

File Number: H.F. 3

Date: May 16, 2017

Version: Conference committee report

Authors: Smith

Subject: REAL ID Act implementation

Analyst: Matt Burress (matt.burress@house.mn)

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/.

Overview

This bill addresses Minnesota's compliance with the federal REAL ID Act of 2005 that governs various aspects of identity verification and security around driver's licenses and identification cards. Among its provisions, the bill:

- ▶ directs the Department of Public Safety to fully comply with REAL ID Act requirements by October 1, 2018 (along with repealing the 2009 implementation ban);
- ▶ establishes both REAL ID-compliant and noncompliant versions of driver's licenses and identification cards;
- ▶ prohibits departmental activity to comply with any future federal REAL ID Act changes in law, process, or data practices, including a contingent halt on issuing REAL ID-compliant licenses and identification cards;
- ▶ makes various statutory changes related to achieving federal compliance;
- ▶ provides for early renewals in order to obtain REAL ID-compliant licenses and identification cards under some circumstances;
- ▶ appropriates funds for implementation; and
- ▶ requires legislative reporting.

The REAL ID Act and its accompanying federal regulations establish various identity verification, security, data, and process requirements for state-issued driver's licenses and identification cards. A key enforcement mechanism of the

Section

REAL ID Act is that, when fully instituted, it prohibits federal agencies from accepting noncompliant state-issued licenses and cards for some federally administered activities, namely: (1) accessing secured federal facilities such as military bases and nuclear power plants, and (2) boarding federally regulated commercial aircraft.

There is a phased federal schedule in enforcing the REAL ID Act requirements. Currently, noncompliant licenses and cards (i.e., those issued by a jurisdiction that does not produce fully REAL ID-compliant documents) are not accepted for entering various secured federal facilities when identification is necessary for access. Beginning January 22, 2018, noncompliant licenses and cards will not be accepted for boarding commercial aircraft unless an extension has been granted by the U. S. Department for Homeland Security to that state. Beginning October 1, 2020, only REAL ID-compliant licenses and cards will be accepted for federal purposes, so that extensions will no longer be provided.

- 1 **Noncompliant license; noncompliant identification cards.** Defines terms for licenses and identification cards that do not meet the requirements of the federal REAL ID Act, for the chapter of statutes on driver licensing.
- 2 **REAL ID Act.** Defines “REAL ID Act” for the chapter of statutes on driver licensing.
- 3 **Temporary lawful status.** Defines “temporary lawful status” to use a definition from federal regulations under the REAL ID Act, for the chapter of statutes on driver licensing.
- 4 **Background investigations; driver’s license agents and certain employees.** Mandates a background check on those Department of Public Safety employees, as well as on those driver’s license agents and their employees, who can modify the records of applicants and holders of a driver’s license or identification card. Provides for recovery of background check costs by the Bureau of Criminal Apprehension from the department or driver’s license agent.
- 5 **[171.019] REAL ID Act conformity; limitations.** Governs Minnesota compliance with REAL ID Act requirements.
 - Subd. 1. Definition.** Defines a “federal change” related to the REAL ID Act.
 - Subd. 2. License and Minnesota identification card options.** Directs the Department of Public Safety to create both REAL ID Act compliant and noncompliant license and identification card versions, which are in addition to enhanced licenses and identification cards.
 - Subd. 3. Limitations.** Prevents the department from taking steps to implement or comply with future changes in federal law, processes, or data practices under the REAL ID Act.

Section

Subd. 4. Legislative notification. Requires notification to the legislature regarding any impending or completed changes in federal law, processes, or data practices under the REAL ID Act.

Subd. 5. Statutory construction. Establishes that, by default, reference to a driver's license includes all types of license (both compliant and noncompliant) and that reference to a Minnesota identification card includes all types of identification card.

6 Temporary lawful admission. Prohibits issuing a license or identification card if the applicant has a temporary admission status to the United States that expires within 30 days of the application.

7 Application format and requirements. Requires all applicants for a driver's license or identification card to sign the application and declare that the information in the application is true and correct, with a penalty of perjury for false statements. Under current law a signature is required but a perjury penalty is not specified.

8 Fees. Clarifies that the same fees apply to REAL ID-compliant and noncompliant versions of licenses and identification cards.

9 Contents of application; other information. Specifies that supporting documentation must be provided as part of application for a driver's license or identification card, including evidence demonstrating:

- ▶ the applicant's identity, date of birth, and any name changes; and
- ▶ for REAL ID-compliant licenses and cards: (1) principal residence address in Minnesota; (2) Social Security number or other permissible documents (that is, other accompanying documents when the applicant does not have a Social Security card); and (3) lawful presence status in the United States (which includes U.S. citizenship and various forms of temporary legal presence).

Makes technical and conforming changes related to optional designations and to documentation provided for enhanced licenses and identification cards.

10 Information for applicants. Requires the Department of Public Safety to make information available to driver's license and identification card applicants regarding the types of cards offered, their respective limitations, and data shared outside the state. Requires a signed acknowledgement of understanding of limitations on license or identification card use.

11 [171.0605] Evidence of identity and lawful presence. Identifies lists of acceptable documents that can be used to prove identity, date of birth, residence in Minnesota, Social Security number, and lawful presence in the United States. The requirements only apply for REAL ID-compliant licenses and identification cards (and override any conflicting administrative rules). Similar lists of acceptable documentation are established under administrative rules for noncompliant as well as enhanced licenses and identification cards, and are unchanged.

Subd. 1. Scope of application. Establishes that the section only applies for licenses and identification cards that are compliant with the REAL ID Act. The section

Section

overrides any conflicting administrative rules, but other administrative rules on driver licensing continue to apply.

Subd. 2. Evidence; identity; date of birth. Identifies acceptable documents for proving identity and date of birth, including a REAL ID-compliant license or identification card, a U.S. passport, a certified copy of a birth certificate, and various federally issued documentation.

Subd. 3. Evidence; lawful status. Identifies acceptable documents for proving lawful presence in the United States, which consist of the same documents as listed in subdivision 2 as well as documents issued by a federal agency that demonstrates the applicant's lawful presence.

Subd. 4. Evidence; Social Security number. Requires presentation of a Social Security card, or if one is not available, certain W-2 or 1099 forms (unless the applicant demonstrates non-work authorized status).

Subd. 5. Evidence; residence in Minnesota. Identifies acceptable documents for proving a residence address in Minnesota. Requires two documents from the listing. (The list substantially matches those required under administrative rules to obtain an enhanced driver's license or identification card.)

Subd. 6. Exceptions process. Allows the department to use a variance process in administrative rules to grant some types of exceptions to the evidence requirements established in this section. Prohibits granting a variance for applicants with temporary lawful status.

- 12 Application.** Authorizes driver's license agents to accept applications for all types of license and identification cards, including REAL ID-compliant and enhanced versions.
- 13 License; contents and design.** Identifies license marking requirements for REAL ID compliance, REAL ID noncompliance (including printing "not for federal identification"), and temporary status. Requires the license holder's full name or truncation in a specified manner. Makes a technical clarification and a technical change, to eliminate language in paragraph (d) on license security features that is substantially reproduced in section 16.
- 14 Identification card; content and design fee.** Identifies identification card marking requirements for REAL ID compliance, REAL ID noncompliance (including printing "not for federal identification"), and temporary status. Requires the card holder's full name or truncation in a specified manner. Makes a technical clarification.
- 15 Identification card expiration.** Sets the expiration for identification cards issued to seniors (age 65 or older) as (1) eight years for REAL ID-compliant cards; or (2) valid for life, for noncompliant cards. Sets the expiration for identification cards issued to people with temporary lawful presence in the United States as the last day of the person's legal stay or one year after issuance if the last day is not known. Makes technical changes.
- 16 Security features.** Broadens the physical security features required for driver's licenses and identification cards. Makes technical changes to substantially reproduce language on security features that is removed from another section.

Section

- 17** **Limitations.** Prevents applicants for a REAL ID-compliant license or identification card from being able to forego having a photo taken based on religious objection (so that preventing a photo is available only for a noncompliant license or identification card applicant).
- 18** **Tribal identification card.** Prevents tribal identification cards from being accepted to prove name and identity in application for a REAL ID-compliant driver's license or identification card.
- 19** **Driver and vehicle services information system; security and auditing.** Establishes requirements for the information technology system used by Driver and Vehicle Services, including: procedures to limit authorized access; mandatory data audit trails; revocation of access upon law violations; and independent biennial auditing with reporting to the legislature. The requirements go into effect in conjunction with the new driver's license information technology system.
- 20** **Record retention; birth certificates.** Requires that driver's license and identification card applicants are able to choose retention by the department of the data contained in the birth certificate rather than retaining a physical or digital copy of the certificate (if the department's procedures include retention of a birth certificate copy).
- 21** **Data privacy; noncompliant license or identification card.** Prohibits sharing data on noncompliant license or identification card holders outside the state beyond what is shared under current processes, including electronic dissemination of data and use of electronic verification systems.
- 22** **Other data provisions.** Prohibits the Department of Public Safety from sharing firearm safety data maintained by the department with the federal government. Firearm data collected by government entities is private under the Minnesota Government Data Practices Act.
- 23** **Expiration of license; military exception.** Sets the expiration for driver's licenses issued to people with temporary lawful presence in the United States as the last day of the person's legal stay or one year after issuance if the last day is not known. Makes a technical change.
- 24** **REAL ID Act implementation.** Establishes requirements and authority on REAL ID Act implementation, including an implementation date of no later than October 1, 2018.

Subd. 1. Definition. Defines "REAL ID Act" for the section, by referencing the federal law.

Subd. 2. Implementation; deadline. Sets an October 1, 2018, deadline for the Department of Public Safety to begin issuing REAL ID-compliant licenses and identification cards. Requires legislative notification of the actual date of implementation.

Subd. 3. Mandatory reissuance prohibition. Prohibits the department from requiring that license and identification card holders must obtain a new license or identification card earlier than the normal expiration date of the document.

Subd. 4. Early renewal and expiration date extension. Authorizes early renewals to obtain a REAL ID-compliant license or identification card, with the

Section

expiration date extended to match the person's next regular renewal. The provision applies if the license or card (1) was issued prior to when Minnesota starts issuing REAL ID-compliant documents; and (2) has an expiration date that is after the date when only REAL ID-compliant licenses and cards are federally accepted. The early renewal option is available for a year after the start of federal full compliance being required. The fee for early renewal ranges from \$4 to \$6 depending on the length of time remaining on the person's current license or identification card.

- 25** **Revisor's instruction.** Makes a technical change, to move a provision on anatomical gifts to a different subdivision.
- 26** **Appropriation.** Appropriates \$3.27 million in fiscal year 2019 from the driver services operating account to the Department of Public Safety for implementing REAL ID Act compliance.
- 27** **Contingent repealer.** Provides that if the REAL ID Act is repealed or if the federal purposes for using the REAL ID-compliant cards are changed, the provisions of this act become null and void on June 30 of the following year and the Department of Public Safety must stop issuing REAL ID-compliant driver's licenses and identification cards. Within 90 days of the federal action, the department must report to the legislature on the legislative changes necessary to repeal this act.
- 28** **Repealer.** Fully repeals the 2009 ban on REAL ID Act implementation (which had been amended in 2016 to permit planning activities).
- 29** **Effective date.** Makes the bill effective the day after enactment, and applies the changes for application for and issuance of licenses and identification cards starting on the date of Department of Public Safety full compliance implementation.