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## Transportation Committee

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### ESB 5008

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

**Sponsors:** Senators King, Hunt, Sheldon, Hobbs, Mullet and Warnick; by request of Department of Licensing.

#### Brief Summary of Engrossed 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, and to adopt rules necessary to implement this change.
- 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 \$66.

**Hearing Date:** 3/22/17

**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

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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. Four other states are considered noncompliant by the DHS and 20 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: (1) include all reasonable security measures to protect the privacy of state residents; (2) include 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.

#### Enhanced Driver's License and Enhanced Identicard Fees.

Total fees for an EDL or EID for a full six-year term are \$108; total fees for partial-term renewals are \$18 per year (or \$9 per year if the applicant already has a standard driver's license or identicard). Total fees do not include first-time driver's license or identicard applicant fees.

#### **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 requirement or on a date set by the DOL. These federal 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. The DOL must adopt rules necessary to implement this change, a process which requires the DOL to solicit comments from the public, respond to public inquiries, and conduct a rulemaking hearing that is open to the public.

#### 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.

Total fees for an EDL or EID for a full six-year term are reduced by \$42, from \$108 to \$66. For partial-term renewals, total fees for an EDL or EID are reduced by \$7 per year, from \$18 per year to \$11 per year (or from \$9 per year to \$2 per year if the applicant already has a standard driver's license or identicard). Total fees do not include first-time driver's license or identicard applicant fees.

**Appropriation:** None.

**Fiscal Note:** Available.

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