

1 **COMMITTEE:** **Communications, Financial Services &**  
2 **Interstate Commerce**

3 **POLICY:** **NCSL Opposes Federal Contactless**  
4 **Technology Mandates for State Issued**  
5 **Identification Documents**

6 **TYPE OF POLICY:** **Action**

7 Whereas, the federal government is taking a more active role in influencing and  
8 determining the technological standards for state issued identification documents  
9 such as drivers licenses. The federal government is attempting to influence or  
10 mandate the technological standards of sovereign state issued identification  
11 documents through the direct acts of Congress, the rule-making processes of the  
12 Departments of State and Homeland Security, or through both official or informal  
13 agreements with international organizations or initiatives such as the American  
14 Association of Motor Vehicle Administrators (AAMVA), the Security and  
15 Prosperity Partnership (SPP), and the United Nation's agency known as the  
16 International Civil Aviation Organization (ICAO).

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18 Whereas, an example contrary to the tenets of federalism, the initial version of  
19 the federal REAL ID Act as introduced would have required the states to enter  
20 into the AAMVA compact known as the Driver's License Agreement (DLA). This  
21 compact as drafted would put the non-governmental 501c3 AAMVA, which has  
22 foreign voting members, in charge of making the technology decisions for a  
23 state's sovereign drivers licenses. Such federal decisions would allow for  
24 AAMVA, and not the States, to determine whether or not bar code or contactless  
25 technology must be employed, whether or not such data could be encrypted,  
26 what biometrics would need to be encoded, and whether or not the data could be  
27 shared with foreign governments.

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29 Whereas, an example contrary to the tenets of federalism, the final rules for both  
30 REAL ID and the Western Hemisphere Travel Initiative (WHTI) were published in

31 2008, and mandated standards onto states' driver's licenses for them to be  
32 acceptable for certain uses. The Department of Homeland Security is currently  
33 requiring states to embed unencrypted contactless technology into a state's  
34 drivers licenses in order for citizens to be able to use them to get back into the  
35 United States at international ground crossings. This places specific  
36 technological choices as having equal importance over the roles of identification  
37 and proof of citizenship, while leaving states with no flexibility or options in this  
38 area if they want to pursue an Enhanced Drivers License (EDL) that does not use  
39 contactless technology, wishes to employ encrypted contactless technology, or  
40 wishes to employ shorter range contactless technology than what is being  
41 mandated. The goal of WHTI deals simply with providing proof of citizenship, not  
42 dictating the technology by which that proof must be conveyed.

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44 Whereas, an example contrary to the tenets of federalism, the final rules for  
45 REAL ID, page 86, make clear that the federal government is not satisfied with a  
46 one time mandate and wishes to have this control in perpetuity going forward:  
47 "Moreover, in the future, DHS, in consultation with the States and DOT, may  
48 consider technology alternatives to the PDF417 2D bar code that provide greater  
49 privacy protections after providing for public comment". The "final rules" are  
50 therefore not really final, and it is unacceptable that such technological decisions  
51 could be made by requiring only non-binding consultation with States, especially  
52 when there is debate between the States and the federal government as to what  
53 really constitutes optimal privacy and security options for their driver's licenses.

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55 Whereas, a driver's license is a sovereign state document, and whether or not  
56 bar code or contactless technology must be employed, should remain a State  
57 decision. The federal government should not use the WHTI, a policy of its own  
58 devising, as an economic cudgel to coerce states into accepting such  
59 technological standards onto their sovereign driver's licenses.

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61 Therefore, let it be resolved, that the NCSL will urge the President, Congress,  
62 and the Departments of State, Transportation, and Homeland Security to not  
63 pass law, allow for federal policy, use international organizations, or enter into  
64 international agreements that mandate or attempt to indirectly influence the use  
65 of contactless technology in state or local identity documents.