HOUSE BILL NO. 606

View Bill Status
View Bill Text
View Amendment
View Engrossed Bill (Original Bill with Amendment(s) Incorporated)
View Statement of Purpose / Fiscal Impact

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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, Chandlerdon, 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

http://www3.idaho.gov/oasis/H0606.html#billtext
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 REQUIRE REPORTING TO THE GOVERNOR AND THE CONSTITUTIONAL DEFENSE COUNCIL OF ATTEMPTS BY FEDERAL AGENCIES TO SECURE IMPLEMENTATION OF THE FEDERAL ACT.

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

SECTION 1. The Second Regular Session of the Fifty-ninth Idaho Legislature hereby finds that:

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

(2) Some of the provisions of the REAL ID Act require states to:
   (a) Issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;
   (b) Verify the issuance, validity and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;
   (c) Provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card;
   (d) Provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards; and
   (e) Issue a driver's license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

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

(4) Some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold or otherwise used for purposes that were never intended or that are criminally related, than if the REAL ID Act had not been enacted; and

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

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

(7) For all these reasons, seventeen states passed legislation opposing the REAL ID Act in 2007, including Idaho, which passed House Joint Memorial No. 3 declaring refusal to participate in the REAL ID program; and
(8) The regulations that have been adopted by the U.S. Department of Homeland Security to implement the requirements of the REAL ID Act were issued in January of 2008, and pushed compliance with the REAL ID Act to 2014 for individuals born after 1964, and to 2017 for individuals born before 1964, undercutting any security rationale that might have existed for the original act; and

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

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

(11) Securing our borders will greatly reduce the number of persons who enter our country without authorization and will do far more to provide security to our society than will increasing scrutiny on law-abiding American citizens by way of the REAL ID program; and

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

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

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

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

(2) The legislature hereby declares that the state of Idaho shall not participate in the implementation of the REAL ID act of 2005. The Idaho transportation board and the Idaho transportation department, including the motor vehicles division of the Idaho transportation department are directed not to implement the provisions of the REAL ID act of 2005, and to report to the governor and to the constitutional defense council created in chapter 63, title 67, Idaho Code, any attempt by agencies or agents of the U.S. department of homeland security to secure implementation of the REAL ID act of 2005, through the operations of that department.
Moved by **Jorgenson**

Seconded by **Kelly**

**IN THE SENATE**

**SENATE AMENDMENTS TO H.B. NO. 606**

**AMENDMENTS TO SECTION 1**

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

**AMENDMENTS TO SECTION 2**

On page 3, in line 2, delete ", and to report to the gov-" and delete lines 3 through 6 and insert: "."; and following line 6, insert:

"(3) Nothing in this act shall prevent the Idaho transportation board and the Idaho transportation department from taking reasonable steps to enhance the security of Idaho state driver's licenses and identification cards.".

**AMENDMENT TO THE BILL**

On page 3, following line 6, insert:

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

**CORRECTIONS TO TITLE**

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

**Engrossed Bill (Original Bill with Amendment(s) Incorporated)**
IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 606, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

1 AN ACT

2 RELATING TO IMPLEMENTATION OF THE FEDERAL REAL ID ACT OF 2005; STATING FINDINGS OF THE LEGISLATURE; AND AMENDING CHAPTER 3, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-322, IDAHO CODE, 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; AND PROVIDING AN EFFECTIVE DATE WITH A CONTINGENCY.

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

SECTION 1. The Second Regular Session of the Fifty-ninth Idaho Legislature hereby finds that:

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

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

(a) Issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

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

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

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

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

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

(4) Some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold or otherwise used for purposes...
that were never intended or that are criminally related, than if the REAL ID Act had not been enacted; and

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

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

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

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

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

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

(11) Securing our borders will greatly reduce the number of persons who enter our country without authorization and will do far more to provide security to our society than will increasing scrutiny on law-abiding American citizens by way of the REAL ID program; and

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

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


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

(2) The legislature hereby declares that the state of Idaho shall not participate in the implementation of the REAL ID act of 2005. The Idaho transportation board and the Idaho transportation department, including the motor vehicles division of the Idaho transportation department are directed not to
implement the provisions of the REAL ID act of 2005.

(3) Nothing in this act shall prevent the Idaho transportation board and

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

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


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STATEMENT OF PURPOSE/FISCAL NOTE

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