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Introduction

In response to national security concerns and identity theft, state legislatures have taken a closer look at policies concerning state-issued identification. In 2003, state legislatures addressed the issue of driver's license and identification card security on three main fronts: 1) eligibility requirements; 2) falsification concerns; and 3) anti-counterfeiting measures. First, states considered who should be eligible to apply for a state driver's license or identification (ID) card and what acceptable forms of identification documents applicants must present. Second, states deliberated ways to stop people from obtaining driver's licenses or identification cards through presenting false documentation to the licensing office. Finally, states contemplated means to stop people from sidestepping the state licensing office requirements altogether through the production of counterfeit licenses and identification cards. In addition to these three areas, states have considered measures aimed at protecting individuals from identity theft and tightening compliance with selective service registration for male driver's license applicants.

Although the driver's license is the primary form of identification, state-issued ID cards also are important. Teen driver restrictions have pushed back the age of eligibility for an unrestricted driver's license in some states, but the first trip to the licensing office may nonetheless be earlier because most states issue identification cards to minors who have not yet reached the driving age. Typically, state ID cards and driver's licenses look similar and require the same documentation. Although the focus of legislation in this area during the past two legislative sessions has been on the policies protecting the security of the driver's license, the majority of licensing policies affect both state-issued ID cards and driver's licenses because the issuing criteria for both often are governed under the same statutes or administrative rules.

The states and the District of Columbia license more than 191 million drivers, who represent roughly 88 percent of those eligible for a license. Since as early as 1903, when Massachusetts and Missouri enacted the first state driver's licensing laws, states and territories have administered their own driver licensing systems. Since 1959, all states have required an examination that tests actual driving skills and traffic safety knowledge before a license is issued. Examining drivers and issuing licenses, however, is no longer the sole concern of state licensing agencies. Because the driver's license has assumed a role beyond traffic safety, where both government and private entities rely on the license for personal identification, state legislatures and driver's license agencies are concerned about the safety and security of the license as an identifier. In 2003, 45 states considered legislation aimed at keeping the license secure in its function as an identifier.

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The federal government is not directly involved in state procedures for licensing of recreational drivers. It is, however, involved in the licensing and oversight of commercial vehicle (CMV) drivers. Commercial drivers are issued a commercial driver's license (CDL). CDLs have different qualifying criteria than noncommercial driver's licenses. The CDL is also governed by different rules and procedures in which the federal government, in contrast to other driver's licenses, does provide specific rules and recommendations.

States determine key criteria for issuing noncommercial driver's licenses, including age restrictions, traffic safety knowledge, and physical requirements a driver's license applicant must meet, such as vision testing. Other issues facing state lawmakers include special requirements for teens and older drivers and regulating the commercial driver's license. The events of September 11, particularly those related to identity theft and fraudulent driver's license issues, caused many state legislators to reexamine driver's license and identification card systems. States contemplated ways to address the identification issues from the perspective of traffic safety, balanced with concerns about personal and national security.

General Identity Documentation

Obtaining a state-issued driver's license or ID card involves a key transaction: the applicant presents documentation identifying himself or herself as the person applying for a driver's license or ID card, and the licensing official accepts that documentation as a valid and accurate identification of the applicant. Most states regulate what forms of personal identification are acceptable. For a driver's license applicant to prove his or her identity, most states require proof through both primary and secondary documents. States differ, however, on which documents fall into each category, how many documents from each category must be presented at application, and what identifying information documents from each category may provide.

Ohio, for example, has implemented a primary/secondary identity document requirement. To obtain a driver's license or state ID card, applicants must present two forms of documentation to prove date of birth and social security number (SSN), if one was ever assigned. At least one of the two identity documents must be from the primary list. All primary documents must display the full name and birth date of the applicant and must be verifiable. Examples of primary documents accepted in Ohio include state driver's license or ID card not expired more than six months, certified birth certificate, valid Immigration and Naturalization Service (INS) documentation, certified copies of court orders that include name and date of birth, military identification documents (with photograph), or valid U.S. or Canadian passports. Examples of acceptable secondary documents include credit cards, employer or student identification cards, health insurance cards, valid foreign passports, and vehicle titles.

At least 12 states—Arizona, California, Colorado, Florida, Hawaii, Illinois, Maryland, Missouri, Nebraska, Rhode Island, Texas and Virginia—considered legislation in 2003 pertaining to documentation requirements. Colorado, Hawaii and Maryland have passed such measures. In 2003, Colorado enacted the Secure and Verifiable Identity Documents Act (HB 1224), which prohibits public entities that provide services from accepting or relying upon documents that are not secure and verifiable as proof of identification. The new law defines a “secure and verifiable document” as “... documents issued by a state or federal jurisdiction, or recognized

by the U.S. government, and that are verifiable by state or federal law enforcement, intelligence, or homeland security agencies.” Private businesses, such as banks, do not fall under this law. In addition, the new law states that public entities that issue licenses or ID cards shall not accept identification documents that are not “secure and verifiable.”

Consular Identification Legislation

Consular identification refers to an official identity card issued by a foreign national government to its citizens who are living in the United States and other countries abroad. Some U.S. states officially recognize consular identification. In 2003 at least 10 states—Arizona, California, Colorado, Georgia, Hawaii, Louisiana, Nevada, New York, Tennessee, and Texas—introduced legislation regarding the consular identification (table 1). Legislation in California, Hawaii and New York sought to broaden acceptance of the consular identification cards as valid identification documents, while legislation in Tennessee sought to restrict their use. In June 2003, Tennessee enacted HB 1705, which expressly prohibits the use of the *matricula consular*—consular identification from Mexico—as an identification document.

Federal legislation on consular identification was also introduced in 2003. HR 502 would prohibit any federal agency, commission or other entity within the executive, legislative, or judicial branches from accepting any identification document not issued by a state or federal jurisdiction and subject to verification (table 2).

Lawful Presence

Some—but not all—states require the applicant to be lawfully present in the United States before issuing a license. By definition, all U.S. citizens and U.S. nationals are lawfully present in the United States. Those who are neither U.S. citizens nor U.S. nationals (for convenience referred to herein as noncitizens) are lawfully present in the United States when they have some form of immigration status. There are many different categories of immigration status, including lawful permanent residents (or people with green cards), refugees, asylees, people granted temporary protected status, and people who have been granted employment authorization by the Bureau of Citizenship and Immigration Services (BCIS).

Although a birth certificate showing birth in a U.S. state or territory or the District of Columbia is the most common document used as proof of U.S. citizenship and lawful presence, many other documents also serve this purpose. Many people who were born abroad are U.S. citizens, either through a U.S. citizen parent or through naturalization in the United States. People born in the Northern Mariana Islands or Swain’s Island may not be U.S. citizens but still may be U.S. nationals and, as such, are entitled to remain in the United States. Just as numerous immigration categories fall under the definition of lawful presence, a great variety of documents may be presented by noncitizens to demonstrate that they have an immigration status. For example, there are at least six documents that prove that a person is a lawful permanent resident and at least four documents that prove that a person is a refugee.

Table 1. State Consular Identification Legislation, 2003

State	Citation	Summary	Last Action as of June 2003
Arizona	SB 1152	Eliminates the requirement that an applicant for a driver's license or ID card to prove legal presence in the United States. Allows use of an embassy or consulate issued ID card as form of identification at application for a driver's license or ID card.	Bill died at end of regular session—no carry over.
California	AB 522	Requires that city and county governments accept, for purposes of identification, identification cards issued by the Mexican Consulate Office except where possession of a driver's license is required by law.	04/28/03 - Passed Assembly, in Senate.
Colorado	SB 159	Creates the consular driver's license. Requires the Department of Revenue to use the consular identification number in lieu of a SSN at application for the license and requires the consular number to be displayed on the license. Requires that the license contain nomenclature identifying it as a consular driver's license and that the duration of the license be one year.	02/13/03 - Died in Senate Transportation Committee.
Georgia	HB 126	Amends current law to allow any person, regardless of residency status to apply for a driver's license. Also allows applicants who are not eligible to receive a SSN to provide an ITIN, a matricula consular, or a certified citizenship or birth document issued by a consulate or embassy in the United States.	Session adjourned; no action after 01/27/03.
	SB 181	Allows citizens of Free Trade of the Americas Act (FTAA) countries and other countries to submit an official driver's license or other identification documents from their country to the Georgia Department of Motor Vehicle Safety, whereby, upon verification of the authenticity of this documentation, these people shall be allowed to take the driver's licensing exam and be issued a driver's license.	Session adjourned; no action after 04/7/03.
Hawaii	HB 654	Allows the matricula consular to be accepted as identification from Mexican nationals residing in Hawaii.	In House Committee on International Affairs at end of 2003 regular session.
	SR 15	Urges local governments to accept the matricula consular as valid identification.	In Senate Committee on Judiciary and Hawaiian Affairs at end of 2003 regular session.
	SCR 26	Urges local governments to accept the matricula consular as valid identification.	In Senate Committee on Judiciary and Hawaiian Affairs at end of 2003 regular session.
Louisiana	HB 1521	Prohibits the Office of Motor Vehicles from accepting any document not approved by the Immigration and Naturalization Service, including but not limited to a Matricula Consular.	05/12/03 - Hearing scheduled in House Transportation, Highways and Public Works Committee.

State	Citation	Summary	Last Action as of June 2003
Nevada	SB 312	Authorizes state and local governmental entities to accept consular identification card for purpose of identifying person under certain circumstances.	06/09/03 - Approved by governor.
	AB 441	Consular Report of Birth Abroad issued by the Department of State can be presented for the issuance of a state driver's license.	06/10/03 Approved by governor.
New York	AB 6022	Requires banks to accept the matricula consular as a valid identification document for banking transactions.	In Assembly Committee on Banks.
Tennessee	HB 1705	Prohibits the use of matricula consular for identification purposes at application for a driver's license.	06/13/03 - Signed by governor.
	SB 1781	Prohibits the use of the matricula consular for identification purposes.	Substituted for HB 1705, which was enacted.
Texas	HB 57	Requires acceptance of matricula consular and other identification documents issued by foreign governments as identification at application for a driver's license if the document contains the holder's full name, photograph and date of birth, and the issuing government has established reasonable means for the document's verifiability.	In House Committee on Law Enforcement at end of 2003 regular session.

Source: NCSL, 2003.

Citation	Summary	Last Action
HR 502	Prohibits federal entities from accepting from individuals identification documents unless they are issued by a state or federal authority and subject to verification by federal law enforcement, intelligence or homeland security agency.	In House Committees: Government Reform, Judiciary (Crime, Terrorism, and Homeland Security Subcommittee), and House Administration.

Source: NCSL, 2003.

In some states, although there is no lawful presence requirement, there is a de facto lawful presence requirement because the list of documents acceptable to prove identity exclude people who are not lawfully present. SSN requirements, for example, may serve as de facto lawful presence requirements. Furthermore, many people who are lawfully present in the United States are denied licenses under current state laws because the documents they carry to prove lawful presence are not included on the list of acceptable documents. In other cases, people who are lawfully here are denied licenses because their foreign-issued birth certificates or other identification documents are not accepted.

Since September 2001, some state legislators have taken a tougher stance on whether to allow undocumented immigrants to obtain driver's licenses. An undocumented immigrant is someone who enters or lives in the United States without official authorization, either by entering illegally or by violating the terms of his or her admission. Examples include entering without inspection by the INS, entry based on fraud, or overstaying the authorized period of admission.

Supporters of restricting the license to only those lawfully present under U.S. law argue that driving is a privilege, and granting a license to undocumented immigrants encourages the influx of illegal immigrants through U.S. borders. In addition, the September 11 terrorist attacks also called attention to the security weaknesses of driver's licenses. Thus, the issue of undocumented immigrants and licensing is also related to states' objectives of preventing terrorists from obtaining false identification.

Opponents of restricting license eligibility argue that by not issuing undocumented immigrants driver's licenses, those individuals are unable to obtain motor vehicle insurance or receive proper driver education and examination. Traffic safety concerns arise because, with or without a license, many are likely to continue driving. Opponents also question the effectiveness of resolving issues of lawful presence at the licensing office when great concern exists regarding the ability of motor vehicle agencies to identify and include the vast number of INS documents immigrants may present.

Figure 1. States that Considered Lawful Presence Requirements for Licenses and ID Cards, 2003



Source: NCSL, 2003.

According to the National Immigration Law Center (NILC), 31 states and the District of Columbia currently require applicants for driver's licenses to be lawfully present under U.S. law.¹ These lawful presence requirements arise either through direct language in statute or administrative code or indirectly through a combination of identification document requirements at application. Issuing licenses and ID cards only to people who are lawfully present was considered by 31 states in 2003 (see figure 1). Virginia was the only state to enact into law its bill that requires lawful presence.

Louisiana passed a law that allows immigrants in the agricultural industry to obtain a temporary license, regardless of the person's immigration status. Conversely, California SB 60, signed into law in September 2003, repeals the lawful presence requirement for obtaining a driver's license or ID card in California. The California legislation permits illegal immigrants to obtain California driver's licenses. An estimated 2 million undocumented immigrants currently reside in California. Federal officials have suggested that California's

legislation may create an extra burden on customs and immigration inspectors at U.S. borders. Americans who return from countries in the Western Hemisphere do not need a passport to reenter the United States, although one is recommended. Federal officials are reviewing the current California policy because it is the most populist state in the nation and has attracted a large number of illegal immigrants.

Social Security Numbers

Federal law requires that states collect driver's license applicants' Social Security numbers (SSN) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.² However this requirement applies only to applicants who have a SSN. A 1996 law, the Illegal Immigration Reform and Immigrant Responsibility Act, included a provision that required states to place social security numbers on state driver's licenses. This provision was repealed in 1999. The Balanced Budget Act of 1997 expanded the SSN collection requirement to include both commercial and noncommercial driver's licenses. This act requires licensing offices to collect a SSN that the applicant *may have*, but does not require individuals to have a SSN as a condition for receiving a state driver's license. It also advises state licensing offices to obtain a sworn affidavit from applicants stating that they do not have a SSN.³

Most states require applicants to provide proof of their SSN as a prerequisite for obtaining a driver's license. However, 40 states have exceptions to that rule, which range from providing a Letter L-676 from the Social Security Administration (SSA) to a sworn affidavit from the applicant stating that he or she neither has, nor is eligible for a SSN. For example, Kansas and Wisconsin allow an individual who does not have a SSN to sign a sworn statement that he or she does not have one. New York allows individuals who are not eligible for a SSN to submit a letter from the SSA setting forth that an SSN has not been issued or the applicant is ineligible for one. According to a February 2002 U.S. General Accounting Office (GAO) report, only six states—Georgia, Kansas, Maryland, Michigan, Minnesota and Oregon—do not collect SSNs of all applicants for driver's licenses. In 1998, the Michigan Legislature passed a law requiring the collection of SSNs, but at the time of the GAO report, the law had not been implemented. In Minnesota in 2003, resolutions were introduced in both the Senate and House urging Congress to repeal the federal provisions that require the collection of SSNs, citing the state's privileges under the Tenth Amendment of the U.S. Constitution. The Tenth Amendment of the U.S. Constitution provides that those powers not expressly granted to the federal government will be retained by the states.

Some states, such as New Mexico, allow applicants to submit IRS individual taxpayer identification numbers (ITIN) in lieu of a SSN. Under U.S. law, earned income is taxable whether the earner is lawfully or unlawfully present. To track earnings of immigrants who are not eligible for a SSN, the Internal Revenue Service (IRS) created the ITIN, a nine-digit number similar to the SSN, but which begins with the number 9. Since the program began in 1996, the IRS has issued about 5 million ITINs. Since the establishment of the ITIN, its use, like the use of the SSN, has expanded beyond its originally intended purpose. Today, seven states—Kansas, Kentucky, New Mexico, North Carolina, Pennsylvania, Utah and West Virginia—allow submission of the ITIN in lieu of the SSN at application for a driver's license (table 3).

Table 3. State Driver's License Social Security Number (SSN) Requirements

State/ Jurisdiction	Require SSN from Those Who Have or Are Eligible for a SSN	Still Issue License without SSN?	SSN Display on Driver's License
Alabama	Yes	Yes ¹	Optional
Alaska	Yes	Yes	No
Arizona	Yes	Yes ²	Optional
Arkansas	Yes	Yes	Optional
California	Yes	Yes ²	No
Colorado	Yes	Yes ²	Optional
Connecticut	Yes	N/A	No
Delaware	Yes	Yes	Optional
Florida	Yes	Yes ²	No
Georgia	Yes	Yes ¹	Optional
Hawaii	Yes	Yes ¹	No
Idaho	Yes	Yes ¹	No
Illinois	Yes	Yes ⁷	No
Indiana	Yes	Yes ²	Optional
Iowa	Yes ⁸	N/A	Optional
Kansas	Yes	Yes ⁹	Optional
Kentucky	Yes	Yes ^{3, 4, 7}	No
Louisiana	Yes	Yes ³	Optional
Maine	Yes	Yes	Optional
Maryland	No	N/A	No
Massachusetts	Yes	Yes ³	Optional
Michigan	Yes	Yes	No
Minnesota	No	N/A	No
Mississippi	No	N/A	Optional
Missouri	Yes	Yes ²	Optional
Montana	Yes	Yes ³	Optional
Nebraska	Yes	Yes ⁶	No
Nevada	Yes	Yes	Yes
New Hampshire	Yes	N/A	No
New Jersey	Yes	No	No
New Mexico	Yes	Yes ⁴	Optional
New York	Yes	Yes ³	No
North Carolina	Yes	Yes ⁴	Yes
North Dakota	Yes	Yes ³	Optional
Ohio	Yes	Yes	Optional
Oklahoma	Yes	Yes	Optional
Oregon	No	N/A	No
Pennsylvania	Yes	Yes ^{3, 5}	No
Rhode Island	Yes	Yes ^{2, 4}	No
South Carolina	Yes	Yes ³	No
South Dakota	Yes	No	Optional

Table 3. State Driver's License Social Security Number (SSN) Requirements (continued)

State/ Jurisdiction	Require SSN from Those Who Have or Are Eligible for a SSN	Still Issue License without SSN?	SSN Display on Driver's License
Tennessee	Yes	Yes ²	Optional
Texas	Yes	Yes ³	No
Utah	Yes	Yes ⁴	Optional
Vermont	No	N/A	No
Virginia	Yes	Yes ³	Optional
Washington	Yes	Yes ¹	No
West Virginia	Yes	Yes ⁴	No
Wisconsin	Yes	Yes ²	No
Wyoming	Yes	Yes ²	Optional
District of Columbia	Yes	No	Optional

Notes

1. Requires letter from the SSA that an SSN has not been issued or the applicant is ineligible for one and documentation of lawful presence.
2. Requires applicants to submit an affidavit stating they have not been issued an SSN or are ineligible for one.
3. Requires letter from the SSA that an SSN has not been issued or the applicant is ineligible for a SSN.
4. Allow applicants without SSNs to submit an ITIN.
5. Allows applicants without SSNs to submit an ITIN, but must still submit a denial letter from the SSA if no ITIN.
6. Requires applicants without SSNs to verify lawful presence.
7. Provides religious exception to SSN requirement.
8. SSN not required for non-immigrants.
9. Allows applicants without SSNs to submit an ITIN, but must still submit a sworn statement if no SSN or ITIN.

Sources: AAA 2003 *Digest of Motor Laws*; AAMVA Comparative Data - State and Provincial Licensing Systems, Dec. 1999; NCSL, 2003.

In 2003, 25 states—Alabama, Arizona, Arkansas, California, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Missouri, Nebraska, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Virginia, West Virginia and Wyoming—reviewed legislation pertaining to driver's licensing and SSN and ITIN numbers.

Kansas enacted SB 16, which allows applicants for a driver's license to submit an ITIN if the applicant does not have an SSN. The Kansas law allows applicants to submit a sworn affidavit that they do not have either an SSN or ITIN. New Mexico also enacted legislation in 2003 related to the SSN/ITIN requirement (HB 173). The New Mexico law allows the submission of an ITIN in lieu of an SSN and requires that the ITIN be accepted from foreign nationals regardless of the applicant's immigration status.

After the federal regulation was repealed in 1999, some states repealed laws and regulations that automatically placed the SSN on the driver's license. Many states established an option under which the applicant for a driver's license could choose whether to have the SSN displayed on the license. Many applicants, because of a concern about identity theft, elected not to have the SSN displayed on the license. In 2003, legislators in at least 10 states—Alabama, Arkansas, Hawaii, North Dakota, Oklahoma, Oregon, Rhode Island, Virginia, West Virginia and Wyoming—introduced legislation that either prohibits the use of the SSN on any state-issued license or measures that remove the option to have the SSN displayed altogether (table 4). Five of these states—Arkansas, Hawaii, North Dakota, Virginia, and West Virginia (CDL)—enacted laws related to SSN display.

Table 4. Social Security Number Display Legislation, 2003			
State	Citation	Description	Last Action as of June 2003
Alabama	HB 33	Removes requirement that SSN be displayed on commercial driver's license.	03/18/03 - Passed House, referred to Senate Committee on Economic Expansion and Trade.
Arkansas	HB 2234	Removes the ability to elect to have SSN as driver's license number.	03/27/03 - Approved by governor (Act 386).
Hawaii	HB 1235	Removes the requirement that an applicant's SSN appear on the commercial driver's license. (Identical to SB 1406.)	Identical bill, SB 1406, was enacted.
	SB 1406	Removes the requirement that an applicant's SSN appear on the commercial driver's license. (Identical to HB 1235.)	04/17/03 - Signed by governor (Act 015).
North Dakota	HB 1443	Removes option of having SSN on driver's license.	03/26/03 - Signed by governor (HJ1065).
Oklahoma	SB 417	Allows people to request that their SSN be used as their driver's license number.	02/3/03 - Introduced and referred to Senate Committee on Veterans, Military Affairs and Public Affairs.
Oregon	HB 2783	Requires all state agencies issuing licenses and permits, including the driver's license, to collect the applicant's SSN. Prohibits the Department of Transportation from disclosing the SSN in motor vehicle records.	04/2/03 - House Judiciary Committee voted do pass and referred to House Ways and Means Committee.
Rhode Island	HB 5667	Prohibits the inclusion of SSNs or ITINs on the license.	04/1/03 - Scheduled hearing and consideration continued.
Virginia	HB 1593	Eliminates optional use of SSNs as driver's license numbers. (Current law allows the use of the SSN as driver's license number upon written request.)	03/16/03 - Approved by governor (Chapter 0306).
	HB 1744	Prohibits state agencies from displaying an individual's entire SSN on any agency-issued ID card or license certificate.	04/3/03 - Approved by governor (Chapter 0974).
	HB 2063	Prohibits display of SSN on any public agency student or employee ID card.	03/23/03 - Approved by governor (Chapter 0927).

State	Citation	Description	Last Action as of June 2003
West Virginia	SB 390	Removes requirement that SSN appear on commercial driver's license.	03/14/03 - Approved by governor (Chapter 70).
Wyoming	HB 55	Neither the SSN nor the ITIN should be displayed on the license, but the option to have the number displayed should be an option at application.	01/16/03 - Withdrawn by sponsor.

Source: NCSL, 2003.

Selective Service Registration

Federal law requires registering for the Selective Service System (SSS)⁴ for all male U.S. citizens and for male immigrant aliens residing in the United States if they are at least age 18 but are not yet age 26. Females are exempt from SSS registration. The federal government and states have tied SSS registration for males to the availability of services and employment opportunities. Failure to register is a crime punishable by a fine of up to \$250,000 and/or up to five years' imprisonment. Furthermore, many federal opportunities - including eligibility for student loans, job training, federal employment and citizenship for male immigrants - are denied to young men who fail to register. Not registering by age 26 results in permanent deprivation of these opportunities.

Although no federal law requires SSS registration at application for a state driver's license, many states have enacted such laws. According to the Selective Service, as of June 2003, 32 states, the District of Columbia, the Northern Mariana Islands and the Virgin Islands have enacted laws that require SSS registration to obtain a driver's license.

In 2003, legislation requiring SSS registration at application for a driver's license or identification card was introduced in at least 11 states: Arizona, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, New Mexico, Rhode Island, Texas, Virginia and Wyoming. Legislation was enacted in Arizona, Iowa, Kansas, Kentucky and New Mexico (table 5).

Fighting Technology with Technology

To increase the security of the driver's license and ID cards, states have considered ways to make state-issued identification difficult to counterfeit or duplicate. States have also reviewed measures aimed at stopping the use of false identification documents to obtain state-issued identification. Forged identification documents have led to increased strains on criminal justice systems, driving up the cost of investigations, prosecutions and incarceration. States are looking for ways that would improve the technology employed at the licensing agency, enabling the state to deter potentially fraudulent activities. Testing the validity of identification documents or training licensing personnel to spot fraudulent documents are two important issues facing state legislators. Because technologies and programs to battle counterfeiters can be costly, some states are considering increasing driver's license fees to help fund the technological improvements.

Table 5. Selective Service System Registration Legislation, 2003

State	Citation	Summary	Last Action as of June 2003
Arizona	HB 2293	Requires males under age 26 to register with the SSS to qualify for a driver's license, identification card or driver's license renewal and prescribes a mechanism to forward information to the SSS for registration purposes.	04/26/03 - Signed by governor (Chapter 90).
	SB 1106	Requires males under age 26 to register with the SSS to qualify for a driver's license, identification card or driver's license renewal and prescribes a mechanism to forward information to the SSS for registration purposes.	Died at end of regular session; similar bill (HB 2293) was enacted.
Colorado	SB 159	Exempts the driver's license from the requirement of registering with the Selective Service.	02/13/03 - Died in Senate Transportation Committee.
Iowa	HF 23	Requires registration with SSS for driver's license and non-operator's license.	03/24/03 - Withdrawn.
	HF 623 HB 23	Requires registration with SSS for driver's license and non-operator's license (formerly HF 23).	04/17/03 - Signed by governor (HJ 1201).
Kansas	HB 2073	Requires male applicants for driver's license or identification card between the ages of 18 and 26 to be in compliance with the Military Selective Service Act.	04/10/03 - Signed by governor (HJ 723).
Kentucky	HB 64	Requires males ages 18 to 26 to register with SSS at application for an operator's license, a commercial driver's license or an identification card.	03/12/03 - Signed by governor (Chapter 60).
Louisiana	HB 450	Provides that all male citizens or immigrants between the ages of 18 and 26 shall be registered with SSS when applying for a license, permit or identification card.	04/24/03 - Passed House, in Senate Committee.
Massachusetts	SB 1275	Requires that a male applicant for a commercial driver's license, instruction permit or license, or a renewal who is at least age 18 but younger than age 26 be registered in compliance with the requirements of the Military Selective Service Act. Signature on application either acknowledges that the applicant has so registered or authorizes the Registrar of Motor Vehicles to forward such information to the SSS.	01/01/03 - In Senate Committee on Public Safety.

State	Citation	Summary	Last Action as of June 2003
New Mexico	HB 89	Allows information from an initial application or renewal of a driver's license to be forwarded to the SSS.	04/08/03 - Signed by governor (Chapter 425).
	SB 316	Requires male applicants for driver's license or identification card to consent to their registration in compliance with the requirements of the Selective Service Act when applying to receive or to renew a driver's license or identification card. Provides for transmittal of information to SSS.	03/18/03 - Passed House; Passed out of Senate Committee on Transportation.
Rhode Island	SB 715	Requires the Division of Motor Vehicles to forward the applicant's SSN to SSS only if applicable.	04/23/03 - Passed Senate as amended, in House.
Texas	HB 479	Amends current law to automatically register with the system any male applicant for a driver's license or identification certificate who is between the ages of 18 and 26. Current law forwards information only upon consent of the applicant.	05/12/03 - Public Hearing Scheduled.
Virginia	SB 915	Amends law requiring applications for driver's license or commercial driver's license to register with SSS to allow for a written statement, signed buy a parent or guardian if the applicant is under age 18, stating that he has a moral or religious objection to the registration with SSS.	01/16/03 - Died in Senate Committee on Transportation.
Wyoming	HB 90	Provides that qualified applicants be registered with SSS in order to receive a driver's license or an ID card; applicants not registered ineligible to receive a license or ID card.	02/11/03 - Died in Committee.
Source: NCSL, 2003.			

Hardened Licenses

Creating a license that is difficult to counterfeit has been a goal of state legislatures in order to protect against both identity thieves and minors who attempt to create a license representing an age over 21. A hardened license is one that is difficult to replicate. Holograms, watermarks and high-definition photographs on laminated licenses traditionally have been used to prevent people from counterfeiting licenses that appear valid to the naked eye.

By adding further information—stored in magnetic strips and bar codes—to the license, most states are issuing driver's licenses that also are verifiable by machine-readers. The information in the magnetic strips and barcodes in most states is the standard information contained on the front of the license. Newer, two-dimensional barcodes used in about 30 states are capable

of storing more detailed information such as digital photographs, signatures or fingerprints. Although law enforcement agencies are the primary holders of machines that can scan this information from a license, scanners are becoming commercially available, allowing businesses to verify the validity of the license. For example, owners of bars and casinos, using commercially available scanners could visually check a license to verify the age of the holder and then scan the license to verify the license's integrity.

Privacy advocates argue that information stored on licenses and scanning creates an intrusion into Americans' everyday lives and creates information that can be stored in central databases. In 2003, Rhode Island considered legislation intended to address concerns about misuse of information embedded in the technological features of the state-issued licenses. HB 5667 would limit the information that may be "digitized" on the operator's license to that which is typically contained in words on the front of a license: name, age, date of birth, address, gender, physical description, signature, organ donor status, license number, expiration date, and any endorsements or restrictions. The bill expressly prohibits the licensee's SSN or ITIN from being digitally stored on the license. The legislation would limit access to the digitized information by nongovernmental entities to ascertaining the age of the licensee for transactions or privileges that are limited by law to those of a certain age, such as the purchase of alcohol or tobacco. The bill has been carried over to the next legislative session.

Biometrics

Biometric technology can verify the identity of individuals based on their unique physical characteristics. Biometrics software takes photographs or scans of physical features such as facial features, retinas or fingerprints and quantifies that information into mathematical algorithms. Facial biometrics quantify the distances between major points such as the eyes, nose or temples, and fingerprint biometrics quantifies the distances between branches and endpoints of the ridges. Once the information is stored, scans of the thumb or other physical features can be cross-checked with existing databases to verify identity.

Currently, three states—Colorado, Illinois and West Virginia—and the District of Columbia employ facial recognition technology to verify the identity of applicants who are renewing or replacing driver's licenses.

As with technology to harden the license, the use of biometrics does not come without cost to the state. States have considered measures in which the cost of using biometric technology in driver licensing can be recouped. A bill that failed to pass in Texas would have increased the cost of driver's license application and renewal to fund the reengineering of the Texas driver's license.

At least 14 states—California, Georgia, Illinois, Maryland, Missouri, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, Virginia, Washington and Wisconsin— reviewed measures related to biometrics in 2003. Oklahoma SB 423 was signed into law in May 2003. It requires driver's license applicants to be fingerprinted for proof of identity.

Privacy concerns and costs are the most significant barriers to the extensive use of biometric technology. The collection and use of digital identifiers has come under fire by civil libertarians

who argue that it is an undue infringement on individual privacy. For licensing technology to be effective, it also must protect the privacy of the individual who submits the unique digital identifiers. In response, some states considered legislation that would protect the digital information from abuse by state officials. Many states are considering legislation that includes digital identifiers under the umbrella of protected information in their identity theft laws.

Currently, eight states—California, Colorado, Florida, Georgia, Hawaii, Oklahoma, Texas and West Virginia—require fingerprinting at application for a driver’s license. However, only Georgia uses fingerprint scans to verify the applicant’s identity when issuing a replacement license.

Some states are considering legislation that addresses the use of the biometric information collected at the licensing offices for other governmental purposes such as criminal and missing persons’ investigations. In 2003, Maryland considered SB 285, which would allow the Motor Vehicle Administration to make digital photographs available to licensed private detective agencies. The bill, however, failed in committee. In Wisconsin, AB 288, which was signed into law in August 2003, expands to all state and federal jurisdictions the use of photographs collected at driver’s license application for legitimate law enforcement or missing persons investigations, provided procedural requirements and confidential requirements under Wisconsin law are met.

The limits of biometric technology are yet unknown. Potentially, the day may come when one would not need to carry any driver’s license or state ID. A thumb-stamp of approval or a look into an optical scanner may prove age and identity. Meanwhile, states continue to work to strike a balance in using technology positively without infringing on personal privacy.

Criminal Laws, Fraud and Underage Drinking

To deter counterfeit licensing and fraud, state legislatures have criminalized such conduct. As identity theft has become a serious issue, many states have considered legislation that establishes or increases penalties for using or possessing personally identifying information from a driver’s license. States are also considering legislation that would heighten penalties for counterfeiting licenses or identification cards.

The two major areas of concern are: 1) individuals who create false identification documents that allow them to obtain a license from an unsuspecting licensing official; and 2) legislation that targets the licensing officials who knowingly help another to obtain a fraudulent license.

In 2003, at least 10 states—Arkansas, Hawaii, Illinois, Kentucky, Nebraska, New Jersey, New York, Rhode Island, Virginia and Washington—reviewed legislation that added criminal sanctions or penalties for fraudulent behavior involved with licensing process. Arkansas SB 219, now Act 217, makes knowingly applying for a commercial driver’s license through fraudulent application or assisting the fraudulent application a Class A misdemeanor. Virginia SB 1058, now Chapter 819, makes it a Class 6 felony to obtain any document issued by the Department of Motor Vehicles through the use of counterfeit, forged or altered documents. If the violation includes obtaining or possessing the documents for the purpose of engaging in an age-limited activity, the violation is a Class 2 misdemeanor.

Religious Exceptions to State Driver's License Photo Requirements

Application for a state driver's license requires the presentation and documentation of personal information. Date of birth, name, address and weight often are questions that are asked not only at application for a driver's license, but that also are typically displayed on the front of the license itself. The photograph requirement may pose obstacles for some holding sincere religious convictions. Several states, recognizing that allowing one's face to be photographed may be antithetical to some religious practices, provide exceptions to this requirement (table 6). Meanwhile, other states favor requiring such information for all applicants. States with mandatory photo requirements may make other accommodations for those who hold sincere religious beliefs. These accommodations may include such as taking photographs after-hours or in areas secluded from other members of the public present in the office.

Citation	Summary
92 Ill. Adm. Code 1030.90	Allows for exception to photograph requirement for driver's license where applicant returns affidavit containing a detailed, written explanation of why the photograph is against the applicant's religious convictions. The affidavits are reviewed by a committee of three administrative personnel in addition to the director. Allows for a 90- day interim non-photo temporary license to be issued during review of affidavit. Also allows a non-photo license to be issued to those with facial disfigurements and allows appeals of denials of non-photo licenses.
1030.90Minn. R. 7410.1800 (2002)(currently under review)	Provides for driver's license valid without photograph for qualified applicants having religious objections to the use of a photograph. The space where photograph normally appears will contain the words "VALID WITHOUT PHOTOGRAPH."
Proposed Rule Minn. R. 7410.1810State Register (April 21, 2003).	Repeals Minn. Rules 7410.1800. Requires that applicants for a driver's license, permit or identification card shall have a full-face, uncovered and unobstructed photograph taken. A new photograph must be taken after one renewal cycle.
Mo. Rev. Stat. § 302.181 (2003)	Requires issuance of license valid without a photograph upon a statement that the applicant is a member of a specified religious denomination that prohibits photographs of members as being contrary to its religious tenets. Requires that license state that no photograph is required because of a religious affiliation.
67 Pa. Code §73.3 (2003)	Allows license that is valid without a photograph upon certification that having photographs taken would violate the applicant's religious beliefs.
Source: NCSL, 2003.	

A Florida judge ruled in May 2003 that a Muslim woman could not wear a veil in her driver's license photo. The woman had obtained a license in 2001 that showed her veiled with only her eyes visible. After the September 11 attacks, however, the state required that she return to have her photo retaken with her face uncovered. When she refused, the state revoked her license.

Another religious group that opposes the photograph requirement for driver's licenses or ID cards are the Amish-Mennonites, who believe that they are not to make any images of themselves. In Kentucky, this community is anticipating that the state will allow them an exception to the

driver's license photograph requirement. A state representative plans to introduce legislation next year that, if enacted, would allow a fingerprint or Social Security number instead of a photo on the license. To guard against impostors posing as Amish-Mennonites, the state could require some form of affidavit.

The Federal Role in Driver's Licensing

States have been regulating driver's licensing for more than a century and with the exception of CDLs, the federal government plays only a small role. Federal law requires SSN collection at application for state driver's licenses. Overall, however, the federal government plays only a tangential role in issuance of non-CDLs.

In 2003, three pieces of legislation were introduced in Congress that relate to the states' issuance of the non-CDL and the use of the driver's license as an identifier (table 7). Two federal bills (HB 655 and HB 687) would prohibit federal agencies from accepting, as identification driver's licenses from states that issue licenses to applicants who are not lawfully present under federal law. HB 1121 would restrict states from issuing driver's licenses to undocumented immigrants and would require that state-issued licenses and ID cards be valid only during the period of lawful presence. These bills are awaiting consideration in committee.

Citation	Description	Status as of June 2003
HR 655	Prohibits federal entities from accepting from individuals for identification purposes state driver's licenses unless the state issues licenses to non-immigrant aliens that expire when their nonimmigrant visas expire.	In House Committees: Government Reform, and Judiciary (Immigration, Border Security, and Claims Subcommittee).
HR 687	Prohibits any employee of federal agencies from accepting from individuals for identification purposes any identification document that was issued by a foreign government, with the exception of foreign passports already authorized to be used for certain purposes according to existing federal law.	In House Committees: Government Reform, Judiciary (Crime, Terrorism, and Homeland Security Subcommittee), and House Administration.
HR 1121	Requires nonimmigrant aliens to present nonimmigrant visas at application for a state driver's license or identification card. Requires that driver's licenses and identification cards issued to nonimmigrant aliens be valid only during the period of validity of the nonimmigrant alien's visa. Requires Homeland Security to enter into discussions with state and local officials to ensure prompt and efficient compliance.	In House Judiciary Committee (Immigration, Border Security, and Claims Subcommittee).

Source: NCSL, 2003.

For CDLs, the federal government's role is more expanded. Regulation of the CDL is within the purview of both state and federal law because commercial drivers often cross state boundaries. Federal laws require states to impose such minimum requirements at licensing as age, driving record and penalty provisions. The Commerce Clause of the U.S. Constitution gives Congress power to regulate interstate commerce. The Supremacy Clause of the Constitution makes

federal law the supreme law of the land. In the event of conflict with state law, federal law will control. Therefore, when federal regulation exists with respect to commercial vehicles and CDLs, federal law will control, notwithstanding the fact that states are the primary issuer of the CDL.

Recently, the U.S. Patriot Act added the additional requirement that states perform thorough background checks of commercial drivers who seek an endorsement to transport hazardous materials. Federal penalties for state noncompliance with the federal CDL laws include withholding of Motor Carrier Safety Assistance Program funding.

Conclusion

In 2003, nearly every state considered legislation to strengthen the security of driver's licenses and ID cards. State lawmakers continue to consider who should be eligible for state ID cards and driver's licenses and whether the documentation presented at the licensing office is valid. Furthermore, identity theft has raised legislators' awareness of technology used to create fraudulent documents, state licenses and ID cards. States are considering making the driver's license more difficult to replicate by using digitally encoded information and biometrics to serve as secondary identity verification. State legislators in 2003 have taken a fresh look at this issue and the legislative options for improving the security of state-issued identification.

Notes

1. National Immigration Law Center, Overview of States' Driver's License Requirements, updated August 25, 2003. Available at <http://www.nilc.org/immspbs/DLs/index.htm>.
2. 42 U.S.C. section 651 et seq.
3. DHHS PIQ-99-05, July 14, 1999.
4. Selective Service System, Selective Service System Fast Facts: Laws Linking SSS Registration To State Driver's License Applications (May 2003). Available at <http://www.sss.gov/Fsdrivers.htm>.

Links to Additional Resources

- American Association of Motor Vehicles Administrators: ID Security—<http://www.aamva.org/IDSecurity/>
- Council of State Governments and National Conference of State Legislatures: White paper on Driver's License Integrity—http://www.csg.org/nt/csg/attachments/csg_drivers_license.pdf
- National Conference of State Legislatures: Identity Theft Project—<http://www.ncsl.org/programs/lis/privacy/idtheft.htm>

- National Conference of State Legislatures: Driver Licensing and Identification Card Security: Review of 2002 State Legislation—<http://www.ncsl.org/programs/esnr/licensetranrev02.htm>
- National Immigration Law Center: Driver's License Issues—<http://www.nilc.org/immspbs/DLs/index.htm>
- U.S. Department of Transportation: Federal Motor Carrier Safety Administration—<http://www.fmcsa.dot.gov/>
- U.S. Social Security Administration—<http://www.ssa.gov/>
- U.S. Selective Service System—<http://www.sss.gov/>

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