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

WHEREAS, an example contrary to the tenets of federalism, the initial version of the federal REAL ID Act as introduced would have required the states to enter into the AAMVA compact known as the Driver’s License Agreement (DLA). This compact as drafted would put the non-governmental 501c3 AAMVA, which has foreign voting members, in charge of making the technology decisions for a state’s sovereign drivers licenses. Such federal decisions would allow for AAMVA, and not the States, to determine whether or not bar code or contactless technology must be employed, whether or not such data could be encrypted, what biometrics would need to be encoded, and whether or not the data could be shared with foreign governments.
WHEREAS, an example contrary to the tenets of federalism, the final rules for both REAL ID and the Western Hemisphere Travel Initiative (WHTI) were published in 2008, and mandated standards onto states’ driver’s licenses for them to be acceptable for certain uses. The Department of Homeland Security is currently requiring states to embed unencrypted contactless technology into a state’s drivers licenses in order for citizens to be able to use them to get back into the United States at international ground crossings. This places specific technological choices as having equal importance over the roles of identification and proof of citizenship, while leaving states with no flexibility or options in this area if they want to pursue an Enhanced Drivers License (EDL) that does not use contactless technology, wishes to employ encrypted contactless technology, or wishes to employ shorter range contactless technology than what is being mandated. The goal of WHTI deals simply with providing proof of citizenship, not dictating the technology by which that proof must be conveyed.

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

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

THEREFORE, LET IT BE RESOLVED, that the NCSL will urge the President, Congress, and the Departments of State, Transportation, and Homeland Security
to not pass law, allow for federal policy, use international organizations, or enter
into international agreements that mandate or attempt to indirectly influence the
use of contactless technology in state or local identity documents.