

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL**
2 **SERVICES & INTERSTATE COMMERCE**

3 **POLICY: NCSL OPPOSES FEDERAL**
4 **CONTACTLESS TECHNOLOGY**
5 **MANDATES FOR STATE ISSUED**
6 **IDENTIFICATION DOCUMENTS**

7 **TYPE OF POLICY: RESOLUTION - DRAFT**

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

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.

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

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

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

57 THEREFORE, LET IT BE RESOLVED, that the NCSL will urge the President,
58 Congress, and the Departments of State, Transportation, and Homeland Security

59 to not pass law, allow for federal policy, use international organizations, or enter
60 into international agreements that mandate or attempt to indirectly influence the
61 use of contactless technology in state or local identity documents.