

Experts: Noncompliance with Real ID Act not a problem for most New Mexicans

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November 28, 2015

This autumn brought much confusion about identification requirements for domestic air travel, causing residents of New Mexico to line up in overwhelming numbers to obtain passports. In fact, the next available appointment to acquire a passport at Santa Fe's main post office isn't until mid-March.

Both the state and federal governments have had a hand in the uncertainty surrounding what kind of ID is required to board a domestic flight. On Oct. 19, the U.S. Department of Homeland Security sent a letter to New Mexico officials notifying them that it would not grant the state an extension to implement a national security law known as the Real ID Act. At issue is a state law allowing residents to obtain driver's licenses regardless of their immigration status.

As a result, stated Homeland Security's letter, the federal government would not accept New Mexico driver's licenses to enter some federal buildings, such as those on military bases or at national labs, starting Jan. 19, 2016. The letter also said the federal government eventually would not recognize the state's licenses for domestic flight passengers, a warning the U.S. Department of Homeland Security has repeated for the past seven years across all 50 states but never has enforced.

Organizations that have analyzed the Real ID Act say it may never be enforced for domestic air travel because of resistance by state governments, some of which have decided to defy the federal mandate.

In New Mexico, a state that says it wants to comply with the Real ID Act, the issue of who gets state-issued driver's licenses has been at the heart of a pitched political battle for five years. Republican Gov. Susana Martinez has waged an unsuccessful fight to repeal the state law allowing undocumented immigrants to receive New Mexico driver's licenses, a policy she calls "dangerous." Democrats in the state Legislature, along with many Republicans in the Senate, have stood against Martinez, saying a two-tiered driver's license system they have devised would solve the problem.

Despite all the infighting, some believe federal officials will take the heat if state driver's licenses someday aren't accepted for domestic air travel.

"If that day ever comes when TSA [the Transportation Security Administration] turns people away at the airport, the one getting all the blame is going to be TSA and Department of Homeland Security," said Jim Harper, a senior fellow with the Cato Institute, a Washington,

D.C.-based libertarian organization. “It’s not going to be people turning to their state legislators and saying, ‘How did you fail to do what the federal government wanted?’ ”

For its part, Homeland Security says New Mexico driver’s licenses are still fine to use as identification to board domestic flights. If the agency ever changed that policy, all states would be given four months to adjust to the new dictate, said Philip A. McNamara, an assistant secretary with Homeland Security.

The federal government says some 28 states, New Mexico among them, are not in compliance with the Real ID Act. Oddly, at least one state that promised to defy the federal law, Utah, now is following Real ID directives, Homeland Security says.

In New Mexico’s case, the federal government says the state needs to do more than alter its driver’s licenses by checking the immigration status of applicants. For example, the state also needs to issue temporary Real ID-approved driver’s licenses to people with short-term lawful status in the country. Those temporary licenses need to expire when the person’s lawful status expires, Homeland Security says.

Another federal stricture starts in January, when New Mexico driver’s licenses won’t be sufficient identification to enter some federal facilities — for example, Los Alamos National Laboratory.

But the lab already has a screening process that employees go through in order to receive clearance and an entry badge. A U.S.-born citizen needs to present a U.S. passport or birth certificate in order to get a clearance badge. An employee who is a naturalized U.S. citizen needs to present a certificate of naturalization, the lab website says.

Air travel is the hot-button issue, though.

After Martinez’s administration announced that the state didn’t receive an extension from the federal government to implement the Real ID Act, panic followed about whether passports would be needed to board planes for domestic travel. Numerous people feared that their licenses were no longer valid to fly domestically.

Then a piece of misinformation about domestic flights was printed in a newspaper. This occurred Nov. 20 when the *Albuquerque Journal* published an editorial inaccurately saying, “NM law means you need a passport, terrorists don’t.” In response, McNamara of Homeland Security wrote a letter that said, “Right now, no one needs to adjust travel plans, rush out to get a new driver’s license or a passport for domestic air travel.”

No state has ever been punished because it hasn’t complied with the federal Real ID Act. Moreover, the Transportation Security Administration has always accepted driver’s licenses for domestic air travel in all states that it says are not compliant with the Real ID Act.

Still, Santa Fe residents rushed to make appointments to renew or obtain passports. Similar scrambles have occurred all over New Mexico.

In response to the high demand, the U.S. Postal Service has scheduled six passport fairs across the state in December.

Martinez campaigned hard on repealing the law allowing state residents without proof of immigration status to obtain a New Mexico driver’s license, and for five years she has continued to push for its repeal. She has been adamant, even opposing a two-tiered driver’s license bill earlier this year that would have allowed immigrants to continue driving while still making the state compliant with the Real ID Act.

That bill cleared the state Senate 35-5, with all Democrats and most Republicans voting for it, a political setback for Martinez. But the measure died when the House of Representatives did not hear it. That left in place the existing law allowing undocumented immigrants to receive licenses identical to those issued to citizens.

The compromise bill was sponsored by Senate Minority Leader Stuart Ingle, R-Portales, and Sen. John Arthur Smith, D-Deming, among the more conservative state senators. They previously had sided with Martinez on a repeal bill, but they broke from her this year after studying the issue for themselves.

They say the compromise bill would have enabled New Mexico to meet the federal standard while also allowing immigrants — who are crucial to the New Mexico economy — to continue driving lawfully. For instance, workers who harvest New Mexico's famous green chile crop are almost entirely Mexican nationals who do a backbreaking job that many Americans wouldn't take.

Martinez has received plenty of plaudits and criticism in the state for her focus on the law allowing licenses for undocumented immigrants. But as other states, including Colorado, California and Illinois, have emulated New Mexico's licensing law, she also has begun to draw criticism from outside New Mexico.

"It's a little bit ironic that a Republican is seeking a larger federal government and a national ID system, whether it's to win political points or what. That's not actually what a Republican is supposed to stand for," said Harper of the Cato Institute.

Last month, Peter Simonson, executive director of the New Mexico chapter of the American Civil Liberties Union, said the state should keep defying the federal government because the Real ID Act would threaten states' rights.

"It is a federal overreach that strips rights from the states, tramples civil liberties, puts citizens' personal information at risk, while doing little to make us safer," Simonson said. "The federal government's denial of New Mexico's requested extension should be recognized for what it is: a bullying tactic meant to force New Mexico into accepting a national ID card that nobody wants or needs."

Congress approved the Real ID Act in 2005 as part of a recommendation by the 9/11 Commission. In its report, the commission recommended that the federal government set standards for state identification cards such as driver's licenses. Even so, seven states that also issue driver's licenses or driving privilege cards to undocumented immigrants are in compliance with the Real ID Act — including Utah, which had set out to defy it.

The first "deadline" for states to comply with the Real ID Act was 2008. But as some states refused, the Department of Homeland Security kept extending the deadline. It continues to grant extensions to certain states.

Arizona, one state that has refused to comply with Real ID, has received an extension from Homeland Security. New York, with some of the nation's busiest airports, also is not in compliance. But Homeland Security has given that state more time as well, until October 2016 at the earliest, to meet requirements of the federal law. "New Yorkers can continue to use their current state-issued driver license or ID card to board domestic flights until DHS announces otherwise," New York's Department of Motor Vehicles says on its webpage.

Harper said that, as part of the act, states need to share driver information with the federal government, essentially creating a national ID database. This is an important reason why some

governors and state lawmakers have refused to participate in the program. They don't want the federal government to expand its reach to the local level, Harper said.

"It offends me that the federal government — a bureaucrat in the Department of Homeland Security — is trying to tell the New Mexico State Legislature what its policy should be," Harper said. "That's contrary to how our government is supposed to work."

Michael Lonergan, a spokesman for Martinez, said in an email that the governor wants to be compliant with the Real ID Act because "it's the law of the United States." He said not being compliant with the act will inconvenience many New Mexicans.

"This would be disruptive to the lives of many New Mexicans and small-business contractors," he said. "Complying with the law simply requires that New Mexico ends the dangerous practice of providing driver's licenses to illegal immigrants, which is overwhelmingly supported by New Mexicans."

Utah, a state that the federal government says is compliant with the Real ID Act, allows undocumented immigrants to obtain a driving privilege card that also is recognized by the Transportation Security Administration as valid government identification to board a plane. The agency says it accepts driver's licenses or other photo identity cards issued by motor vehicle departments of the states. New Mexico state Rep. Paul Pacheco, R-Albuquerque, who previously sponsored bills to repeal New Mexico's licensing law for immigrants, recently softened his stance and says he will introduce a Utah-style bill in the House during next year's legislative session.

Senate Majority Leader Michael Sanchez, D-Belen, also said recently said that a bill compliant with the Real ID law "will be introduced and passed again in the Senate during the upcoming 2016 session."

In many cases, implementation of the Real ID Act seems to depend on the cycle of state politics.

For example, five years ago, Utah approved a law to ban implementation of the federal act. But the state inadvertently complied when its legislature approved its two-tiered driver's license law. In Colorado, state lawmakers opposed the federal regulations, but the state's motor vehicle department had already implemented policies to comply with the Real ID Act.

In Arizona, then-Gov. Janet Napolitano, a Democrat who would later become Cabinet secretary of the Department of Homeland Security under the Obama administration, signed a law in 2008 barring the state from complying with the Real ID Act. Her successor, Republican Gov. Jan Brewer, also declined to recognize the federal law. But earlier this year, Republican Gov. Doug Ducey signed a law that would eventually make Arizona compliant.

Arizona does not allow undocumented immigrants to apply for a driver's license. Its lack of compliance with the Real ID Act is tied to other concerns the federal government has about its identification system. Montana, another state not compliant with the federal law, also does not issue driver's licenses to undocumented immigrants.

The Department of Homeland Security's website lists Minnesota as the only state that is not compliant with the federal law. But it also lists 27 other states that aren't compliant but have extensions, or their request for an extension is under review. New Mexico was denied an extension, yet it is listed as working toward compliance.