



## GOVERNMENT TECHNOLOGY

# Though Idaho Refuses REAL ID, it Complies With All But Five Requirements

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A coercive federal mandate, threats to privacy, risk of identity theft, outside intervention in state affairs — just the sort of impositions and issues that make Idaho lawmakers howl.

They were among the concerns raised when a legislative committee in April rejected a rewrite of federal child support rules, changes lawmakers will reconsider when they return to Boise for a special session Monday.

But in 2008, the same concerns prompted Idaho's ire at another package of federal rules: requirements for driver's licenses and state identification under the 2005 REAL ID Act. And in this case, Idaho does not stand alone.

Nor does the continued opposition to the REAL ID requirements reside at only one end of the political spectrum. From the far left to far right, civil libertarians, privacy watchdogs, anti-tax and immigrant rights groups, government groups such as the National Coalition of State Legislatures, and advocates for states' rights have objections.

"This issue runs across political lines, and really the focal point here is around the issue of privacy," said Leo Morales, acting executive director of the ACLU of Idaho. "The REAL ID requirement is really invasive and will create America's first national identity card. I think Idahoans are very cautious about that, and should be."

Idaho lawmakers banned the state Transportation Department from implementing REAL ID, making Idaho one of 15 states with restrictions in place. Yet Idaho and other states continue to apply for and receive extensions from the federal government to keep restrictions from taking

effect. The current extensions expire in October, but if history is a guide, there will be an opportunity to seek more.

Confused yet? Welcome to the world of federal mandates. We're just getting started.

## **POST-2001 REFORM**

The REAL ID Act grew out of the 9-11 Commission's recommendation to set standards for more secure kinds of identification. The act requires states to verify a person is legally in the U.S. using federal databases and documents such as birth certificates and Social Security cards.

It has 43 separate requirements, both for how the documents may be obtained and what information they must contain. Idaho's licenses and procedures actually already comply with all but five of the requirements. In the state's March extension application, the Division of Motor Vehicles noted that the Legislature "statutorily prohibited" state officials from implementing REAL ID, but the state is nonetheless making "significant improvements" in the security of license and ID cards.

Once fully implemented, REAL ID bars federal agencies from accepting driver's licenses and identity cards as official identification unless the Department of Homeland Security has determined that the state's ID meets federal standards. Official uses are defined as things such as accessing federal facilities and entering nuclear power plants — and most important to the average citizen, boarding commercial aircraft.

The act originally was to be phased in beginning in 2008, but that's been pushed back four times, in large part due to state objections and foot-dragging. At the end of last year, Homeland Security pushed the deadline for federal agencies to stop accepting noncompliant state-issued IDs to October 2020. That's in states that have complied but whose residents still hold unexpired, noncompliant IDs.

In noncompliant Idaho, the extension means that facilities such as the Idaho National Laboratory, which would have had to start enforcing REAL ID requirements in January, still can accept Idaho IDs.

Homeland Security now says the time frame for enforcing restrictions on air travel is "no sooner than 2016." Its official position is that it "will ensure the public has ample advanced notice before identification requirements for boarding aircraft change." If a state's documents do not meet requirements, the agency says people "may present alternative forms of identification," such as a U.S. passport.

Does that mean that Idahoans, at some point in the future, will be barred from boarding an airplane without a passport? It's not likely, for a number of reasons.

One of them is the amendment the Legislature passed in March to the 2008 state law. Lawmakers allowed ITD to submit "extension requests and status reports" and to update state IDs as needed "to ensure their acceptance for commercial airline travel within the United States."

## **WHAT'S THE CONCERN?**

Homeland Security maintains that REAL ID does not create a national identification card, something deemed invasive and overreaching by groups ranging from the ACLU to the conservative Cato Institute. Homeland Security notes that states and territories will continue to be the issuers of driver's licenses and identification cards, "and there is no federal database of driver information."

S.Y. Lee, a Homeland Security spokesman in Washington, declined to discuss REAL ID or answer questions over the phone. Lee provided a statement via email that said states "have made considerable progress" in making licenses and IDs more secure "and every state has a more secure driver's license today than before the passage of the act."

"Most states and territories are either fully compliant with the REAL ID standards or have made enough progress to qualify for an extension," Lee said. "We continue to work with states to help them meet REAL ID standards."

Another worry, in the era of disclosures about the federal government spying on citizens, is the idea of personal information being collected and stored in a national database. Immigrants and foreign nationals also have concerns. Foreigners without proof of legal U.S. entry or a Social Security number could be barred from obtaining a driver's license.

"The premise is that this leads to a more secure society, when in reality what we have seen is that massive data collection isn't necessarily making us safer. It makes it harder to find the real threats," said the ACLU's Morales. "Just the premise itself is what's wrong. The purpose of the driver's license is just to drive."

## **SO WHAT CAN SKEPTICAL STATES DO?**

One option, says Homeland Security, is for states to comply with REAL ID for most licenses but offer residents an alternative labeled "Not for Federal Identification." People could choose that based on "personal preference, religious conviction or the inability or decision not to provide original documents needed to verify identity, citizenship, or lawful status in the United States."

Another option is for states to offer an enhanced driver's license that does meet federal standards. Homeland Security deems those acceptable for travel in the western hemisphere, for accessing federal facilities or for boarding a plane. Only Michigan, Minnesota, New York, Vermont and Washington issue enhanced licenses today.

REAL ID requirements do not apply to entering federal facilities that do not require showing ID, voting or registering to vote, applying for or receiving federal benefits, driving, accessing health services, or engaging in "constitutionally protected activities" such as defending oneself in court.

"The whole challenge DHS has is to continue and get out and meet with the states as frequently as possible and keep doing what they can to assist" with implementation, said Brian Zimmer,

president of the Coalition for a Secure Driver's License, a group that advocates for REAL ID and secure licenses.