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Comparing PASS Act with Real ID, v 2.0

By Sheila Dean



A BTC Exclusive

The PASS Act, filed June 15, 2009, poses as the partial repeal effort of the expiring Real ID Act. The introduction comes on [the heels of a DHS exchange](#), allowing Real ID legislation to have a second genesis.

Privacy advocates demand Real ID should be repealed in its entirety. Others maintain Washington's standard condition, that the law must be replaced with a related legislation. One such attempt is the PASS Act.

WHAT IS THE PASS ACT?

[The Center for Democracy and Technology cited a few of the comparisons and improvements.](#) The more important question is, how does passing another law repeal the Real ID Act? According to the CDT, the Real ID Act is expected to "fade away" while the PASS Act takes its place.

THOSE IN FAVOR

The [National Conference of State Legislatures](#) [NCSL] and the National Governors Association [NGA], mid-level players between the federal mandate and the masses, have commended the the PASS Act as suitable amendment for the Real ID Act.

"NCSL is encouraged by the introduction of the PASS Act, because it would repeal Real ID and replace it with a system that will ensure greater safety and security without

sacrificing privacy and without incurring exorbitant costs that REAL ID imposed," said Carl Tubbesing, NCSL's deputy director in the Washington, D.C., office. "We applaud the sponsors for recognizing the shortcomings of REAL ID and for working with states to bring about these much-needed changes."

THOSE OPPOSED

While state legislative engines run in favor of the legislation, there is opposition. [The ACLU disagrees with the direction of the PASS Act](#) that it is not dissimilar enough from the Real ID Act.

"Unfortunately under Senator Akaka's proposal, a state would have to adopt Real ID or risk having all its citizens subject to secondary screening at airports," says ACLU counsel, Chris Calabrese. "With this bill, states may still be coerced into adopting a National ID. It is also problematic that this legislation contains no exemption for religious beliefs of those who oppose identification."

"Any day now, we will have fully half of all states on record opposing Real ID," said Calabrese. "We agree with Secretary of Homeland Security Napolitano that the best solution to the Real ID Act is to repeal it."

The ACLU would still much rather see identical legislation introduced to last sessions [Identity Security Enhancement Act \(HR 1117\)](#). Opponents of HR 1117 volleyed similar criticisms that it too was not dissimilar enough from the Real ID Act of 2005.

In weeks leading up to the PASS Act's introduction neo-conservative think tanks, like the Heritage Foundation, attacked the legislation for modifying the Real ID Act. They claim that the PASS Act pays [seemingly heedless compliance to 9-11 Commission Report recommendations](#). "

Other more conservative civil liberties advocates, like the CATO Institute insist that the PASS Act still instates a National ID card program. Opposing a national ID card program historically has been part of both the Republican and Libertarian national party platforms.

With the move in the Senate to revive our moribund national ID law, the REAL ID Act, under the name "PASS ID," it's important to look at whether we're still dealing with a national ID law. My assessment is that we are," says [Jim Harper](#), Director of Information Policy Studies at the CATO Institute.

"First, PASS ID is modeled directly on REAL ID. The structure and major provisions of the two bills are the same. Just like REAL ID, PASS ID sets national standards for identity cards and drivers' licenses, withholding federal recognition if they are not met."

[The 9-11 Commission Report](#) is still given [justified consideration in the PASS Act](#) despite the abused and incomplete credibility of its contents. [\[pp. 384, 390\]](#)

IS THERE ANY DIFFERENCE?

Depending on who you ask, the 9-11 Commission Report's cred is not so much an issue as what is being traded in exchange for the security recommendations. ""In the Real ID Act, DHS was given jurisdiction over identity. Essentially DHS would have the power to determine who you are without much accountability or limits to qualify their demand to determine use of identity.

The distinction between the PASS Act & Real ID should be based on how much power is granted to federal powers to determine identity and its use and how this will affect the private daily lives of millions of Americans. The PASS Act only repeals Title II of the Real ID Act, having much to do with identity cards and national license regulations for States. Regardless of the PASS Act's introduction, Real ID remains on the books and has not yet been repealed to finality. The deadlines and the pains of compliance continue into the daily lives of license holders nationally.

STATES & COMPLIANCE

State legislatures still contend with license and immigration standards consistent with the Real ID Act. Local activists and Real ID opponents fear the PASS Act becoming an Enhanced Drivers License mandate.

Two of the original anti-Real ID stronghold states, Maine and South Carolina, are embattled with the grind of new challenging local concessions in favor of federal regulations. Governor Baldacci of Maine recently added his endorsement to the PASS Act. Maine Senator Susan Collins co-authored the federal legislation. South Carolina Governor, Mark Sanford, found many problems with the PASS Act including to "[continue modifying what is now widely regarded as an impractical, intrusive federal mandate.](#)"

The more unsavory regulations include [RFID tags](#) and [biometric identifiers](#) as license requirements, more specifically to Western Hemisphere Travel Initiative compliant border crossing cards or Enhanced Drivers Licenses. Biometrics vendors cite the Real ID Act as a good sale point for [embedding DNA laminates in licenses](#). DHS continues to push states on federal compliance benchmarks. In Texas, vendors levied threats of legal suit, with or without merit, against licensing agencies over security fulfillments. Conversely, states like [Pennsylvania](#) now are [contending with lawsuits](#) against the use of an insecure facial recognition software called, Face Explorer. The use of biometrics have been found to create violations of the state's strict constitutional privacy provisions.

One Pennsylvania plaintiff, Renee Bumgartner, said the software has been licensed by Viisage to most states in the U.S. Bumgartner is gaining daily support from others seeking representation in Pennsylvania for what may be a class action lawsuit against the Real ID Act's requirements for biometric identifiers. She affirms that Real ID is alive and well. States who passed local laws barring Real ID compliance based on privacy and identity security are moving towards regulations in licenses without qualified consent and State constitutional laws.

"My research is trying to prove [PennDOT] is converting legacy photographs and new digital captured photos into biometric face prints templates," says Bumgartner.

RFID tags have the potential to send stores of private transactional information into State maintained [fusion centers](#). With plausible legal slight of hand, personal information may be sold to 3rd parties. States like Arizona and Texas, have transportation code moving towards Enhanced Drivers licenses, but never were granted the federal funding to move programs forward. Literal compliance fell to the wayside while state law has been in place.

The battle for privacy, and identity security clamor for recognition amid the white noise of immigration interests in border territories. The manifest destinies of state level Real ID touch diversity and immigration in America. California Senator Gil Cedillo recently suspended the 2009 SB 60 due to the reevaluation of the Real ID Act. It was Cedillo's third attempt to pass the California Real ID Act, persisting to give undocumented immigrants license to drive and identity in the U.S. Texas, which shares the largest border with Mexico, recently passed State-to-federal law requesting emergency funding to expedite jamming traffic at the border. In the Spring of 2009, DHS Secretary Janet Napolitano recognized RFID technology as a key tool to speed port of entry regardless of its documented failures in a DHS pilot, the U.S. VISIT program in Brownsville, TX.

So far there has been no mention of border affairs in the PASS Act. That could be due to Congressman [Raul Grijalva's work](#) to repeal border fence provisions in the Real ID Act, providing exchange legislation in the [Border Security and Responsibility Act](#).

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