



REPORT OF THE STATE AUDITOR

**Secure and Verifiable Identity
Document Act**

**Performance Audit
November 2008**

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Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the implementation of the Secure and Verifiable Identity Document Act (Act) by state government. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 24-72.1-107, C.R.S., which requires the State Auditor to conduct a study of the implementation of the Act and to examine "whether the birth certificates issued in Colorado, or any other state, district, territory, possession, commonwealth, or other insular area of the United States, should qualify as a secure and verifiable document." The report presents our findings and conclusions.

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Secure and Verifiable Identity Document Act

Authority, Purpose, and Scope

Colorado's Secure and Verifiable Identity Document Act (Act), adopted by the General Assembly in 2003, establishes mandates related to the acceptance by public entities of personal identity documents. The Act [Section 24-72.1-103(1), C.R.S.] states that a public entity "shall not accept, rely upon, or utilize an identification document to provide services unless it is a secure and verifiable document." Additionally, the Act prohibits a public entity that is issuing an identification card, license, permit, or official document from accepting an identification document "... unless such identification document is a secure and verifiable document." The Act states that a secure and verifiable document is:

... a document issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.
[Section 24-72.1-102(5), C.R.S.]

Another provision of the Act [Section 24-72.1-107, C.R.S.] requires the State Auditor to study the implementation of the Act "by departments, institutions, agencies of state government, including education institutions, and the judicial and legislative branches." Also, the State Auditor is required to examine whether "a birth certificate issued in Colorado, or any other state, district, territory, possession, commonwealth, or other insular area of the United States, should qualify as a secure and verifiable document."

As part of the audit we surveyed all 19 state departments to assess implementation of the Act. We selected nine state agencies and four educational institutions for further testing. For these 13 agencies and institutions we interviewed staff; reviewed agency policies, procedures, and case files; and observed agency activities related to providing services and issuing licenses, permits, and official documents. For the review of the Legislative Branch's implementation of the Act, we contracted with a private accounting firm. Also, we met with staff from the Governor's Office and the Office of the Attorney General during the initial and final phases of the audit. We acknowledge the assistance of the management and staff at the agencies we visited during the audit.

In addition to the specific requirements of the Secure and Verifiable Identity Document Act, this performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The audit work was performed from May through November 2008. The audit work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary of Findings

In studying the implementation of the Act, we identified obstacles that impaired the ability of agencies to implement the Act and prevented our Office from fully evaluating agency compliance with the Act. Specifically, we found that critical requirements of the Act, including definitions of key terms, are unclear, and that there is no single entity designated as the authority to coordinate, administer, and monitor implementation of the Act. Additionally, we found most state agencies were not familiar with the Act. Eleven of the 13 agencies we reviewed were unaware of the requirements of the Act and only 2 had taken steps to implement the Act. However, the vast majority of documents that all 13 agencies were accepting or relying upon appeared to meet the definition of a secure and verifiable document under the Act. Finally, we concluded that birth certificates issued by the 50 states, District of Columbia, and U.S. territories are secure and verifiable documents as defined under the Act. We discuss these issues below.

Background

The Colorado General Assembly's passage of the Secure and Verifiable Identity Document Act in 2003 is one example of legislation directed at addressing federal and state concerns about the ability of government to establish and verify personal identity. These concerns gained momentum following the events of September 11, 2001. Other examples of efforts to enact identity-related legislation include House Bill 06S-1023, discussed later in this report, and the federal Real ID Act.

The Act intends to establish and verify identity through the use of specific types of documents. The two categories of documents for establishing identity under the Act include:

- **Documents issued by a state or federal jurisdiction.** Many documents are issued by state and federal jurisdictions and typically include driver's licenses and IDs, U.S. passports, U.S. military IDs, state or federal employee IDs, university or college IDs (if state supported), and high school IDs (if state supported).

- **Documents recognized by the United States Government and verifiable by federal or state law enforcement, intelligence, or homeland security agencies.** As discussed later in this report, many documents are recognized by the federal government and almost all of these documents can be verified by federal or state law enforcement, intelligence, or homeland security agencies if given enough time.

To fully understand the Act's requirements and its impact on state government operations, it is important to first understand what the Act does not require. Specifically, the Act does *not* require:

- An applicant for government services or a license, permit, or official document to provide an identity document if one is not already required by state agency procedures, rules, or statute. In other words, if the agency does not require or rely upon an identity document to deliver a service or issue a license, the Act does not apply.
- A public entity to verify the legitimacy of the identity documents presented by the applicant.
- A public entity to maintain copies of the identity documents relied upon to provide services or issue licenses, permits, or official documents.
- A public entity to comply with the Act's requirements if federal law mandates the acceptance of certain identity documents that differ from those indicated by the Act.

Identity and Lawful Presence

While the Act focuses on establishing a person's identity through documentation (i.e., the person is who they say they are), it does not require that lawful presence be established. In other words, the Act does not require an applicant for services or a license, permit, or official document to establish that he or she is lawfully present in the United States, a resident of Colorado, or a U.S. citizen. The distinction between these two terms—identity and lawful presence—is important because establishing one does not necessarily or automatically mean that the other is established.

Specifically, an individual's identity—full name, age, birth date, gender, race, address, etc.—may be established through some form of photo or other identification. However, identity documents may or may not prove a person's citizenship or lawful presence status. For example, a driver's license issued by a state that does not verify the applicant's lawful presence status only establishes identity. Another document, such as a birth certificate or certificate of naturalization,

would be needed to prove the applicant's lawful presence in the United States. The reverse is also true. An individual may present documentation such as a birth certificate as proof of citizenship, or lawful presence. However, birth certificates do not contain photos of the persons who were issued the documents. Therefore, it is impossible to determine if the individual bearing the birth certificate is the individual to whom the document was issued. Other documents, such as a state-issued ID card, would be needed to verify identity. Some documents prove both a person's identity and lawful presence. Examples of such documents include U.S. passports, U.S. military ID cards, and driver's licenses and ID cards issued by states that verify an applicant's lawful presence in the United States.

Implementation of the Act

As required by statute [Section 24-72.1-107(1)(a), C.R.S.] we studied the efforts of state departments, institutions, and agencies to implement the Act. As part of our study, we surveyed all state departments and collected and reviewed documentation regarding the departments' processes and procedures. Based on this information, we selected for further analysis programs and operations at eight state agencies, four educational institutions, and one program administered by the Governor's Office. (See Appendix A for a complete list of the agencies and programs we studied.) Our audit work at these 13 entities included interviewing more than 120 state employees, observing approximately 169 transactions, and reviewing 412 case files.

We determined that only 2 of the 13 state entities in our review have taken steps to implement the Act's requirements. The two agencies are the Department of Public Health and Environment, Vital Records Section and the Department of Revenue, Motor Vehicles Division, Titles and Registration Section. Although this finding appears to indicate minimal compliance among state agencies, it is important to note that the vast majority of transactions we observed and case files we reviewed at all 13 of the agencies involved documents that appeared to meet the definition of secure and verifiable. For example, in approximately 99 percent of the 169 transactions we observed, applicants provided identification documents issued by a state or federal jurisdiction (e.g., a state driver's license). Similarly, of the 412 case files reviewed, 376 or 91 percent, contained copies of government-issued identity documents. Such documents are considered secure and verifiable under the Act.

On the surface, the lack of awareness and compliance with the Act is troubling. State entities have a responsibility to fulfill statutory mandates. However, we found that there are a number of issues that make the Act's implementation difficult if not impossible. These issues have a corresponding impact on our ability to audit compliance. We describe these issues in the following sections.

Lack of Specificity within the Act

The Act lacks clarity or specificity in a number of areas needed to ensure complete and consistent implementation. As stated earlier, the Act defines a secure and verifiable document as “. . . a document issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.” [Section 24-72.1-102(5), C.R.S.] This definition does not identify the types of identity documents agencies may rely upon and is silent with respect to the features on the document that render the document secure. Additionally, the Act lacks clarity in the following areas:

- **Documents issued by state and federal jurisdictions.** Under the Act, an identity document is considered secure and verifiable if it is issued by a state or federal jurisdiction. However, the Act does not define state or federal jurisdiction. In common law, state and federal jurisdiction refers to the geographic area within which political or judicial authority may be exercised, and generally includes political and judicial subdivisions within such areas. On the basis of this definition, federal and state jurisdiction could include federal agencies, territories, and other insular areas of the U.S., state agencies, and political subdivisions of both state and federal governments including counties, city and counties, cities, towns, school districts, local improvement districts, or any municipal, quasi-municipal, or public corporation organized pursuant to state or federal law. Applying this definition broadly, a secure and verifiable document could include such documents as library cards and school IDs. With such a broad range of jurisdictions and an absence of universal standards for the issuance of identity documents, it may not be reasonable to consider identity documents issued by all state or federal jurisdictions secure and verifiable.
- **Documents recognized by the United States Government.** Currently, no authoritative guidance exists to identify a set of documents recognized by the United States Government. Typically, each federal agency or program establishes a list of acceptable identification documents for proving an applicant’s identity, citizenship, and lawful presence in the United States. We reviewed the United States Code and federal regulations and found that identity documents accepted or recognized by the federal government include state-issued driver’s licenses and IDs; U.S. passports; U.S. military IDs; state- issued hunting, fishing, and marriage licenses; voter registration cards; school records or report cards; clinic, doctor, or hospital records; and daycare or nursery school records. Whether acceptance by Colorado state agencies of any or all of these documents meets the requirements or intent of the Act is unclear.

- **Documents verifiable by federal or state authorities.** There is no authoritative guidance, at the state or federal levels, on the federally recognized identification documents that are verifiable by federal or state law enforcement, intelligence, or homeland security agencies, as prescribed in the Act. According to Colorado Bureau of Investigation officials, with enough time and resources, most identity documents issued in the United States can be verified with the issuing agency or corroborated through other investigative techniques.
- **Definition of public services.** According to the Act, public entities that provide “services” are subject to the Act’s mandates. However, the Act does not define what is meant by “services.” From a broad perspective, an argument could be made that all activities, programs, and functions of state and local government are services and thus, are covered under the Act. However, the position argued by some state entities we contacted is that their activities or functions did not qualify as services per se. Rather, these agencies asserted that their activities served a necessary public function or vital role in carrying out essential government or societal operations. For example, the Judicial Branch is responsible for resolving disputes through the state court system and for supervising offenders on probation. Judicial officials argue that access to the court is a matter of due process and is not an optional service. Access to the court is either mandated, in the case of state action against a person, or is the only method to obtain lawful resolution of a matter. Likewise, supervising probationers is a matter of public safety. Probationers are required by the entry of a judgment and sentence to complete probation and to be supervised by Judicial Branch employees, regardless of whether the defendant can produce a secure and verifiable document. Furthermore, individuals have a constitutional right to a fair trial. As such, Judicial Branch officials argue that the state court system does not provide a service but ensures the fair administration of justice, a constitutional right. Similar arguments could be made with regard to many of the activities and functions of other state entities including the Departments of Corrections, Public Safety, and Transportation.

Lack of Authoritative Administration and Oversight

There have been administrative challenges to the implementation of the Act as well. No single entity has authority to administer and oversee the services of all state and local public entities, and the Act does not designate such an authority to coordinate, administer, and monitor implementation of the Act. Consequently, since the Act’s passage in 2003, there has been no statewide direction for or oversight of the efforts

of state agencies and institutions to implement the Act. We believe this lack of a central authority has resulted in three fundamental problems:

- First, as noted earlier in this report, only 2 of the 13 state entities we contacted had actively taken steps to implement the Act. Staff at the remaining 11 state entities told us they were unaware of the Act and its requirements. In the absence of an oversight authority, public entities may not be made aware of or may not be compelled to fulfill the Act's mandates.
- Second, the two state entities that attempted to implement the Act developed lists that contained different approved ID documents. Such differences, particularly in the absence of an authoritative source on the documents that meet the definition of secure and verifiable, raise questions about state government fairness, consistency, and equity. For example, the Department of Revenue accepts only government-issued identity documents such as U.S. passports to issue driver's licenses and IDs. By contrast, the Department of Public Health and Environment accepts both government- and privately issued documents, such as foreign driver's licenses and W-2 forms, when it issues certified copies of birth and death certificates. The lack of a standardized list also impacts the ability to audit implementation because there is no standard against which an agency's compliance can be assessed.

Finally, the Act also applies to local governments. However, no state mechanism exists to enforce or monitor compliance with the Act within local jurisdictions.

Confusion with Similar Legislation

During the 2006 Special Session, the General Assembly passed House Bill 06S-1023 [Article 76.5 of Title 24 of the Colorado Revised Statutes]. In contrast with the Secure and Verifiable Identity Document Act, the focus of House Bill 06S-1023 is the verification of lawful presence in the United States. Specifically, this legislation requires state agencies to verify the lawful presence in the United States of each person 18 years of age or older who applies for state or local public benefits or for federal benefits for the applicant. Unlike the Secure and Verifiable Identity Document Act, House Bill 06S-1023 delineates the documents that applicants must produce when applying for benefits. These are:

- Valid Colorado driver's license or a Colorado identification card
- United States military card or a military dependent's identification card
- United States Coast Guard Merchant Mariner Card; or
- Native American Tribal Document.

Under House Bill 06S-1023, each applicant for public benefits is also required to execute an affidavit stating that he or she is a United States citizen, legal permanent resident, or otherwise lawfully present in the United States pursuant to federal law. The law also required the Department of Revenue to develop rules identifying additional documents that can be used by an applicant to establish lawful presence in the United States.

In conducting our audit work, we found that many state entities that had not actively implemented the Secure and Verifiable Identity Document Act were aware of and had taken steps to implement House Bill 06S-1023. In most instances, by implementing House Bill 06S-1023 these agencies also fulfilled the requirements of the Act. Public entities that adequately implement House Bill 06S-1023 also satisfy the requirements of the Act because the documents required by House Bill 06S-1023 appear to qualify as "secure and verifiable documents." For example, U.S. military and merchant mariner cards are issued by a federal jurisdiction and are therefore, by definition, secure and verifiable documents under the Act. However, compliance with House Bill 06S-1023 does not necessarily mean that the provisions of the Act have been fulfilled. One reason for this is that the requirements of House Bill 06S-1023 apply to applicants ages 18 and older. The requirements of the Act apply to applicants ages 5 and older.

In addition, House Bill 06S-1023 applies to individuals applying for state, local, or federal public benefits as defined in the United States Code. The Act's requirements apply to individuals receiving services or a license, permit, or official document from a public entity that requires or relies upon identification. Thus, if a public entity provides services not defined in the United States Code, House Bill 06S-1023 would not apply, and that entity would be subject to the provisions of the Act. For example, the Division of Wildlife's hunting and fishing licenses are not considered public benefits as defined in the United States Code, and as such, the Division is not required to comply with House Bill 06S-1023. However, the Act's requirements apply because the Division issues a license and requires identification prior to such issuance.

Birth Certificates

As indicated previously, the Secure and Verifiable Identity Document Act, [Section 24-72.1-107, C.R.S.] requires that the Office of the State Auditor examine “whether a birth certificate issued in Colorado, or any other state, district, territory, possession, commonwealth, or other insular area of the United States, should qualify as a secure and verifiable document.” To determine whether birth certificates are secure and verifiable documents as mandated in the Act, we reviewed the governing laws of the 50 states, District of Columbia, and U.S. territories; interviewed staff from vital record offices in various states and U.S. territories; and reviewed federal law.

Overall, we found that the birth certificates issued by the 50 states, District of Columbia, and U.S. territories are secure and verifiable documents as defined by the Act. We reached this conclusion on the basis of the following:

- First, we found that the birth certificates issued by the states, District of Columbia, and U.S. territories are either issued directly by the state or territorial governments or are issued with the authority of those jurisdictions. For example, Arkansas birth certificates are only issued by state employees located in state-run offices. In contrast, Wisconsin state law authorizes the state registrar to appoint and authorize local registrars to issue birth certificates. Wisconsin officials reported that 72 counties, two cities, and the State are currently authorized to issue birth certificates. As discussed previously in this report, U.S. territories meet the definition of a federal jurisdiction. As such, birth certificates issued by the governing bodies of U.S. territories are secure and verifiable documents pursuant to the Act.
- Second, birth certificates issued by the states, District of Columbia, and U.S. territories are generally recognized by the federal government and verifiable by federal or state law enforcement, intelligence, or homeland security agencies. Although there is no single, authoritative source for the identity documents the federal government recognizes, the U.S. Attorney General issued an order in 1997 listing birth certificates from the 50 states, District of Columbia, and U.S. territories as acceptable forms of identification for proving lawful presence in the United States. Additionally, with the exception of Hawaii, the remaining 49 states, District of Columbia, and U.S. territories authorize local, state, and federal law enforcement officials to verify the authenticity of its birth certificates without a court order. Hawaii vital record officials reported that they would verify the authenticity of a birth certificate but it would require a court order.

Although birth certificates from the 50 states, District of Columbia, and U.S. territories are secure and verifiable documents under the Act, birth certificates by themselves are a poor form of identification. From prior audits and our current research, we have found that birth certificates can easily be obtained and used for fraudulent purposes. Federal and state agencies have also reached similar conclusions. In a September 2000 report, for example, the United States Department of Health and Human Services Office of Inspector General concluded that (1) birth certificates are easy to obtain, (2) birth certificate fraud is hard to detect, and (3) birth certificates alone do not provide conclusive or reliable proof of identity. As such, most federal programs do not accept birth certificates as an authorized form of identification. Generally, federal programs accept birth certificates to prove U.S. citizenship but require an additional document to prove identity, such as a state-issued driver's license or ID. At the state level, the Department of Revenue (Department) has taken steps similar to those of the federal government in that the Department will accept birth certificates only as proof of citizenship. The Department requires another document, such as a state-issued driver's license or ID or U.S. passport, to prove identity.

Despite our determination that birth certificates issued by the 50 states, District of Columbia, and U.S. territories are secure and verifiable documents under the Act, we believe it would be prudent for state agencies to require additional documentation to prove an applicant's identity. Without some form of photo ID, it is impossible to determine whether the individual bearing the birth certificate is the individual listed on the document.

Legislative Considerations

Overall, our study identified a number of problems that prevent the General Assembly from obtaining reasonable assurance that its intent, upon enacting the Secure and Verifiable Identity Document Act, has been met. It may be appropriate for the General Assembly to consider changes to clarify the requirements of the Act and improve implementation and compliance. If the General Assembly determines that changes to the Secure and Verifiable Identity Document Act are in order, there are several options and actions the General Assembly could consider:

- Amending the Act to more clearly define the terminology we identified as lacking sufficient clarity and precision. This could include clarifying whether birth certificates, alone, should be relied upon for establishing identity.

- Reevaluating the Act, in conjunction with House Bill 06S-1023, to determine whether the provisions of House Bill 06S-1023 could be amended to encompass the intent of both pieces of legislation.
- Designating a single state agency with rulemaking authority related to the provisions of the Act.
- Consulting with federal officials to determine how the provisions of the current and any contemplated state legislation related to identity document requirements for federal benefits interact with federal law.

Finally, the General Assembly may want to consider whether mechanisms are needed to ensure implementation of the Act's requirements by local governments.

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Appendix A
Secure and Verifiable Identity Document Act Performance Audit
State Entities Where Audit Testing Was Performed

Department	Program(s)	Program Descriptions
Agriculture	Commercial Licensing by Animal Industries, Plants, Consumer Industries, and Brand Divisions	Issuance of agricultural and livestock related licenses
Governor's Office	Energy Office	Home weatherization services provided as part of the Low Income Energy Assistance Program
Higher Education	College Assist and College Invest	Post-secondary financial assistance programs
Human Services	Offices of Self Sufficiency and Children, Youth, and Family	1. Licensing of childcare providers 2. Financial assistance provided through the Temporary Assistance For Needy Families/Colorado Works Programs 3. Financial assistance provided through the Colorado Childcare Assistance Program 4. Financial assistance provided through the Low Income Energy Assistance Program
Labor and Employment	Unemployment Insurance and Workforce Investment Act Programs	1. Unemployment benefits 2. Training and career assistance services
Natural Resources	Division of Wildlife	Issuance of hunting and fishing licenses
Public Health and Environment	Vital Records Section	Issuance of vital records such as birth and death certificates
Regulatory Agencies	Division of Registrations	Issuance of professional, occupational, and business licenses
Revenue	Division of Motor Vehicles	Issuance of vehicle registrations and titles
Metropolitan State College of Denver	Admissions, Student ID Cards, Financial Aid, Registrar, Bursar/Cashier	Services students typically receive or request while attending a post-secondary institution, including: applying for admissions; registering for classes; obtaining financial assistance, such as loans and scholarships; and receiving cash back for living expenses Issuance of student identification cards
Pueblo Community College	Admissions, Student ID Cards, Financial Aid, Registrar, Bursar/Cashier	
Trinidad State Junior College	Admissions, Financial Aid, Registrar, Bursar/Cashier	
University of Colorado at Boulder	Admissions, Student ID Cards, Financial Aid, Registrar, Bursar/Cashier, Housing	

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