

SENATE BILL REPORT

ESB 5008

As Amended by House, April 11, 2017

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: 1/19/17, 1/24/17 [DP, DNP].

Floor Activity:

Passed Senate: 2/28/17, 45-4.

Passed House: 4/11/17, 69-28.

Brief Summary of Engrossed Bill

- Requires the Department of Licensing (DOL) to mark standard issue driver's licenses and identicards as non-compliant with the REAL ID Act, beginning July 1, 2018.
- Lowers the fee for enhanced driver's licenses and identicards to \$66.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass.

Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Baumgartner, Cleveland, Fortunato, Hawkins, O'Ban, Takko, Walsh and Wilson.

Minority Report: Do not pass.

Signed by Senators Saldaña and Van De Wege.

Staff: Kim Johnson (786-7472)

Background: REAL ID Act. Congress passed the REAL ID Act in 2005, which established national standards for state-issued driver's licenses and personal identification cards. One of

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.

the requirements of the REAL ID Act is a state must verify the lawful presence within the United States of an applicant for a driver's license or identification card. Presently, Washington does not verify lawful presence in the United States of applicants for standard driver's licenses and identicards.

There are currently two state statutes that restrict the DOL from implementing the REAL ID Act until the following conditions are met:

- that certain data security measures and safeguards are in place;
- that the costs and recordkeeping burdens are not unreasonable on driver's license or identicard applicants; and
- that Washington has received federal funding to cover the cost of implementation.

State-issued driver's licenses or identification cards that do not comply with the requirements of the REAL ID Act may not be accepted by a federal agency for certain official purposes. The purposes covered by the Act are:

- accessing federal facilities, including military bases;
- entering nuclear power plants; and
- beginning January 22, 2018, boarding federally regulated commercial aircraft.

Washington is currently one of five states that are officially out of compliance with the REAL ID Act and are currently, or will soon be, subject to enforcement at certain federal facilities. Twenty other states are currently operating under an extension and twenty-five states are fully compliant with the REAL ID Act.

Generally, the standard driver's license costs \$54 and is issued for a period of six years.

Enhanced Driver's License (EDL). In April 2005, the Departments of State and Homeland Security announced the Western Hemisphere Travel Initiative (WHTI), which required individuals entering or re-entering the United States to present a passport or other acceptable secure identification. The Legislature in 2007 authorized DOL to enter into a memorandum of understanding with a federal agency to facilitate border crossing between Washington and British Columbia, and to issue a voluntary EDL or enhanced identicard (EID). Under WHTI, EDL and EID are acceptable alternatives to a passport for re-entry into the U.S. at land and sea border crossings.

The EDL or EID may be issued to a Washington resident that is also a United States citizen if—in addition to meeting all standard driver's license application requirements—they have submitted proof of their identity, citizenship, and state residency, and successfully complete an in-person interview with a DOL licensing services employee. The cost of an EDL and EID is currently \$108 and the documents are valid for a period of six years. EDL and EID contain a Radio Frequency Identification tag (RFID) like the one used in U.S. passports. The RFID tag contains a unique reference number that is used by U.S. border crossing stations.

The Transportation Security Administration lists EDL and EID as acceptable forms of identification for the purpose of boarding domestic commercial aircrafts.

Summary of Engrossed Bill: Beginning July 1, 2018, DOL must mark the standard driver's licenses and identicards as required by federal law. DOL must adopt rules regarding the implementation of marking the standard driver's license and identicard.

The total fee for enhanced driver's licenses and identicards is reduced to \$66.

The statutes prohibiting DOL's implementation of the REAL ID Act are repealed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: We have worked diligently on this issue and have tried to find the most simple method to address the challenge that REAL ID poses to our state. We have tried to work very hard with everyone who has had concerns with this bill and have tried to address those concerns.

This is a common sense approach. We want to minimize the impacts to the public seeking travel or access federal facilities. DOL has worked hard to put this together in a way that is as close to the way driver's license work today. We have tried to be transparent and communicative in developing this bill over the many years we have worked on this issue. This bill moves us towards REAL ID compliance. This bill will give us a 2 year compliance extension which gives Washington residents time to obtain an EDL or one of the many valid federal documents so that they can fly domestically.

The Port of Seattle supports this bill. The Port has had huge growth, in fact we have been the fastest growing airport in the country. We saw 45 million people come through SEATAC last year which means nearly 50,000 people per day. When you add the potential REAL ID enforcement impacts to the mix it is a recipe for a severe negative economic impact that will ripple outwards across the whole state. We urge its support moving forward.

The business community is concerned with the approaching REAL ID deadline and we support this bill as a positive step forward.

Washington is missing an opportunity to create a more technologically secure identity document.

This bill would help military families increase their quality of life. Their friends and family members cannot visit on base. The extension would help people gain access.

CON: The ACLU has due process, privacy, and data security concerns. Turning the standard driver's license into a true scarlet letter is not the way for Washington to go. DOL cannot confirm that we will get an extension if you pass this bill. This bill is not necessary for people to get an EDL and for people to use that EDL to fly domestically. The EDL already

exists and will continue to be available even if you do not mark the standard license. One of the laws being repealed is about DOL certifying that there are certain data security and privacy issues in place prior to the state complying with REAL ID. Why should we repeal this? It is even more important now.

Marking licenses in any way that makes citizenship status clear can lead to racial profiling and discrimination. It can also lead to people making the choice not to obtain a license which means that people may not have proper driving training, get insurance, and can also cause them to fear any interaction with police. These are not good outcomes to the community. You are putting a bulls eye on their license. Please maintain the current system. It works and there is not real need to move towards REAL ID.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Mike Ennis, Association of Washington Business; Tony Sermonti, Dept. of Licensing; Shelly Helder, South Sound Military & Communities Partnership; John Creighton, Commissioner, Port of Seattle; Perry Chaffee, WWPass; Eugene Shablygin, WWPass; Cliff Webster, Spokane International Airport.

CON: Elisabeth Smith, ACLU of Washington; Xochitl Maykovich, Washington Community Action Network / Political Organizer.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes the reduction to the EDL and EID fee, restoring the EDL and EID total cost to \$108.
- Provides that a driver's license that is marked pursuant to the REAL ID Act requirements may not be used as evidence of an individual's citizenship or immigration status for any purpose.
- Prohibits the fact that a driver's license is marked pursuant to the REAL ID Act from being used as the basis for a criminal investigation, arrest, or detention of a person in circumstances where the absence of such marking on a person's driver's license would not be criminally investigated, arrested, or detained.
- Prohibits DOL from altering its practices to comply with any additional requirements set forth by the federal government as a condition of state compliance with the REAL ID Act that were not included in federal regulations as of April 1, 2017.
- Prohibits DOL from altering department practices as of April 1, 2017, related to releasing personally identifying information, that is required by DOL for a person to apply for a driver's license or identicard, to the federal government or to a party the department knows may intend to release the information to the federal government, directly or indirectly.
- Reinstates the statute that prohibits DOL from meeting requirements of the REAL ID Act until DOL certifies that:
 - certain data security measures and safeguards are in place; and
 - the costs and recordkeeping burdens are not unreasonable on driver's license or identicard applicants.