



**HB 789 - Testimony for the House Judiciary Committee
Maryland Highway Safety Act of 2013
March 13, 2013**

SUPPORT

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The ACLU of Maryland strongly supports this proposal to create a limited use driver's license. Limited use driver's licenses would help ensure that more Marylanders have access to the basic necessities of daily life, would improve public safety and security, and would be consistent with the standards set forth in the federal REAL ID Act of 2005.

I. Driver's Licenses are a Basic Necessity of Daily Life.

Without the ability to drive, persons cannot perform the most essential daily functions and activities without great hardship, particularly where public transportation is not readily available. These daily life activities include taking children to school, going to medical visits, grocery shopping, keeping medical appointments, or going to and from places of employment. Because of the centrality of driving to life in Maryland, individuals who currently cannot apply for a license to drive may find themselves with little choice but to continue to drive anyway.

Reliable estimates indicate that there are more than 275,000 undocumented Maryland residents.¹ Because the current system requires proof of lawful immigration status as a condition of obtaining a license to drive, that entire population² is excluded. In fact, some U.S. citizens and lawfully present immigrants also face challenges under the current system. As of 2006, as many as 13 million United States citizens lacked ready access to documentary proof of their citizenship, including 12 percent of low-income citizens earning less than \$25,000 per year.³

¹ UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, PEW HISPANIC CENTER, February 2011, available at <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/>.

² With the exception of the estimated 95,000 individuals who obtained a driver's license prior to 2009. Their licenses, however, are set to expire in 2015. See SB 715 Fiscal and Policy Note at 3.

³ CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION, Brennan Center for Justice, November 2006, available at www.brennancenter.org/page/-/download_file_39242.

Moreover, not every immigrant who is lawfully present in the United States is able to provide documentary proof of lawful presence. For example, when individuals are in the process of adjusting their status from one immigrant category to another, they may lack documents to show proof of lawful presence, and the process is often lengthy and complicated.⁴

Thus, limited use driver's licenses could benefit a large number of Maryland residents and will likely result in a dramatic decrease of unlicensed drivers on the road.

II. Limited Use Driver's Licenses Improve Public Safety and National Security.

Limited use driver's licenses also improve public safety and national security, for a number of reasons. First, having trained, tested, and insured drivers on the road improves public safety for everyone and decreases the costs associated with motor vehicle accidents. Second, law enforcement officials would have access to a current database against which to check the identity, address, driving record, and even arrest records of drivers with limited use licenses. Finally, tying immigration status to identification has counterproductive national security results.

Individuals who are not eligible to apply for a driver's license do not obtain the necessary training and testing to ensure that they know the rules of the road. In addition, individuals without a driver's license are unable to apply for motor vehicle insurance. If involved in an accident, individuals without a license are more likely to flee the scene of the accident for fear of being arrested. Decreasing the number of unlicensed, uninsured motorists would therefore, for obvious reasons, result in improved highway safety.

Moreover, the ability of police to access current information about drivers would improve dramatically with the addition of individuals who, under this proposal, would now be able to obtain a license to drive and would therefore be recorded in the MVA database. In addition, individuals with driver's licenses would be less fearful of arrest by local law enforcement and would therefore be more inclined to trust and cooperate with local authorities. For both these reasons, increasing access to driver's licenses would promote public safety and security.

Finally, experts who have examined the connection between immigration status and national security concerns have concluded that tying immigration status to identification requirements does not help promote national security.⁵ Moreover, the proposed law would result in the issuance of limited use driver's licenses that meet

⁴ This difficulty has been acknowledged by courts. *See, e.g., Lozano v. Hazleton*, 496 F.Supp. 477, 531 (M.D. Pa. 2007).

⁵ For example, the 9/11 Commission, a bipartisan panel of experts, explicitly opposed tying immigration status to identification requirements. *See* AILA Press Release: House and Senate Conferees Meet on 9/11 Legislation, *available at* <http://www.aila.org/content/default.aspx?docid=11693> (discussing a 2004 letter to Senator Susan Collins and Representative Peter Hoekstra from 9/11 Commission Chair Thomas Kean and Vice-Chair Lee Hamilton).

all the requirements of the REAL ID Act, which should be sufficient to address any remaining concerns about national security.

III. The Federal REAL ID Act of 2005 Allows the Issuance of Limited Use Driver's Licenses.

Maryland is one of thirteen states that meet the standards specified in the REAL ID Act of 2005.⁶ The introduction of a limited use driver's license in no way alters that fact. The REAL ID Act does not prohibit the issuance of driver's licenses or identification cards to persons who are unable to provide proof of lawful immigration status. Instead, the REAL ID Act makes provisions for just that circumstance when it requires distinguishing those licenses from licenses that meet the additional identification standards specified in the Act.⁷

Even for federal purposes, the limitation on uses of driver's licenses that do not meet the above-mentioned identification standards is extremely narrow. The REAL ID Act prohibits the use of such licenses only for official federal purposes, and DHS regulations explicitly limit the definition of those terms to three very specific circumstances: "Official purpose means accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants."⁸ Thus, the use of a limited use driver's license would be acceptable for all other purposes, and the issuance of limited use driver's licenses does not undermine Maryland's compliance with REAL ID Act provisions.

It should also be noted that in practice, non-REAL ID compliant driver's licenses are routinely accepted even for the federal purposes specified in the Act such as boarding federally-regulated commercial aircraft, since so few states comply with REAL ID standards. Only thirteen out of fifty states have met the identification standards specified in the REAL ID Act of 2005.⁹ Fifteen states have specifically rejected the implementation of those standards by passing legislation prohibiting state agencies from imposing them. DHS has not penalized holders of licenses from those states in any way. Instead, DHS continually postpones implementation of the REAL ID Act and appears not to regard it as a priority.¹⁰

In any event, providing access to a limited, clearly distinguishable driver's license, as this proposal would do, would have no effect on Maryland's status as one of thirteen states that has met the standards specified in the REAL ID Act of 2005.

⁶ PL 10-13, May 11, 2005, 119 Stat 231, codified at 49 USC § 30301 note. For a list of the 13 states that meet REAL ID standards, including Maryland, *see* DHS Determines 13 States Meet Real ID Standards, December 20, 2012, *available at* <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>.

⁷ *See* 49 USC § 30301 note 202(d)(11).

⁸ 6 CFR § 37.3, 73 Fed. Reg. 5271 (January 29, 2008).

⁹ *See* DHS Determines 13 States Meet Real ID Standards, *supra* note 6.

¹⁰ The REAL ID Act provided for implementation within 3 years, by May 2008. In January 2008 DHS postponed that deadline till 2009 and 2011 for different parts of the Act. Further extensions were granted in December 2009 and January 2011. The current nominal compliance deadline has been extended to January 2013, *see* 76 Fed. Reg. 12269, and is likely to be postponed again given that at least 15 states have explicitly rejected compliance and that only 13 states are currently in compliance with the Act.

IV. Conclusion

The proposed law would improve Marylanders' access to the basic necessities of daily life, would promote public safety and security, and would not conflict with REAL ID standards. The ACLU of Maryland urges a favorable report on this much-needed proposed bill.