



South Dakota's Compliance With The Real ID Act

In May of 2005, Congress passed legislation requiring states to meet certain uniform standards regarding the issuance of a driver license or state issued ID card. The legislation is known as the Real ID Act. If a state fails to meet these federal requirements by May 10, 2011, the federal government will not accept that state's driver license or ID card for federal official purposes. Residents of that state will be unable to use a driver license or ID card as identification to board an airplane or to enter a federal building. To avoid this potential inconvenience to South Dakota citizens, the 2009 Legislature passed legislation to implement the Real ID Act here in this state. The legislation which went into effect December 31, 2009 provides for a new, more secure driver license to be phased in over the next five years as South Dakotans receive a new driver license, get a duplicate license for those that have been lost, or renew a driver license.

As this new law has been implemented, questions have arisen from legislators and from their constituents regarding this new law. This issue memorandum is intended to help with those questions and give legislators background information regarding the Real ID Act and the actions taken by the Legislature and the Department of Public Safety to implement the requirements of that Act in South Dakota with those questions.

Federal legislative history

The issuance of driver licenses and state ID cards, since the inception of such licenses and cards, has been left to the administration and discretion of state governments. Consequently, there had developed among the states a patchwork of diverse policies governing who is qualified for a driver license, how an applicant proves his or her identity when applying for a license, and the physical appearance and construction of the license or ID card. Any coordination among the states was done through the voluntary efforts of the state agencies issuing driver licenses.

These divergent systems of issuing driver licenses and ID cards appeared to be adequate for the purposes for which they were intended until the terror attack of 9/11. The 9/11 Commission found, in their report in July 2004, that all but one of the 9/11 hijackers had acquired some form of government-issued ID, mostly state driver licenses, many of which were obtained fraudulently. The Commission was dismayed at how easy it was for the hijackers to beat the system. Consequently, the Commission recommended that secure identification should begin in the United States and that the federal government should set standards of the issuance of sources of identification, including driver licenses.

In response to 9/11 Commission report, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004. As part of that legislation, the U.S. Secretary of Transportation was directed to issue rules establishing minimum standards for federal acceptance of driver licenses and ID cards. The rulemaking was supposed to be a negotiated process involving state officials and other interested parties.

However, before any rules were established under that 2004 legislation, Congress passed the Real ID Act of 2005 as a rider on the 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief. The Real ID Act repealed the negotiated rulemaking provisions established in 2004 and replaced it with a stricter set of federal requirements for the issuance of driver licenses and ID cards.

States initial reactions to the Real ID Act

Many states were not pleased with the passage of the Real ID Act and the subsequent federal rules to implement the Act. The states were unhappy with the way the Act was passed at the federal level with little warning as a last minute attachment to a military spending bill. The states were also upset at the costs that would be borne by them to implement the Act. The Department of Homeland Security estimated it will cost the states \$3.9 billion over the next eleven years to implement the Act.

Fifteen state legislatures passed statutes preventing their state from complying with the Act. Those states include Alaska, Arizona, Georgia, Idaho, Louisiana, Maine, Minnesota, Missouri, Montana, New Hampshire, Oklahoma,

Oregon, South Carolina, Virginia, and Washington. Another ten state legislatures passed resolutions in opposition to the Act. The South Dakota Legislature in 2008 passed Senate Concurrent Resolution #7 which petitioned Congress to repeal the Act.

Requirements of the Real ID Act

The Act requires that federal agencies only accept state-issued driver licenses and ID cards that are compliant with the Act as proof of identification for certain federal purposes, including boarding aircraft or entering federal buildings. Under the provisions of the Act, a state, before issuing a compliant document, must verify the issuance, validity, and completeness of:

- A photo identification document or non-photo document containing both the applicant's full legal name and date of birth;
- The applicant's date of birth;
- The applicant's social security number; and
- The name and address of the applicant's principle residence.

The states are required to verify an applicant's legal status in the U.S. before issuing a driver license or ID card and are required to adopt procedures and practices to:

- Capture digital images of identity source documents;
- Retain paper copies of source documents for a minimum of seven years or images of source documents presented for a minimum of ten years;

- Take a picture of each applicant;
- Establish an effective procedure to confirm or verify a renewing applicant's information;
- Confirm with the Social Security Administration the social security number presented by an applicant;
- Refuse issuance of a driver license or ID card to a person holding a driver license issued by another state without confirmation that the person is terminating or has terminated the license;
- Ensure the physical security of locations where cards are produced and the security of document materials and papers from which driver licenses and ID cards are produced;
- Subject all persons authorized to manufacture or produce driver licenses and ID cards to appropriate security clearance requirements;
- Establish fraudulent document recognition training programs for employees engaged in the issuance of driver licenses and ID cards; and
- Limit the length of time a driver license or ID card is valid to eight years.

The Act also requires states to electronically verify driver license and ID card information contained in other state's driver license databases and to ensure a person has a driver license from only one state.

Federal rules implementing the Real ID Act

The Department of Homeland Security was given the authority to promulgate rules to implement the Real ID Act. The department first proposed draft rules in March of 2007. Final rules were published in the Federal Register in January of 2008 with an effective date of March 2008. Initially, the rules required compliance to the rules by May 11, 2008. In March of 2008 that deadline was extended to December 31, 2009, and in December of 2009 the deadline for compliance was extended to May 11, 2011.

These federal rules require the states to comply with the following benchmarks to be in material compliance with the federal law:

- The state must subject each applicant to mandatory facial image capture and retain the image even if a driver license or ID card is not issued;
- The state must require each applicant to sign a declaration under penalty of perjury that the information presented is true and correct and the state must retain this declaration;
- The state must require each applicant to present one of the following source documents to establish identity: a certified birth certificate, a valid unexpired U.S. passport, a certificate of naturalization, a certificate of citizenship, a valid unexpired permanent resident card, a valid unexpired employment authorization document, or a

foreign passport with a valid unexpired U.S. visa;

- The state must require documentation of date of birth, social security number, address of principal residence, and evidence of lawful status;
- The state must have a documented exceptions process for applicants who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or date of birth;
- The state must make reasonable efforts to ensure that an applicant does not have more than one driver license or ID already issued by the state under a different identity;
- The state must verify lawful status of each applicant by a method approved by the Department of Homeland Security;
- The state must verify social security numbers with the Social Security Administration;
- The state must issue driver licenses and IDs with integrated security features;
- The state must provide a card with the following information on the front or back of the card: full legal name, date of birth, gender, unique driver license or ID number, full facial digital photograph, address of principal residence, signature, date of

transaction, expiration date, and state of issuance;

- The state must mark materially compliant driver licenses and IDs with a Department of Homeland Security-approved security marking;
- The state must issue temporary or limited term licenses to applicants with temporary lawful status and tie license validity to the end of the lawful status;
- The state must have a documented security plan for driver licensing operations;
- The state must have protections in place to ensure the security of personally identifiable information;
- The state must require all employees handling source documents or issuing driver licenses or IDs to attend approved fraudulent document recognition training and security awareness training;
- The state must conduct name-based and fingerprint-based criminal history and employment eligibility checks on all driver licensing employees; and
- The state must clearly state on the face of any non-compliant driver license or ID that the card is not acceptable for official federal purposes.

The rules also require the states to complete a certification process and to verify electronically the validity of other identity documents such as birth

certificates, U.S. passports, and Real ID-compliant licenses and cards issued by other states as the technology to do so becomes available. Each state is also required to reissue all existing driver licenses and ID cards by December 1, 2017.

South Dakota's efforts to comply with the Real ID Act

South Dakota's system of licensing of motor vehicle drivers was more advanced than many other states at the time the Act was passed. South Dakota's driver licenses and ID cards already contained the information required by the Act. Also, the state was already verifying social security numbers and immigration documents. Consequently, the changes that were needed to be made to our state laws and procedures to come into compliance with the Act were not as extensive as in other states.

In 2009, Senate Bill 17 was introduced by the Senate Transportation Committee at the request of the Department of Public Safety to make the necessary changes in law to help bring the state in compliance with the Act. This bill provided for three new requirements of applicants for a driver license or ID card. The bill required an applicant to supply one document to prove identity, date of birth, and lawful status (SDCL 32-12-3.1 and 32-12-3.3), one document to prove the applicant's social security number (SDCL 32-12-3.4), and two documents to prove the applicant's principal address (SDCL 32-12-3.5). This bill passed the Senate with only four dissenting votes and passed the House with 48 affirmative votes. The bill went into effect on December 31, 2009.

Also in 2009, Senate Bill 32 was introduced by the Senate Appropriations Committee at the request of the Department of Public Safety. This bill increased various driver license fees and one of the reasons stated for the need to increase fees was to help cover the cost of a new driver license system. Among other features this system would allow the state to issue a driver license and ID card compliant with the Real ID Act. The primary change in fees was an increase of the fee for a driver license and an ID card from eight dollars to twenty dollars. This bill passed the Senate with 29 affirmative votes and the House with 55 affirmative votes. The new fees went into effect on July 1, 2009.

Many of the other changes that needed to be made to comply with the Act were administrative in nature and were handled by changes in policies and procedures within the Driver Licensing Program in the Department of Public Safety.

The federal government has offered the states grants to help with the Act's implementation. South Dakota has received federal grants in the last three fiscal years to help implement the REAL ID Act. In 2008, the state received \$300,000 which was used for training of driver license employees, for scanners for field driver license offices, for employee background checks, for information technology costs for a new driver license contract, and for public information. In 2009, the state received \$661,690 which was used for a photo verification system and for public education. This year \$651,877 was recently awarded and it is planned to be used for self-service kiosks at the larger driver exam stations in the state and for continuing public education.

Currently, South Dakota is one of eleven states that meet all the necessary benchmarks to be in material compliance with the Real ID Act. South Dakota became in material compliance when Senate Bill 17 went into effect on December 31, 2009. The other states that are in material compliance are Alabama, Delaware, Florida, Indiana, Iowa, Kansas, Kentucky, Mississippi, Maryland, and Utah. Fourteen other states have committed to becoming materially compliant by the end of 2010. Many of the states that have legislation preventing them from complying with the Act are even taking steps to provide for a more secure driver license issuance process. South Dakota will be in full compliance when the Department of Public Safety files with the Department of Homeland Security the state's security plan for its driver license operation and a certification that the state meets all the requirements of the Real ID Act and that the state intends to remain in compliance with those requirements. The Department of Public Safety is planning to submit this plan and certification prior to the May 11, 2011 deadline.

Effects of the implementation of the REAL ID in South Dakota

When Senate Bill 17 went into effect at the beginning of this year, it initiated a major change in the documents needed to get a driver license that will eventually affect every person with a driver license or ID card. As with any change of this magnitude, the challenge was to educate the public of the change and the need to bring the newly required identity documents at the time of renewal. In the beginning, many applicants showed up at the driver license exam stations without the proper documents. The Department of Public

Safety responded by quickly getting information out to the public via press releases and public service announcements regarding the need for the newly required documentation. Consequently, the implementation has been going smoother as applicants are better informed of the documents they need to bring to the driver exam station.

The implementation of the law, however, has not been easy for everyone. It has been most difficult for married or divorced women and others who have changed their legal names. The difficulty is not because of our state law change but because of the federal rules the state has to abide by to remain in compliance with the REAL ID Act. The federal rules provide that if a state permits an applicant to establish a name other than the name that appears on a birth certificate (for example, through marriage, adoption, court order, or other mechanism permitted by state law), the state must require evidence of the name change through the presentation of documents issued by a court, governmental body, or other entity as determined by the state. This has proven to be a struggle for those applicants who have had numerous name changes. The Department of Public Safety requires legal proof of each name change to create a paper trail of the name changes. Unfortunately, the cost and hassle of getting certified copies of marriage licenses and divorce decrees can add significantly to the cost of getting a new driver license. But unless the federal rule is changed, the Department of Public Safety must follow the federal rule to stay in compliance with the Act.

The Department of Public Safety has encouraged those with name changes to consider using a U.S. passport as the

document to prove identity, date of birth, and lawful status. A passport is one of the documents allowed instead of a birth certificate by the federal rules. When applying for a passport an applicant must supply a certified copy of his or her birth certificate and a form of identification such as a driver license. However, an applicant for a passport does not need to document a name change between the birth certificate and the driver license. Therefore by using a passport a person can avoid documenting each name change. This is an apparent inconsistency in the Real ID requirements, but, the law nevertheless.

Compliance with the Real ID Act

It has been almost six years since the Real ID Act was enacted by Congress and in a little over six months we'll find out if the latest federal deadline regarding the implementation of the Real ID Act goes into effect or not. While South Dakota should have little trouble coming into full compliance by May 2011 with our current law and driver licensing procedures, that is not true for many other states. While states have made steps in the last six years to make their driver licensing systems more secure and have made significant strides to become compliant with the Act, only eleven states are currently in material compliance. So far every deadline established regarding the Real

ID Act has been extended when that deadline has been approached and it looks like the May 2011, deadline may be extended as well.

It appears it would take a change in the federal law or in the federal rules before a state such as South Dakota can attempt to lessen its driver license identification procedures without risking becoming noncompliant with the Real ID Act. While there have been attempts in Congress, most recently in 2009, to either repeal or revise the REAL ID Act, none of those efforts have gone anywhere. There also is no guarantee that the new Congress in 2011 will make any changes in the federal law since the Real ID Act was originally promoted by Republican members of the U.S. House of Representatives, passed by a Republican Congress, and signed into law by a Republican president. It is more likely that there might be a change in the federal rules implementing the Real ID Act to lessen some of the burdens on the state. The National Conference of State Legislatures and the American Association of Motor Vehicle Administrators are currently working with the Department of Homeland Security on possible rule changes in early 2011. Before the May 2011 deadline, the state should know the results of any rule changes.

This issue memorandum was written by David L. Ortbahn, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
