



Issue Brief:
The REAL ID Act
National Association of State Budget Officers

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Enacted in May of 2005, the REAL ID Act requires new standards, procedures and requirements for states when issuing driver's license and identification (DL/ID) cards. The law requires changes to all existing DL/ID cards and will alter the business practices of every state's motor vehicle agency. The Department of Homeland Security (DHS) will issue regulations pursuant to the REAL ID Act in draft form this summer.

Background

On May 11, 2005 the REAL ID Act, sponsored by Rep. James Sensenbrenner (WI), became law. The Act includes immigration and document-security issues that had been dropped from the final version of the previously passed *Intelligence Reform and Terrorism Prevention Act (IRTPA)* of 2004 as well as provisions that were not considered during the final deliberations of the IRTPA. In 2005, REAL ID was attached to the *Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief*. The REAL ID Act repeals provisions of the IRTPA that established a cooperative state-federal process to create federal standards for DL/ID cards and instead imposes federal driver's license standards.

State organizations are very concerned about the implications and cost of the REAL ID Act.

Implementation of the REAL ID Act

The REAL ID Act shifts the responsibility of administering this program from the Department of Transportation to the Department of Homeland Security (DHS). States' ability to meet the requirements by the statutory deadline of May 11, 2008 depends on how much deference DHS is willing to grant to states in order to comply with the statute and their commitment to assist states and establish necessary verification systems. Under the REAL ID Act, if states do not implement federal standards for the issuance of DL/ID cards, the federal government will not recognize that particular state's DL/ID card for federal purposes.

The Real ID Act: Driver's License and Identification Card Provisions

The REAL ID Act:

- Preempts state and local laws and regulations regarding DL/ID cards in favor of national standards established by the Department of Homeland Security.
- Allows the Department of Homeland Security to issue regulations, set standards, and issue grants under the law in consultation with the Department of Transportation and the states.
- Requires states to maintain sufficient data retention and storage, including retaining paper copies of source documents for a minimum of seven years or images of source documents presented for a minimum of 10 years.
- Requires states to link databases providing direct electronic access to each state's motor vehicle information.
- Requires states to implement new training classes for motor vehicle employees.
- Prohibits states from accepting any foreign document other than an official passport for identification purposes for the issuance of DL/ID cards.

- Requires that DL/ID cards be valid for no more than eight years.
- Requires that a DL/ID card include the full legal name, date of birth, gender, DL/ID number, digital photograph, legal address, and signature.
- Requires that each DL/ID card contain security features designed to prevent tampering, counterfeiting or duplication.

Cost of the REAL ID Act

The Administration's fiscal 2007 budget request does not include any funds for state governments to comply with the REAL ID Act and also does not provide funds for the development of federal systems that are necessary for the REAL ID Act's implementation. So far, Congress has appropriated \$40 million to the states in order to comply with the Act (with very little detail as to how or when the funds are to be distributed). The Congressional Budget Office (CBO) estimates that the REAL ID Act may impose costs to states of more than \$100 million. Under the REAL ID Act, the Secretary of Homeland Security has the authority to make any appropriations to assist states in conforming to the minimum federal standards for fiscal years 2005-2009.

Implementation Recommendations

The National Governors Association (NGA), National Conference of State Legislatures (NCSL) and the American Association of Motor Vehicles Administrators (AAMVA) have been working together to review the REAL ID Act and make recommendations to the Department of Homeland Security and Congress. These state organizations feel that pilot projects (such as the \$3 million pilot programs in Kentucky and New Hampshire) should be implemented to "maximize lessons for replicability among jurisdictions" and that federal appropriations recognize the costs of the new requirements through an on-going annual appropriation and grant process. Also, they feel the federal government should establish a federal program office responsible for identifying the needs and cost to ensure on-going appropriations and grant management. They recommend that in order to establish reasonable and workable regulations under the REAL ID Act:

- Federal regulations should include best practices rather than impose unworkable or untested models without regard to functional or technical problems;
- Federal standards should be subject to a thorough cost-benefit analysis before any regulations are issued;
- Federal regulations should not impose any obligations on states for which the federal government is unwilling to provide federal aid;
- States should retain maximum flexibility within the confines of the statute, providing a security framework while preserving maximum state authority;
- Federal regulations should be limited to DL/ID card verification and issuance and oppose any effort to transform DL/ID cards into a national identity card;
- Federal regulations must ensure that states have direct links to verifiable, timely and accurate data regarding immigration status, durations of stay, and application filing or make reasonable accommodations under the law.

NGA, NCSL and AAMVA are currently working together with DHS toward the implementation of the Real ID Act. NASBO will update you with more information as it becomes available.

For more information or to receive a copy of the National Governors Association's *REAL ID Act: State Implementation Recommendations* please contact Kevin Bradley at (202) 624-8433 (kbradley@nasbo.org) or Scott Pattison at (202) 624-8804 (spattison@nasbo.org).