

HOUSE BILL REPORT

HB 1041

As Reported by House Committee On: Transportation

Title: An act relating to facilitating compliance with the federal REAL ID act by modifying driver's license and identicard design and fees.

Brief Description: Facilitating compliance with the federal REAL ID act by modifying driver's license and identicard design and fees.

Sponsors: Representatives Clibborn, Kilduff, Ormsby, Gregerson, Santos and Fey; by request of Department of Licensing.

Brief History:

Committee Activity:

Transportation: 1/19/17, 2/21/17 [DP].

Brief Summary of Bill

- Requires the Department of Licensing (DOL) to mark standard driver's licenses and identicards in accordance with federal REAL ID Act regulations to indicate that they are not acceptable for federal identification purposes.
- Removes the requirement that the DOL provide formal certification that it has met certain conditions related to its driver's license and identicard procedures to proceed with specified components of REAL ID Act compliance.
- Removes the restriction on state agencies and programs that prohibits the expenditure of funds to implement or comply with the REAL ID Act unless certain conditions are satisfied.
- Reduces the fee for a full-term enhanced driver's license and an enhanced identicard from \$108 to \$90 for four years.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 14 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Chapman, Gregerson, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli and Tarleton.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 10 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Hayes, Irwin, Pike, Shea, Stambaugh, Van Werven and Young.

Staff: Jennifer Harris (786-7143).

Background:

REAL ID Background.

Congress passed the REAL ID Act in 2005 and, in 2008, the Department of Homeland Security (DHS) issued final administrative rules governing state issuance of driver's licenses and identification cards (IDs) and associated back office practices in accordance with the new law. The DHS extended compliance deadlines in 2009 and 2011.

While the REAL ID Act does not directly impose federal standards on states, states are required to comply with it in order for state driver's licenses and IDs to be recognized by federal agencies as REAL ID-compliant for the purposes of accessing federal facilities, boarding federally regulated aircraft, entering nuclear power plants, and any other purposes as determined by the Secretary of the DHS. A REAL ID-compliant state also has the option to offer noncompliant driver's licenses and IDs, although these are not valid for federal purposes.

REAL ID Requirements.

The REAL ID Act regulations promulgated by the DHS include a variety of requirements that states must meet to be considered REAL ID-compliant: (1) states must put in place minimum issuance standards related to establishing identity, residence, evidence of legal status (lawful presence in the United States), and, where applicable, expiration based on length of authorization to remain in the United States; (2) states must adopt a number of practices related to mandatory facial image capture, document and image retention, applicant information verification, physical location and document security, security clearance requirements, and fraudulent document recognition training; and (3) driver's licenses and IDs must include machine-readable technology with certain identifying information readable on a bar code that cannot be encrypted but that must be scanned to be read. (While the REAL ID Act includes an additional requirement for interstate access to state license and ID data, this has not yet been incorporated in the DHS regulations as a criterion for certification of state compliance.)

Washington will meet approximately two-thirds of the REAL ID Act requirements with the implementation of its new driver's license information-technology system in mid-2018. The majority of the requirements that the state will be out of compliance with relate to the REAL ID Act's mandate that only individuals with lawful status in the United States can be eligible for REAL IDs.

REAL ID Compliance.

A number of states have received compliance extensions, including Washington. Washington's last extension expired in 2015. On April 1, 2016, federal facilities in Washington began requiring that state-issued driver's licenses and IDs be REAL ID-compliant to be recognized for entry to these facilities. In October 2016, the DHS declined to provide Washington with an extension.

Based on its most recent guidance, the DHS has given noncompliant states without extensions until January 22, 2018, to meet the requirements of the REAL ID Act for the purposes of domestic air travel. Beginning on that date, if Washington has not received an extension, individuals will no longer be permitted to use a standard Washington driver's license or identicard to board a domestic airline flight. Seven other states are considered noncompliant by the DHS and 18 states have extensions that expire in the summer or fall of 2017.

The Washington-issued enhanced-driver's license (EDL) and enhanced identicard (EID) will continue to be accepted for federal identification purposes, since they are authorized for federal purposes under the Western Hemisphere Travel Initiative (WHTI). Under the WHTI, these forms of identification can also be used to travel by land and sea to and from Canada, Mexico, the Caribbean, and Bermuda.

State Restrictions on REAL ID Implementation.

The Department of Licensing (DOL) is prohibited from issuing REAL ID-compliant driver's licenses or identicards or storing or including data about state residents in any database, records facility, or computer system for the purposes of meeting the requirements of the REAL ID Act until the DOL certifies that its driver's license, identicard, database, records facility, computer system, and personnel screening and training procedures include: (1) all reasonable security measures to protect the privacy of state residents; (2) all reasonable safeguards to protect against the unauthorized disclosure of data; and (3) do not place unreasonable costs or recordkeeping burdens on a driver's license or identicard applicant.

State agencies and programs are prohibited from expending funds to implement or comply with the REAL ID Act until the DOL certification described above is completed and federal funds are received by the state and allocated to fund REAL ID Act implementation in amounts sufficient to cover the costs to the state of implementing or complying with the REAL ID Act, as estimated by the Office of Financial Management (OFM).

Enhanced Driver's License and Enhanced Identicard Fees.

The fee for a renewal EDL and EID for a full six-year term is \$108; the fee for partial-term renewals is \$9 per year.

Summary of Bill:

REAL ID Compliance.

Beginning July 1, 2018, the DOL is required to mark standard driver's licenses and identicards in accordance with federal REAL ID Act regulations as they exist on the effective date of this mandate or on a date set by the DOL. These regulations currently require that non-REAL ID-compliant driver's licenses and ID cards clearly state on their face and in their machine-readable zones that they are not acceptable for federal identification purposes.

State Restrictions on REAL ID Implementation.

The DOL is no longer restricted from issuing REAL ID-compliant driver's licenses or identicards or from storing or including data about state residents in a database, records facility, or computer system for the purposes of meeting the requirements of the REAL ID Act until it provides formal certification that its driver's license, identicard, database, records facility, computer system, and personnel screening and training procedures include: (1) all reasonable security measures to protect the privacy of state residents; (2) all reasonable safeguards to protect against the unauthorized disclosure of data; and (3) do not place unreasonable costs or recordkeeping burdens on a driver's license or identicard applicant.

State agencies and programs are not prohibited from expending funds to implement or comply with the REAL ID Act until the DOL certification described above is obtained and federal funds are received and allocated to fund REAL ID Act implementation.

Enhanced Driver's License and Enhanced Identicard Fees.

For four years from the effective date of the change: (1) the fee for a renewal EDL and EID for a full six-year term is reduced by \$18, from \$108 to \$90; (2) for partial-term renewals, the fee is reduced by \$3 per year, from \$9 per year to \$6 per year.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state has a deadline for compliance and it needs to be prepared for residents to be able to fly. Under this bill, a standard driver's license will be used for driving, not for federal purposes. The enhanced driver's license was developed to cross the Canadian border and can be used for domestic travel. Residents may also have another form of identification that is accepted for federal purposes. The state will conduct outreach to make people aware of what forms of identification can be used for travel.

It is important for the DOL to continue to allow people eligible to drive to obtain a driver's license. Under REAL ID, it is important for people to have a document that is valid for

federal purposes. People will be able to choose the driver's license they prefer. If a person has a passport card, then he or she does not need an EDL.

This is a common sense approach that keeps the driver's licensing system as close to the way it is today as possible, while moving the state closer to REAL ID compliance. The bill provides authority to the DOL to place distinguishing markings on standard driver's licenses. The DOL will develop a marking on the card through rulemaking, working with groups on this issue in an open, transparent way.

The state is one of several states that does not have a compliance extension or is not already compliant with the REAL ID Act. The DHS has indicated that it will grant the state an extension for compliance through 2020 if the bill is passed. Without an extension, the state will have to comply by January 2018.

Because of the state's current noncompliance status, a standard driver's license is not a valid form of identification for accessing military installations. Joint Base Lewis-McChord denies entry to approximately 300 people per week for not having compliant IDs. Military personnel and their immediate families have military IDs, but friends, extended family, and people employed by businesses are not able to get on the bases.

People rely on a reliable and efficient air travel system. Seattle-Tacoma International Airport (Sea-Tac Airport) is an economic engine to the entire state and connects to all parts of the state. If the bill does not move forward, this will negatively impact the entire state. Sea-Tac Airport has seen double-digit growth in the last couple of years. A very large number of people move through security lines at the airport every day.

The bill could put people at risk of data theft if the system is not implemented correctly. Providing a secure system to prevent cyberattacks would provide benefits.

(Opposed) Weighing compliance versus noncompliance is challenging. There are privacy concerns and costs involved with compliance. This is an unfunded federal mandate. The public wants clear guidance on what is needed to fly. The best way for the state to move forward is for residents to use other forms of identification and for the state to conduct public outreach.

Having a marked driver's license or identification card will single-out those without legal status for scrutiny from law enforcement. In addition, driver's license information will be accessible to many state and federal agencies. The data security protections of current law should not be repealed.

It is not clear that becoming REAL ID-compliant on the bill's terms is the best use of state funds. Carrying a standard driver's license will not be sufficient under this bill. It is questionable whether this form of compliance actually provides the public with more options.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; Tony Sermoniti, Department of Licensing; Shelly Helder, South Sound Military and Communities Partnership; Mike Ennis, Association of Washington Business; John Creighton, Port of

Seattle; Cliff Webster, Spokane International Airport; and Perry Chaffee and Eugene Shablygin, Worldwide Pass.

(Opposed) Alex Hur, OneAmerica.

Persons Signed In To Testify But Not Testifying: None.