

HOUSE BILL REPORT

ESB 5008

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

Brief History:

Committee Activity:

Transportation: 3/22/17, 4/4/17 [DPA].

Brief Summary of Engrossed Bill (As Amended by Committee)

- 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.
- Prohibits the use of a standard driver's license or identicard as evidence of or as a basis to infer an individual's citizenship or immigration status.
- Prohibits the use of a person's standard driver's license or identicard as a basis for the criminal investigation, arrest, or detention of that person where the person otherwise would not be criminally investigated, arrested, or detained.
- Prohibits the DOL from altering department practices to comply with new federal requirements for REAL ID Act compliance that are not in federal regulation currently.
- Prohibits the DOL from altering department practices for the release of personally identifying information required to apply for a driver's license or identicard either to the federal government or to a party the DOL knows may release that information to the federal government.

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.

- 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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. 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.

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 had extensions in place until October of 2015, at which time Washington's extension expired. On April 1, 2016, federal facilities in the state began requiring that state-issued driver's licenses and IDs be REAL ID-compliant to be recognized for entry to these facilities. In March of 2017, the DHS granted the state an additional extension through June 6, 2017.

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 additional extension or become REAL ID-compliant, individuals will no longer be permitted to use a standard Washington driver's license or identicard to board a domestic airline flight. Four states are considered noncompliant by the DHS and 21 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 Identocard 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 identocard). Total fees for a standard driver's license or a standard identocard for a full six-year term are \$54; total fees for partial-term renewals are \$9 per year. These fees do not include a first-time driver's license or identocard application fee of \$35.

Summary of Amended Bill:

REAL ID Compliance.

Beginning July 1, 2018, the DOL is required to mark standard driver's licenses and identocards 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.

State agencies and programs are no longer prohibited from expending funds to implement or comply with the REAL ID Act until federal funds are received and allocated to fund REAL ID Act implementation.

In the absence of express authorization in state law, the DOL may not alter department practices to comply with new federal requirements for REAL ID Act compliance not included in federal regulation as of April 1, 2017. The DOL may not alter department practices in place as of April 1, 2017, for the release of personally identifying information required to apply for a driver's license or identocard either to the federal government or to a party the department knows may either directly or indirectly release that information to the federal government in the absence of express authorization in state law.

Standard Driver's License and Identocard Use.

Eligibility criteria for obtaining a standard driver's license or a standard identocard remain unchanged. A standard driver's license or identocard marked in accordance with federal REAL ID Act regulations may not be used as evidence of or as a basis by which to infer an individual's citizenship or immigration status. A person's standard driver's license or identocard marked in accordance with federal REAL ID Act regulations may not be used as a basis for the criminal investigation, arrest, or detention of that person where the person otherwise would not be criminally investigated, arrested, or detained.

Amended Bill Compared to Engrossed Bill:

The amended bill: (1) prohibits the use of a standard driver's license or identocard with the specified design features as evidence of or as a basis by which to infer an individual's citizenship or immigration status; (2) prohibits the use of a person's standard driver's license or identocard with the specified design features as a basis for the criminal investigation, arrest, or detention of that person where the person otherwise would not be criminally investigated, arrested, or detained; (3) prohibits the DOL from altering department practices to comply with new federal requirements for REAL ID Act compliance not included in federal regulation as of April 1, 2017; and (4) prohibits the DOL from altering department practices in place as of April 1, 2017, for the release of personally identifying information required to apply for a driver's license or identocard either to the federal government or to a party the DOL knows may either directly or indirectly release that information to the federal government.

The amended bill eliminates the reduction in the fee for a full-term EDL and an EID to \$66, restoring the fee to the current fee of \$108. It also preserves the prohibition on the DOL issuing REAL ID-compliant drivers' licenses or identocards, or storing or including data about state residents, to meet the requirements of the REAL ID Act, until the DOL provides formal certification that it has met certain conditions related to security measures for privacy protection, safeguards against unauthorized disclosure of data, and unreasonable cost and recordkeeping burdens.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a common sense approach to the REAL ID issue that keeps the driver's license system as close to the current system as possible, while moving toward REAL ID compliance to minimize travel disruptions and disruptions at licensing offices, to commerce, to the economy, and to travel. The DOL has worked with community groups, advocates, and the federal government to develop an approach to comply with the REAL ID Act. This is the approach that, to the extent possible, addresses many of the concerns raised.

If this legislation were to pass, the DHS would issue an extension to Washington until 2020, giving residents of the state an extra two years to obtain a compliant option on a card-by-card basis beginning at that time instead of in 2018. This would avoid the possibility of millions of people attempting to obtain an EDL in a nine-month timeframe. Many individuals who have other compliant forms of identification will likely retain their standard driver's license, so the standard driver's license will not become a driver's license only for those who do not have the option to obtain an EDL.

Regarding privacy concerns, the federal government does not have direct access to state-run driver's license databases. This would require changes to state law to give the federal government access to these databases. There is already significant existing federal and state law that provides privacy protections in this area.

Airports want to ensure flying experiences are safe and seamless. The bill would bring the state into compliance with the REAL ID Act and would prevent potential major operational disruptions at airports. Airports need to be able to move passengers and freight through the airport safely and efficiently to avoid disruption to the region's economy. If the standard driver's license is not accepted by the Transportation Security Administration (TSA) in 2018, the impact to operations will be significant.

The more difficult it is to falsify identification through copying a driver's license or other form of identification, the better it is for retailers who allow shoppers who come into their stores to apply for credit. The changes in this bill that increase security for drivers' licenses to make it more difficult to commit fraud would assist the retail industry.

(Opposed) Immigrant and refugee advocacy, legal advocacy, privacy, and civil rights organizations all have concerns about this bill related to privacy rights for all Americans, especially under President Trump's administration. United States (U.S.) Immigration and Customs Enforcement and U.S. Customs and Border Protection are conducting raids and detaining individuals. A person does not need to be convicted of a serious crime to be classified as deportable; he or she simply needs to be accused of any crime, even a minor traffic violation. In addition, there has been a significant increase in biased-related incidents taking place across the state and around the country.

There is tremendous fear in communities in the state. A second-tier license could be used by law enforcement agencies and other entities to profile immigrants. Without antidiscrimination and profile protections accompanying this change, standard drivers' licenses and identicards should not be marked to indicate that they are not valid for federal purposes or there will be more deportations, more families broken apart, and the state's economy will be hampered. This change could very quickly undermine the state's history of inclusivity and its welcoming nature.

Anyone without one of the TSA-approved documents will need to change his or her behavior going forward if he or she wants to fly domestically, irrespective of whether the Legislature does or does not implement REAL ID. Compliance with the REAL ID Act is unnecessary, costly, and will create panic among Washington's drivers. The EDL is already accepted by the TSA and will continue to be accepted as a valid form of identification. People will also be able to use numerous other forms of identification at the airport. The Legislature can propose legislation to create a public education campaign to educate residents about forms of identification that can be used at the airport.

This bill would remove important data security protections previously implemented by the Legislature, raising the risk of identity theft. There are no restrictions in the REAL ID Act that limit the ability of federal agencies to expand the information that is collected by states,

and private businesses plan to use the data on drivers' licenses and IDs for their own purposes.

The function of a driver's license is for the state to be able to certify that someone has the ability and knowledge to drive. While driving on the freeway, the public would like to know that the people driving in the vehicles around them have been judged capable of driving, are licensed, and are able to buy insurance. States should not be forced to issue what amounts to a national ID. The U.S. Congress can have a debate about a national ID if it would like to do so.

Persons Testifying: (In support) Cliff Webster, Spokane International Airport; Mark Johnson, Washington Retail Association; Mike Ennis, Association of Washington Business; Wendy Reiter, Port of Seattle; and Tony Sermoniti, Department of Licensing.

(Opposed) Alex Hur, OneAmerica; Elisabeth Smith, American Civil Liberties Union of Washington; Paul Benz, Faith Action Network; Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Hilary Bernstein, Anti-Defamation League; and Eric Gonzalez, Washington State Labor Council.

Persons Signed In To Testify But Not Testifying: None.