

# HOUSE BILL NO. 606

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~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

## Bill Status

H0606aaS.....by STATE AFFAIRS  
 FEDERAL REAL ID ACT OF 2005 - Adds to existing law relating to the implementation of the Federal REAL ID Act of 2005 to state findings of the Legislature; to direct the Idaho Transportation Board and the Idaho Transportation Department not to implement the provisions of the REAL ID Act of 2005; and to provide for security of driver's licenses and identification cards.

03/07 House intro - 1st rdg - to printing

03/10 Rpt prt - to Transp

03/11 Rpt out - rec d/p - to 2nd rdg

03/12 2nd rdg - to 3rd rdg

03/13 3rd rdg - PASSED - 67-0-3

AYES -- Anderson, Andrus, Barrett, Bayer, Bedke, Bell, Block, Bock, Boe, Bolz, Bowers, Brackett, Bradford, Chadderdon, Chavez, Chew, Clark, Collins, Crane, Durst, Eskridge, Hagedorn, Hart, Harwood, Henbest, Henderson, Jaquet, Killen, King, Kren, Labrador, Lake, LeFavour, Loertscher, Luker, Marriott, Mathews, McGeachin, Mortimer, Nielsen, Nonini, Pasley-Stuart, Patrick, Pence, Raybould, Ringo, Roberts, Ruchti, Rusche, Sayler, Schaefer, Shepherd(02), Shepherd(08), Shirley, Shively, Smith(30), Smith(24), Snodgrass, Stevenson, Thayn, Thomas, Trail, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker

NAYS -- None

Absent and excused -- Bilbao, Black, Moyle

Floor Sponsor - Hart

Title apvd - to Senate

03/13 Senate intro - 1st rdg - to St Aff

03/24 Rpt out - to 14th Ord

03/26 Rpt out amen - to 1st rdg as amen

03/27 1st rdg - to 2nd rdg as amen

03/28 2nd rdg - to 3rd rdg as amen

03/31 3rd rdg as amen - PASSED - 32-0-3

AYES -- Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Gannon(Gannon), Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, Little, Lodge, Malepeai(Sagness), McGee, McKague, Richardson, Schroeder, Siddoway, Stegner, Stennett, Werk

NAYS -- None

Absent and excused -- Langhorst, McKenzie, Pearce

Floor Sponsor - Jorgenson

Title apvd - to House

04/01 House concurred in Senate amens - to engros

Rpt engros - 1st rdg - to 2nd rdg as amen

Rls susp - PASSED - 65-0-5

AYES -- Andrus, Barrett, Bayer, Bedke, Bell, Bilbao, Block, Bock, Boe, Bolz, Bowers, Brackett, Bradford, Chavez, Chew, Clark, Collins, Crane, Durst, Eskridge, Hagedorn, Hart, Harwood, Henderson, Jaquet, Killen, King, Kren, Labrador, LeFavour, Loertscher, Luker, Marriott, Mathews, McGeachin, Mortimer, Moyle, Nielsen, Nonini, Pasley-Stuart, Patrick, Pence, Raybould, Ringo, Roberts, Ruchti, Rusche, Sayler, Schaefer, Shepherd(02), Shepherd(08), Shirley, Shively, Smith(30), Smith(24), Snodgrass, Stevenson, Thayn, Thomas, Trail, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker

NAYS -- None

Absent and excused -- Anderson, Black, Chadderdon, Henbest, Lake

Floor Sponsor - Hart

Title apvd - to enrol - Rpt enrol - Sp signed

04/02 Pres signed - To Governor

04/09 Governor signed

Session Law Chapter 385

Effective: 07/01/08 Sections 1 & 2 with contingencies involving US Homeland Security, revision of administrative regulation CFR Part 37, Governor's review & issuance of Governor's Executive Order

## Bill Text

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]]]] LEGISLATURE OF THE STATE OF IDAHO ]]]]  
Fifty-ninth Legislature Second Regular Session - 2008

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IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 606

BY STATE AFFAIRS COMMITTEE

1 AN ACT  
2 RELATING TO IMPLEMENTATION OF THE FEDERAL REAL ID ACT OF 2005; STATING FIND-  
3 INGS OF THE LEGISLATURE; AND AMENDING CHAPTER 3, TITLE 40, IDAHO CODE, BY  
4 THE ADDITION OF A NEW SECTION 40-322, IDAHO CODE, TO STATE FINDINGS OF THE

5 LEGISLATURE, TO DIRECT THE IDAHO TRANSPORTATION BOARD AND THE IDAHO TRANS-  
6 PORTATION DEPARTMENT NOT TO IMPLEMENT THE PROVISIONS OF THE REAL ID ACT OF  
7 2005 AND TO REQUIRE REPORTING TO THE GOVERNOR AND THE CONSTITUTIONAL  
8 DEFENSE COUNCIL OF ATTEMPTS BY FEDERAL AGENCIES TO SECURE IMPLEMENTATION  
9 OF THE FEDERAL ACT.

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. The Second Regular Session of the Fifty-ninth Idaho Legisla-  
12 ture hereby finds that:

13 (1) In May of 2005, the U.S. Congress enacted the REAL ID Act of 2005 as  
14 part of the Emergency Supplemental Appropriations Act for Defense, the Global  
15 War on Terror, and Tsunami Relief Act (Public Law 109-13), which was signed by  
16 President George W. Bush on May 11, 2005, and which becomes fully effective  
17 May 11, 2008; and

18 (2) Some of the provisions of the REAL ID Act require states to:

19 (a) Issue a driver's license or state identification card in a uniform  
20 format, containing uniform information, all as prescribed by the Depart-  
21 ment of Homeland Security;

22 (b) Verify the issuance, validity and completeness of all primary docu-  
23 ments used to issue a driver's license, such as those showing that the  
24 bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person  
25 holding a valid visa;

26 (c) Provide for secure storage of all primary documents that are used to  
27 issue a federally approved driver's license or state identification card;

28 (d) Provide fraudulent document recognition training to all persons  
29 engaged in issuing driver's licenses or state identification cards; and

30 (e) Issue a driver's license or state identification card in a prescribed  
31 format if it is a license or card that does not meet the criteria provided  
32 for a federally approved license or identification card; and

33 (3) Use of the federal minimum standards for state driver's licenses and  
34 state-issued identification cards will be necessary for any type of federally  
35 regulated activity for which an identification card must be displayed, includ-  
36 ing flying in a commercial airplane, making transactions with a federally  
37 licensed bank, entering a federal building, or making application for feder-  
38 ally supported public assistance benefits, including social security; and

39 (4) Some of the intended privacy requirements of the REAL ID Act, such as  
40 the use of common machine-readable technology and state maintenance of a data-  
41 base that can be shared with the United States and agencies of other states,  
42 may actually make it more likely that a federally required driver's license or  
43 state identification card, or the information about the bearer on which the  
44 license or card is based, will be stolen, sold or otherwise used for purposes

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1 that were never intended or that are criminally related, than if the REAL ID  
2 Act had not been enacted; and

3 (5) These potential breaches in privacy that could result directly from  
4 compliance with the REAL ID Act may violate the right to privacy of thousands  
5 of residents of Idaho; and

6 (6) The U.S. Department of Homeland Security has estimated the cost to  
7 implement the REAL ID Act to be \$3.9 billion to the states and \$5.8 billion to  
8 individuals, of which the U.S. Congress has pledged only \$81.3 million, or  
9 less than 1% of the total cost; and

10 (7) For all these reasons, seventeen states passed legislation opposing  
11 the REAL ID Act in 2007, including Idaho, which passed House Joint Memorial  
12 No. 3 declaring refusal to participate in the REAL ID program; and

13 (8) The regulations that have been adopted by the U.S. Department of  
 14 Homeland Security to implement the requirements of the REAL ID Act were issued  
 15 in January of 2008, and pushed compliance with the REAL ID Act to 2014 for  
 16 individuals born after 1964, and to 2017 for individuals born before 1964,  
 17 undercutting any security rationale that might have existed for the original  
 18 act; and

19 (9) The final regulations promulgated by the U.S. Department of Homeland  
 20 Security fail to address the well known privacy problems with the REAL ID Act  
 21 and in some cases, such as the issue of whether the machine-readable zone as  
 22 encrypted may have exacerbated the problem; and

23 (10) The federal government has been ineffective in stopping illegal immi-  
 24 gration, resulting in millions of persons who are present in the United States  
 25 of America without authorization; and

26 (11) Securing our borders will greatly reduce the number of persons who  
 27 enter our country without authorization and will do far more to provide secu-  
 28 rity to our society than will increasing scrutiny on law-abiding American citi-  
 29 zens by way of the REAL ID program; and

30 (12) The mandate to the states, through federal legislation that provides  
 31 no funding for its requirements, to issue what is, in effect, a national iden-  
 32 tification card, appears to be an attempt to "commandeer" the political  
 33 machinery of the states and to require them to be agents of the federal gov-  
 34 ernment in violation of the principles of federalism contained in the 10th  
 35 Amendment to the Constitution of the United States as construed by the United  
 36 States Supreme Court in *New York v. United States*, 488 U.S. 1041 (1992),  
 37 *United States v. Lopez*, 514 U.S. 549 (1995), and *Printz v. United States*, 521  
 38 U. S. 898 (1997); and

39 (13) It is within Idaho's rights to protest the commandeering of its posi-  
 40 tion in the Union by acts of Congress and the President of the United States.

41 SECTION 2. That Chapter 3, Title 40, Idaho Code, be, and the same is  
 42 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 43 ignated as Section 40-322, Idaho Code, and to read as follows:

44 40-322. DIRECTIVE ON IMPLEMENTATION OF THE FEDERAL REAL ID ACT OF 2005.

45 (1) The legislature finds that the enactment into law by the U.S. congress of  
 46 the REAL ID act of 2005, as part of public law 109-13, is inimical to the  
 47 security and well-being of the people of Idaho, will cause unneeded expense  
 48 and inconvenience to those people and was adopted by the U.S. congress in  
 49 violation of the principles of federalism contained in the 10th amendment to  
 50 the constitution of the United States.

51 (2) The legislature hereby declares that the state of Idaho shall not  
 52 participate in the implementation of the REAL ID act of 2005. The Idaho trans-  
 53 portation board and the Idaho transportation department, including the motor

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1 vehicles division of the Idaho transportation department are directed not to  
 2 implement the provisions of the REAL ID act of 2005, and to report to the gov-  
 3 ernor and to the constitutional defense council created in chapter 63, title  
 4 67, Idaho Code, any attempt by agencies or agents of the U.S. department of  
 5 homeland security to secure implementation of the REAL ID act of 2005, through  
 6 the operations of that department.

## Amendment

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]]]] LEGISLATURE OF THE STATE OF IDAHO ]]]]  
 Fifty-ninth Legislature Second Regular Session - 2008

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Moved by Jorgenson

Seconded by Kelly

IN THE SENATE  
 SENATE AMENDMENTS TO H.B. NO. 606

AMENDMENTS TO SECTION 1

1  
 2 On page 2 of the printed bill, in line 38, delete "; and" and delete lines  
 3 39 and 40 and insert: ".".

AMENDMENTS TO SECTION 2

4  
 5 On page 3, in line 2, delete ", and to report to the gov-" and delete  
 6 lines 3 through 6 and insert: "."; and following line 6, insert:  
 7 "(3) Nothing in this act shall prevent the Idaho transportation board and  
 8 the Idaho transportation department from taking reasonable steps to enhance  
 9 the security of Idaho state driver's licenses and identification cards."

AMENDMENT TO THE BILL

10  
 11 On page 3, following line 6, insert:  
 12 "SECTION 3. Sections 1 and 2 of this act shall be in full force and effect  
 13 on and after July 1, 2008. Provided however, that if the United States Depart-  
 14 ment of Homeland Security revises its final administrative regulation, 6 CFR  
 15 Part 37, relating to the REAL ID, and the Governor of the State of Idaho sub-  
 16 sequently determines that such revised final regulation is acceptable to the  
 17 State of Idaho, by Executive Order the Governor may initiate implementation of  
 18 REAL ID during the 2008 interim, notwithstanding the provisions of Section  
 19 40-322, Idaho Code. However, continued implementation of REAL ID shall be sub-  
 20 ject to the approval by the members of the First Regular Session of the  
 21 Sixtieth Idaho Legislature. Such legislative approval shall be evidenced by  
 22 the repeal of Section 40-322, Idaho Code."

CORRECTIONS TO TITLE

23  
 24 On page 1, in line 7, delete "AND TO REQUIRE REPORTING TO THE GOVERNOR AND  
 25 THE CONSTITUTIONAL"; delete lines 8 and 9 and insert: "AND TO PROVIDE FOR  
 26 SECURITY OF DRIVER'S LICENSES AND IDENTIFICATION CARDS; AND PROVIDING AN  
 27 EFFECTIVE DATE WITH A CONTINGENCY."

**Engrossed Bill (Original Bill with Amendment(s) Incorporated)**

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]]]] LEGISLATURE OF THE STATE OF IDAHO ]]]]  
Fifty-ninth Legislature Second Regular Session - 2008

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## IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 606, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

## AN ACT

1  
2 RELATING TO IMPLEMENTATION OF THE FEDERAL REAL ID ACT OF 2005; STATING FIND-  
3 INGS OF THE LEGISLATURE; AND AMENDING CHAPTER 3, TITLE 40, IDAHO CODE, BY  
4 THE ADDITION OF A NEW SECTION 40-322, IDAHO CODE, TO STATE FINDINGS OF THE  
5 LEGISLATURE, TO DIRECT THE IDAHO TRANSPORTATION BOARD AND THE IDAHO TRANS-  
6 PORTATION DEPARTMENT NOT TO IMPLEMENT THE PROVISIONS OF THE REAL ID ACT OF  
7 2005 AND TO PROVIDE FOR SECURITY OF DRIVER'S LICENSES AND IDENTIFICATION  
8 CARDS; AND PROVIDING AN EFFECTIVE DATE WITH A CONTINGENCY.

9 Be It Enacted by the Legislature of the State of Idaho:

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14 War on Terror, and Tsunami Relief Act (Public Law 109-13), which was signed by  
15 President George W. Bush on May 11, 2005, and which becomes fully effective  
16 May 11, 2008; and

17 (2) Some of the provisions of the REAL ID Act require states to:

18 (a) Issue a driver's license or state identification card in a uniform  
19 format, containing uniform information, all as prescribed by the Depart-  
20 ment of Homeland Security;

21 (b) Verify the issuance, validity and completeness of all primary docu-  
22 ments used to issue a driver's license, such as those showing that the  
23 bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person  
24 holding a valid visa;

25 (c) Provide for secure storage of all primary documents that are used to  
26 issue a federally approved driver's license or state identification card;

27 (d) Provide fraudulent document recognition training to all persons  
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29 (e) Issue a driver's license or state identification card in a prescribed  
30 format if it is a license or card that does not meet the criteria provided  
31 for a federally approved license or identification card; and

32 (3) Use of the federal minimum standards for state driver's licenses and  
33 state-issued identification cards will be necessary for any type of federally  
34 regulated activity for which an identification card must be displayed, includ-  
35 ing flying in a commercial airplane, making transactions with a federally  
36 licensed bank, entering a federal building, or making application for feder-  
37 ally supported public assistance benefits, including social security; and

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39 the use of common machine-readable technology and state maintenance of a data-  
40 base that can be shared with the United States and agencies of other states,  
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42 state identification card, or the information about the bearer on which the  
43 license or card is based, will be stolen, sold or otherwise used for purposes

44 that were never intended or that are criminally related, than if the REAL ID

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1 Act had not been enacted; and

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3 compliance with the REAL ID Act may violate the right to privacy of thousands  
4 of residents of Idaho; and

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6 implement the REAL ID Act to be \$3.9 billion to the states and \$5.8 billion to  
7 individuals, of which the U.S. Congress has pledged only \$81.3 million, or  
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10 the REAL ID Act in 2007, including Idaho, which passed House Joint Memorial  
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13 Homeland Security to implement the requirements of the REAL ID Act were issued  
14 in January of 2008, and pushed compliance with the REAL ID Act to 2014 for  
15 individuals born after 1964, and to 2017 for individuals born before 1964,  
16 undercutting any security rationale that might have existed for the original  
17 act; and

18 (9) The final regulations promulgated by the U.S. Department of Homeland  
19 Security fail to address the well known privacy problems with the REAL ID Act  
20 and in some cases, such as the issue of whether the machine-readable zone as  
21 encrypted may have exacerbated the problem; and

22 (10) The federal government has been ineffective in stopping illegal immi-  
23 gration, resulting in millions of persons who are present in the United States  
24 of America without authorization; and

25 (11) Securing our borders will greatly reduce the number of persons who  
26 enter our country without authorization and will do far more to provide secu-  
27 rity to our society than will increasing scrutiny on law-abiding American citi-  
28 zens by way of the REAL ID program; and

29 (12) The mandate to the states, through federal legislation that provides  
30 no funding for its requirements, to issue what is, in effect, a national iden-  
31 tification card, appears to be an attempt to "commandeer" the political  
32 machinery of the states and to require them to be agents of the federal gov-  
33 ernment in violation of the principles of federalism contained in the 10th  
34 Amendment to the Constitution of the United States as construed by the United  
35 States Supreme Court in *New York v. United States*, 488 U.S. 1041 (1992),  
36 *United States v. Lopez*, 514 U.S. 549 (1995), and *Printz v. United States*, 521  
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44 security and well-being of the people of Idaho, will cause unneeded expense  
45 and inconvenience to those people and was adopted by the U.S. congress in  
46 violation of the principles of federalism contained in the 10th amendment to  
47 the constitution of the United States.

48 (2) The legislature hereby declares that the state of Idaho shall not  
49 participate in the implementation of the REAL ID act of 2005. The Idaho trans-  
50 portation board and the Idaho transportation department, including the motor  
51 vehicles division of the Idaho transportation department are directed not to

52 implement the provisions of the REAL ID act of 2005.  
 53 (3) Nothing in this act shall prevent the Idaho transportation board and

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1 the Idaho transportation department from taking reasonable steps to enhance  
 2 the security of Idaho state driver's licenses and identification cards.

3 SECTION 3. Sections 1 and 2 of this act shall be in full force and effect  
 4 on and after July 1, 2008. Provided however, that if the United States Depart-  
 5 ment of Homeland Security revises its final administrative regulation, 6 CFR  
 6 Part 37, relating to the REAL ID, and the Governor of the State of Idaho sub-  
 7 sequently determines that such revised final regulation is acceptable to the  
 8 State of Idaho, by Executive Order the Governor may initiate implementation of  
 9 REAL ID during the 2008 interim, notwithstanding the provisions of Section  
 10 40-322, Idaho Code. However, continued implementation of REAL ID shall be sub-  
 11 ject to the approval by the members of the First Regular Session of the  
 12 Sixtieth Idaho Legislature. Such legislative approval shall be evidenced by  
 13 the repeal of Section 40-322, Idaho Code.

## Statement of Purpose / Fiscal Impact

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### STATEMENT OF PURPOSE

RS 18033

The Real ID Act of 2005 is an unfunded mandate imposed by Congress on the states. It is estimated that the cost of compliance is approximately \$10 billion dollars, yet Congress has only appropriated less than 1% of this amount to help the states with Real ID.

This bill would prohibit the Idaho Transportation Department from implementing the provisions of the federal Real ID Act of 2005, while at the same time giving the Governor the flexibility to initiate implementation of Real ID should the U.S. Department of Homeland Security modify their final rule such that it is acceptable to the Governor. Additionally, the bill allows the Transportation Department to make improvements to our drivers licenses as that department sees fit to do so.

The legislation finds that the Real ID Act was passed without proper debate in the US Congress, that the Act is an attempt to commandeer the political machinery of the States and to require them to be agents of the federal government. This is in violation of the principles of federalism contained in the Tenth Amendment to the Constitution.

Real ID creates a huge database of linked state databases and will put the personal information of Idahoans at risk to identity theft. In 2007, 17 states passed legislation against the Real ID Act, with seven of those states passing statutory bans against implementing the Act. Last year Idaho passed HJM 3, resolving not to comply with Real ID. This bill would codify that resolution.

On January 10 of this year, the Department of Homeland Security issued final



regulations for implementation of the Real ID Act. This final rule failed to fix the majority of problems and brushed aside many of the states' legitimate concerns.

In its regulations, the Department of Homeland Security offered states an extension of the May 2008 statutory deadline until December 2009. Idaho applied for, and received, that extension in order to assess whether the state should comply with the law. Because of the federal government's repeated failure to fix or fund the Real ID Act, it is time for Idaho to send a clear message to Washington that the Real ID Act will not be implemented in its current form in Idaho.

#### FISCAL NOTE

If Idaho were to comply with the Real ID Act of 2005 the startup costs will be in the range of \$20 million with ongoing costs of about \$5.0 million per year.

#### CONTACT:

Name: Rep. Phil Hart, Rep. Lenore Barrett, Rep. JoAn Wood, Rep. Dean  
Mortimer, Rep. Pete Neilson, Rep. Dick Harwood, Rep. Liz  
Chavez,  
Sen. Mike Jorgenson, Sen. Shirley McKague, Sen. Monte Pearce  
Phone: (208) 332-1000

STATEMENT OF PURPOSE/FISCAL NOTE

H 606aaS

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