, most of the changes proposed in the CS reflect a significant improvement compared to the bill first introduced to the Senate.

The ACLU of Alaska is most encouraged by the privacy protections reflected in Section 3 of the CS (limiting what data the department may share); Section 5 (requiring meaningful notice of the options Alaskans will have); and Section 9 (giving noncompliant licensees control over how certain documents and images can be stored and used). In the more detailed comments that follow we provide additional thoughts, but we wanted to highlight the significance of these elements of your CS for SB 34.

Concerning each section of the Committee Substitute bill:

**Section 1:** We have no objection to rewording the provision in SB 34 that imposes a \$5 surcharge for the issuance of a federally compliant identification card.

**Section 2:** We support providing a new subsection, AS 18.65.310(q), to define “federally compliant” and making appropriate changes elsewhere for consistency;

We support removing the definition of “noncompliant identification card” from the original bill, as including such a definition should prove unnecessary;

We support the rewording of proposed subsection AS 18.65.310 (n);

We do not object to the requirement that noncompliant cards be processed and created in Alaska.

**Section 3:** We strongly support adding a subsection to AS 28.05 such as this, imposing sweeping limitations on what data the department can share. As government agencies throughout the state and the country collect and store more data about people than ever before, the possibility increases that agencies will be pressured to share such data for purposes that were never contemplated when the data was first collected. This proposed subsection should ensure that does not happen concerning data maintained by the department.

**Section 4:** As with Section 2, we support restructuring the wording of SB 34 as introduced.

**Section 5:** We strongly support amending AS 28.15.061(b) to require notification as the CS does here.

**Sections 6 and 7:** We note that this leaves unchanged Sections 4 and 5 of SB 34 as introduced. While we note that the REAL ID Act does not require compliant licenses to be valid for eight years—the Act instead requires that compliant licenses must expire *no later than* after eight years—we have no objection to making licenses valid for eight years instead of the current five.

**Section 8:** We support the edits the CS proposes to Section 6 of the bill as originally introduced.

**Section 9:** We strongly support giving noncompliant licensees control over what documents may be copied or retained; whether image verification or facial recognition may be used as part of the application process; and whether images of their faces may be retained. We believe this could prove an even stronger privacy protection if the reasons a licensee might want to select one of the options was provided and if the department was limited to using such documents or data for only those reasons.

Furthermore, we believe such control should also be extended to identity card applicants. We also believe federally compliant licensees and cardholders should be given control over whether image verification or facial recognition may be used in the application process, as that is not a requirement of the Act or of the regulations implementing it.

**Section 10:** We support increasing the surcharge for federally compliant licenses to \$10, instead of \$5.

**Section 11:** We support moving the definition of “federally compliant” to Chapter 90 of Title 28 and making appropriate adjustments elsewhere, as is done elsewhere in the CS.

**Section 12:** We support the emphasis the CS places on minimal compliance with the requirements of the Act. We are concerned, however, that placing the nexus of compliance on the question of asset usage may be in tension with maximizing privacy. For example, the department might find it more cost effective to maintain digital files than paper or microfiche files, while paper or microfiche files would be more secure from identity thieves and hackers. We look forward to giving this issue further consideration and exploring it with you and the Committee.

**Sections 13 and 14:** We have no objections.

Again, the ACLU of Alaska is pleased to see that the Committee Substitute for Senate Bill 34 takes many steps in the direction we have been advocating. We note, however, that we oppose the proposed new subsection AS 18.65.310(o), contained in Section 2 of the CS, which explicitly limits the issuance of noncompliant identity cards to persons who can establish their lawful presence in the United States. We firmly believe that Alaska has no interest in learning the nationality or immigration status of a resident when issuing a identity card or driver's license. We believe that issuing noncompliant licenses and cards that are not predicated on establishing nationality or immigration status is one of the most important distinctions Alaska can make between compliant and noncompliant licenses and cards.

We also believe room exists for additional privacy protections. For example, the bill could amend the statutes to specifically limit what documents, copies, or information may be retained; specifically limit how long documents, copies, or information is retained before it must be destroyed; and specifically limit what information is maintained and shared in the database required by REAL ID or in any centralized index used to locate records in REAL ID databases.

We look forward to sharing further details about these additional suggestions with you and the Committee soon. Again, we appreciate your thoughtful attention to our concerns and remain happy to assist you and the Committee in any way that may prove helpful.

Sincerely,



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