

# REAL ID Act Implementation in Minnesota

September 2022

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This brief provides information on federal REAL ID Act legislation and associated activity in Minnesota.<sup>1</sup>

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## Executive Summary

The federal REAL ID Act was enacted by Congress in 2005. It governs various aspects of state-issued driver's licenses and identification cards, including setting standards and requirements related to identity verification, security, credential production, and access to data. It applies across the states as well as U.S. territories.

The provisions of the REAL ID Act are not yet completely enforced. When fully instituted, federal agencies will be prohibited from accepting noncompliant state-issued<sup>2</sup> licenses and identification cards for several activities under federal jurisdiction where identity must be demonstrated. Namely, the law requires state-issued credentials to be REAL ID-compliant when presented to:

- pass through security checkpoints to board federally regulated commercial aircraft; and
- access federally secured facilities such as military bases and nuclear power plants.

The U.S. Department of Homeland Security (DHS)—the primary federal implementing agency—is using a phase-in schedule to enforce REAL ID Act requirements. The agency has delayed its implementation timeline on several occasions, including to repeatedly extend the date of the final phase-in step. DHS attributed its most recent delay of the final phase as in response to the COVID-19 coronavirus pandemic.<sup>3</sup>

As it currently stands, both REAL ID compliant and noncompliant licenses as well as identification cards will be accepted until **May 3, 2023**, for some federal access purposes (i.e., boarding aircraft and potentially accessing secured facilities), if the issuing jurisdiction is either compliant with REAL ID Act requirements or under federal review. After May 3, 2023, a state-issued license or identification card presented for federal access must be REAL ID-

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<sup>1</sup> This brief is revised from previous memos and is current with information obtained as of August 2, 2022.

<sup>2</sup> In this brief, “state-issued” includes credentials issued by U.S. territories that are subject to REAL ID Act requirements.

<sup>3</sup> [86 Fed. Reg. 23239](#) (May 31, 2021).

compliant. For instance, after that date a person who presents a noncompliant license or identification card will not be able to pass through an airport security checkpoint (but an alternative accepted identity document could instead be used).

Note that a variety of other documents are also accepted by federal agencies for access purposes, including federally issued identification such as a U.S. passport. The list of accepted documents varies based on the policies of each federal agency.<sup>4</sup>

## Implementation in Minnesota

Like several jurisdictions throughout the United States, Minnesota initially refrained from complying with REAL ID Act requirements. Lawmakers imposed a REAL ID Act implementation ban in 2009.<sup>5</sup> The legislature partially lifted it in 2016 for planning purposes and subsequently authorized compliance in 2017.<sup>6</sup>

Minnesota began issuing REAL ID-compliant versions of driver’s licenses and identification cards in October of 2018. Today, all U.S. states and territories are in compliance with the federal requirements or under a compliance review.

## Credential Offerings

Qualifying applicants can choose from three types of Minnesota driver’s licenses and identification cards:

- traditional, which is noncompliant for REAL ID Act access purposes;
- REAL ID-compliant; or
- enhanced, which is a hybrid of a state-issued license and a substitute for a passport when entering the United States in limited situations (discussed further on page 6).

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<sup>4</sup> For instance, see the list of accepted documents for boarding commercial flights at <https://www.tsa.gov/travel/security-screening/identification>.

<sup>5</sup> Minn. Laws 2009, ch. 92, § 1.

<sup>6</sup> Minn. Laws 2017, ch. 76.

## Overview of the REAL ID Act

The REAL ID Act of 2005 established federal standards for state-issued driver's licenses and identification cards.

The federal REAL ID Act of 2005 sets a number of federal standards governing driver's licenses and identification cards issued by the states.<sup>7</sup> A DHS summary of the act is that it “established minimum security standards for state-issued driver's licenses and identification cards and prohibits certain federal agencies from accepting for official purposes licenses and identification cards from states that do not meet these standards.”<sup>8</sup> Regulatory areas within the REAL ID Act and corresponding federal regulations include:

- applicant documentation and verification of identity;
- proof of lawful presence in the United States;
- digital image storage;
- information, design, and security features on the physical credential;
- security of card production and storage facilities; and
- use of national electronic data verification systems and sharing of electronic data across the states and territories.<sup>9</sup>

The law addresses access for “official purposes,” which essentially applies to federal buildings and facilities under federal jurisdiction where identification must be presented for entrance. The law does not mandate identification checks at all federal locations. In particular, the requirements to show proof of identity do not extend to unrestricted facilities (like Smithsonian Institution museums) as well as various law enforcement, health, safety, and legal activities (like voting, accessing hospitals and clinics, and receiving federal benefits). The law does not create new cases where compliant credentials must be provided, nor does it prevent acceptance of other forms of federal identification such as passports and military ID cards.

## Historical Background

Implementation and enforcement of REAL ID Act requirements met with initial opposition across some jurisdictions but proceeded over the ensuing years.

Prior to the REAL ID Act, the regulatory framework for driver licensing had primarily been under the purview of states with state-federal processes and federal laws in a few areas—particularly around licensing to operate interstate commercial vehicles. To some extent the law shifted the state-federal relationship over identification credentials. Its impetus can be viewed in the

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<sup>7</sup> REAL ID Act of 2005, Pub. L. No. 109-13 (2005) <<https://www.gpo.gov/fdsys/pkg/PLAW-109publ13/pdf/PLAW-109publ13.pdf>>.

<sup>8</sup> U.S. Department of Homeland Security, “REAL ID Frequently Asked Questions,” accessed July 20, 2022. <<https://www.dhs.gov/real-id-frequently-asked-questions>>.

<sup>9</sup> See 6 C.F.R. §§ 37.13, 37.29.

context of federal security and safety responses following the events of September 11, 2001. For instance, setting federal standards for driver's license issuance was one of the recommendations of the 9/11 Commission.<sup>10</sup>

In the years following passage of the federal legislation and the subsequent development of federal regulations (particularly 2007 to 2009), a number of states, state associations, governors, and advocacy groups expressed concerns with the REAL ID Act (although it was supported among some states and interest groups).<sup>11</sup> Some states including Minnesota enacted legislation stating opposition to or barring compliance with the federal mandates.

The timeline under the federal legislation originally called for full implementation by 2008, which did not occur. DHS went through rulemaking and in 2008 adopted final federal regulations governing driver's license standards and processes.<sup>12</sup>

In the following years DHS issued a series of extensions to the state compliance deadline as well as deferments of agency enforcement. (The federal law includes a provision whereby DHS can provide extensions that allow continued federal acceptance of noncompliant licenses and cards while a jurisdiction implements the steps to become fully compliant.)

Starting around 2011, DHS largely moved to an approach with case-by-case (instead of universal) extensions as well as limited grace periods for noncompliant jurisdictions. In 2013 DHS identified a schedule of enforcement phases to put the REAL ID Act fully into effect. Enforcement phases one to three addressed access to various federally restricted and semi-restricted areas. Phase four, which remains yet to be fully completed, restricts boarding commercially regulated aircraft.

In the years that followed establishment of the enforcement phases, jurisdictions increasingly pursued REAL ID Act compliance. In 2015, DHS denied an enforcement extension requested by Minnesota.<sup>13</sup> This was followed by legislative activity in 2016 and 2017 to implement Minnesota's compliance. Today, Minnesota is among the 55 states and territories (out of 56)

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<sup>10</sup> National Commission on Terrorist Attacks Upon the United States, "9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States," 2004, p. 390  
<<https://govinfo.library.unt.edu/911/report/911Report.pdf>>.

<sup>11</sup> For instance, see National Governors Association, National Conference of State Legislatures, and American Association of Motor Vehicle Administrators, "The Real ID Act: National Impact Analysis," 2006, pp. 4-5  
<[https://www.ncsl.org/print/statefed/Real\\_ID\\_Impact\\_Report\\_FINAL\\_Sept19.pdf](https://www.ncsl.org/print/statefed/Real_ID_Impact_Report_FINAL_Sept19.pdf)>.

<sup>12</sup> 73 Fed. Reg. 5272 (29 Jan. 2008), codified at 6 C.F.R. Part 37.

<sup>13</sup> In November 2015, Gov. Dayton requested an extension for Minnesota. This was denied by DHS, which stated in its response that "Minnesota has not provided adequate justification for continued noncompliance with the REAL ID standards." DHS later granted an extension following passage of 2017 legislation. The letter is available at [https://mn.gov/governor/images/2015\\_12\\_22\\_DHS\\_MN\\_REAL\\_ID\\_Response\\_and\\_Enclosure.pdf](https://mn.gov/governor/images/2015_12_22_DHS_MN_REAL_ID_Response_and_Enclosure.pdf).

that are considered to be in full compliance with REAL ID Act requirements and can issue compliant licenses and identification cards.<sup>14</sup>

## Implementation in Minnesota

Minnesota initially banned compliance implementation, but is now compliant with REAL ID Act requirements.

As previously noted, the 2009 Legislature enacted a prohibition on state planning and compliance with REAL ID Act provisions. The original legislation was brief, stating:

The commissioner of public safety is prohibited from taking any action to implement or to plan for the implementation by this state of those sections of Public Law 109-13 known as the Real ID Act.<sup>15</sup>

The ban remained in effect until it was partially lifted in a 2016 law that allowed planning but not actual implementation or REAL ID-related administrative rulemaking.<sup>16</sup> A legislative report on implementation steps and costs was also mandated in the legislation, which the Department of Public Safety produced in April of 2016.<sup>17</sup> The 2016 Legislature contemplated authorizing further implementation steps, but did not enact anything further that session.

Subsequently, the 2017 Legislature enacted a law that provides for full compliance implementation.<sup>18</sup> The following highlights some core elements of the act.

- **Implementation authority.** The 2009 prohibition was reversed, repealing that law and directing the Department of Public Safety to offer driver's licenses and identification cards that are compliant with federal REAL ID requirements. The legislation also set a timeline, directing the department to begin issuing compliant credentials by October 1, 2018.
- **Compliant and noncompliant options.** Both REAL ID-compliant and noncompliant offerings are available. An applicant has the option of seeking either version (or an enhanced driver's license or identification card, which is discussed further below).<sup>19</sup>
- **Ban on implementing future federal changes.** The department is prohibited from taking steps to comply with any future federal changes to the REAL ID law (including federal regulations, processes, data practices, and card standards), and must notify the

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<sup>14</sup> As of writing, American Samoa is under review for compliance (and its licenses and identification cards are accepted for federal access purposes). See <https://www.dhs.gov/real-id/american-samoa>.

<sup>15</sup> Minn. Laws 2009, ch. 92, § 1.

<sup>16</sup> Minn. Laws 2016, ch. 83.

<sup>17</sup> The report is available at <https://www.leg.state.mn.us/docs/2016/mandated/160416.pdf>.

<sup>18</sup> Minn. Laws 2017, ch. 76.

<sup>19</sup> Minn. Stat. § 171.019, subd. 2.

legislature regarding any impending changes at the federal level.<sup>20</sup> In effect, state compliance is pegged to the version of federal provisions in effect as of May 19, 2017. Further, a contingent repealer directs the Department of Public Safety to stop issuing compliant credentials following federal additions or modification in the “official purposes” where REAL ID-compliant documents are necessary.<sup>21</sup>

- **Eligibility.** Documentation of identity, date of birth, principal residence in Minnesota, a Social Security number or equivalent information, and lawful presence is necessary in order to obtain a REAL ID-compliant license or identification card. (This follows from requirements under the federal law in order for a state-issued document to be considered REAL ID-compliant.) Statutory lists identify the accepted forms of evidence.<sup>22</sup>
- **Compliance implementation.** The act covered a variety of other implementation details and policies, including provisions on mandatory staff background checks; card design inscriptions and features; expiration dates; information technology auditing and security; birth certificate recordkeeping; data dissemination limitations; and extended expiration dates for early license and identification card renewals. The fees for REAL ID-compliant licenses were set at the same level as corresponding noncompliant ones (fee amounts vary across license classes and types). The act also made a onetime \$3.27 million appropriation for implementation costs.

## Driver’s License and Identification Card Options

Minnesota offers multiple types of driver’s licenses and identification cards, some of which are accepted for federal access depending on the circumstances.

### Enhanced Licenses and Identification Cards

Minnesota is among a handful of states that offer enhanced driver’s licenses and enhanced identification cards as an alternative to the traditional and REAL ID-compliant versions. The enhanced credentials are part of a federal initiative on border security and verifying traveler identity and citizenship at U.S. border crossings. It results from federal legislation.<sup>23</sup> In essence, the enhanced credential versions (1) function the same way as other driver’s licenses and Minnesota identification cards, and (2) are also accepted documentation to enter the United States at some land and sea ports of entry (analogous to a passport).

In comparison to traditional licenses and identification cards, the enhanced credentials contain additional security and technology features, such as a radio frequency identification (RFID) chip,

<sup>20</sup> [Minn. Stat. § 171.019](#), subds. 3 & 4.

<sup>21</sup> [Laws 2017, ch. 76](#), § 27.

<sup>22</sup> [Minn. Stat. § 171.0605](#).

<sup>23</sup> The program is known as the Western Hemisphere Travel Initiative (WHTI). It was arguably created in response to requirements in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) to present a passport or other acceptable identity document when entering the United States.

and involve more stringent documentation to obtain.<sup>24</sup> The cost in Minnesota for an enhanced driver’s license is \$15 higher than a corresponding driver’s license or permit.<sup>25</sup> The enhanced credentials are only available to U.S. citizens and there is not an exceptions process for unusual documentation situations.

While similar to a passport, there are limitations in using enhanced licenses and identification cards at border crossings. In particular, the enhanced credentials:

- are valid only for crossings at sea and land ports, and not for entry to the United States via international air travel; and
- can only be used for entry from Canada, Mexico, the Caribbean, and Bermuda.

Although its use at border crossings is constrained to limited situations, Minnesota’s enhanced licenses and identification cards are also accepted by DHS as a form of identification for access purposes under the REAL ID Act. Minnesota enhanced driver’s licenses and identification cards can be used to board commercial aircraft and enter federally secured facilities.

## Comparison

The following table compares some aspects of driver’s license options in Minnesota. (Equivalent identification cards are treated the same way except that no driving privileges are conferred.)

**Minnesota Driver’s License Comparison Summary**

	Traditional	REAL ID-Compliant	Enhanced
<b>Uses</b>			
Driving privileges	Yes	Yes	Yes
General identification	Yes	Yes	Yes
Board aircraft	No <sup>a</sup>	Yes	Yes
Access federally secured facilities	No <sup>b</sup>	Yes	Yes
At certain border crossings	No	No	Yes <sup>c</sup>
<b>Eligibility Requirements</b>			
Lawful U.S. presence	Yes	Yes	Yes
U.S. citizenship	No	No	Yes
<b>Notes</b>			
<sup>a</sup> The credential will be accepted until May 3, 2023.			
<sup>b</sup> The credential might be accepted until May 3, 2023, depending on the federal implementing agency’s policies.			
<sup>c</sup> The credential is allowed only in limited circumstances.			

<sup>24</sup> See <https://dps.mn.gov/divisions/dvs/forms-documents/Documents/EDL-EID-Identification-Requirements.pdf>.

<sup>25</sup> Minn. Stat. § 171.06, subd. 2.

## Legislative History

This section provides further details on state legislative activity around REAL ID Act compliance.

### 2007-08

The original Minnesota prohibition was enacted after a couple of years of deliberations. Some areas of policy concern expressed at the time related to:

- federal intrusion in an area historically under state jurisdiction;
- de facto creation of a national ID card;
- civil liberties;
- data privacy;
- security, control, and oversight of state data, as well as mandatory electronic data sharing with the federal government and across states; and
- unfunded state implementation costs.

Multiple bills in the 2007 and 2008 legislative sessions proposed prohibitions on implementation. Language was included in a 2008 transportation policy omnibus bill, H.F. 1351 (Hornstein) / S.F. 1971 (Murphy), that contained various REAL ID implementation conditions and requirements.<sup>26</sup> The bill was passed by the legislature but vetoed by Gov. Pawlenty over objections to the policy approach taken with respect to REAL ID.<sup>27</sup> Later in the 2008 session, the legislature passed a stand-alone bill containing a broader prohibition, H.F. 3807 (Mariani) / S.F. 3494 (Moua).<sup>28</sup> It too was vetoed by the governor.<sup>29</sup>

Also of note, in the final days of the 2008 session (one day after vetoing the second bill), the governor issued an executive order that had the effects of:

- temporarily barring the Department of Public Safety from implementing the REAL ID Act (until June 1, 2009);
- permitting the agency to take steps and receive federal funds towards enhancing driver's license security; and
- limiting the agency in any multistate agreement to store or share driver's license data.<sup>30</sup>

<sup>26</sup> H.F. 1531, Conference Committee Report, art. 1, § 117  
<[https://www.revisor.mn.gov/bills/text.php?number=HF1351&version=D&session=ls85&session\\_year=2007&session\\_number=0&type=ccr](https://www.revisor.mn.gov/bills/text.php?number=HF1351&version=D&session=ls85&session_year=2007&session_number=0&type=ccr)>. Some of the provisions had previously been considered in a 2007 conference committee, but no conference committee report was produced that year.

<sup>27</sup> Minn. Laws 2008, ch. 239. The veto letter is available at [https://www.leg.state.mn.us/archive/vetoes/2008veto\\_ch239.pdf](https://www.leg.state.mn.us/archive/vetoes/2008veto_ch239.pdf).

<sup>28</sup> Minn. Laws 2008, ch. 334.

<sup>29</sup> The veto letter is available at [https://www.leg.state.mn.us/archive/vetoes/2008veto\\_ch334.pdf](https://www.leg.state.mn.us/archive/vetoes/2008veto_ch334.pdf).

<sup>30</sup> The executive order is available at <https://www.leg.mn.gov/archive/execorders/08-08.pdf>.



## 2009

In the next session, a compliance implementation ban in H.F. 988 (Mariani) / S.F. 738 (Limmer) passed unanimously in the House and with one opposing vote in the Senate. It was enrolled as [Laws 2009, chapter 92](#), and was signed by the governor.

## 2016

The 2016 Legislature considered several REAL ID-related proposals (after a 2015 DHS denial of an enforcement extension for Minnesota). Following a series of working group meetings, S.F. 1646 (Dibble) / H.F. 1732 (Smith) proposed a partial lifting of the implementation ban. The legislature enacted it near the beginning of the legislative session, which removed limitations on state planning while retaining a prohibition on implementation.<sup>31</sup>

Some legislators at the time had characterized the law as a “phase I” step towards potentially authorizing REAL ID compliance in Minnesota; the legislation also set planning and reporting requirements in order to evaluate additional potential legislative activity. After the Department of Public Safety released a legislative report on REAL ID Act implementation later in the legislative session, the legislature considered proposals for full implementation.<sup>32</sup> H.F. 3959 (Smith) / S.F. 3589 (Dibble) moved through each body to conference committee. However, the session ultimately concluded without a further agreement.

## 2017

The legislature continued to pursue REAL ID Act compliance legislation throughout the 2017 session. Ultimately, H.F. 3 (Smith) / S.F. 166 (Pratt) was enacted and signed by Gov. Dayton, becoming [Laws 2017, chapter 76](#). The language was substantially similar to the provisions considered in the previous session.

## 2020

In response to concerns about the ease of application for a REAL ID-compliant license or identification card, the 2020 Legislature modified and generally broadened the types of documents that can be submitted to show residency in Minnesota.<sup>33</sup> The proposed change was introduced as H.F. 3964 (Hornstein) / S.F. 3901 (Newman), and was ultimately included in a broader package of provisions designed to respond to the COVID-19 coronavirus pandemic. The legislation also included a \$2.4 million appropriation for temporary staff to assist with timely driver’s license and identification card issuance.<sup>34</sup>

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<sup>31</sup> [Laws 2016, ch. 83](#).

<sup>32</sup> The report is available at <https://www.lrl.mn.gov/docs/2016/mandated/160416.pdf>.

<sup>33</sup> [Laws 2020, ch. 71](#), art. 2, § 9.

<sup>34</sup> [Laws 2020, ch. 71](#), art. 1, § 1.



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