

REAL ID ACT MODIFICATION FOR FREELY ASSOCIATED STATES ACT

SEPTEMBER 12, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 3398]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 3398) to amend the Real ID Act of 2005 to permit Freely Associated States to meet identification requirements under such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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SUMMARY AND PURPOSE OF LEGISLATION

H.R. 3398, the REAL ID Act Modification for Freely Associated States Act, amends the *REAL ID Act of 2005* to permit Freely Associated States to meet identification eligibility requirements.

BACKGROUND AND NEED FOR LEGISLATION

The Compact of Free Association permit citizens of the Freely Associated States (FAS) to work and reside indefinitely in the United States as legal non-immigrants without the need for a visa.¹ However, the REAL ID Act of 2005 did not cover FAS citizens.² Instead, under the definition of “State,” the law refers to “the Trust Territory of the Pacific Islands”—an outdated and defunct term describing the former Trusteeship that predated the Compact of Free Association between the United States and FAS nations.³

Because the Compact of Free Association does not establish a specific time period for admission and duration of stay in the United States, FAS citizens are often subject to temporary driver’s licenses under the REAL ID Act.⁴ Temporary licenses under the law expire after one year, while permanent licenses are authorized for a period of eight years.⁵ As a legal non-immigrant, a FAS citizen would otherwise be eligible for a permanent, state-issued driver’s license compliant with the REAL ID Act.⁶

As a result, some employers are reluctant to hire or retain FAS citizens.⁷ FAS citizens with temporary licenses are also often denied access to housing, transportation, schools, and other opportunities, even though they are lawfully residing in the United States.⁸ H.R. 3398 updates the law to ensure a FAS citizen admitted as a non-immigrant to the United States pursuant to a Compact of Free Association can obtain a REAL ID-compliant driver’s license on the same basis as any other long-term migrant in the United States.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the previous section.

¹Pub. L. No. 108–188 (2003); Pub. L. No. 101–219 (1989). The Freely Associated States are the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

²Pub. L. No. 109–13 (2005).

³*E.g.*, U.S. CITIZENSHIP & IMMIGR. SERVS., FACT SHEET: STATUS OF CITIZENS OF THE REPUBLIC OF PALAU (Nov. 3, 2015), available at [https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/FactSheet-Status of Citizens of Palau.pdf](https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/FactSheet-Status%20of%20Citizens%20of%20Palau.pdf).

⁴Briefing by Gerald Zackios, Ambassador, Embassy of the Republic of the Marshall Islands, to Comm. Staff, H. Comm. on Oversight & Gov’t Reform (Oct. 25, 2017).

⁵Pub. L. No. 109–13 (2005).

⁶*Hearing to Conduct Oversight on Issues Facing U.S.-Affiliated Islands and to Consider Two Measures Related to U.S.-Affiliated Islands: Hearings before the S. Comm. on Energy & Natural Resources*, 114th Cong. (Apr. 5, 2016) (statement of Esther P. Kia’aina, Ass’t Sec’y for Insular Areas, Dep’t of the Interior).

⁷*Id.*

⁸*Id.*

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to amend the Real ID Act of 2005 to permit Freely Associated States to meet identification requirements under such Act, and for other purposes.

LEGISLATIVE HISTORY

On July 25, 2017, Representative Don Young (R-AK) introduced H.R. 3398, the REAL ID Act Modification for Freely Associated States Act. H.R. 3398 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 3398 at a business meeting on February 6, 2018, and ordered the bill favorably reported by voice vote.

In the 114th Congress, Senator Lisa Murkowski (R-AK) introduced S. 2360, the Omnibus Territories Act of 2015, which included a provision substantially similar to H.R. 3398. On July 13, 2016, the Senate Committee on Energy and Natural Resources considered and ordered favorably reported S. 2360, as amended, and on September 29, 2016, the Senate passed the bill by unanimous consent.

In the 113th Congress, Senator Ron Wyden (D-OR) introduced S. 1237, the Omnibus Territories Act of 2013, an identical bill to S. 2360. On December 19, 2013, the Senate Committee on Energy and Natural Resources considered and ordered favorably reported S. 1237, as amended, and on June 18, 2014, the Senate passed the bill by unanimous consent.

COMMITTEE CONSIDERATION

On February 6, 2018, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by voice vote.

ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 3398.

EXPLANATION OF AMENDMENTS

There were no amendments to H.R. 3398 offered or adopted during Committee consideration of the bill.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends the Real ID Act of 2005 to permit Freely Associated States to meet identification requirements under such Act. As such, this bill does not relate to employment or access to public services and accommodations.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget Act of 1974 the Committee has included a letter received from the Congressional Budget Office below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, February 14, 2018.

Hon. TREY GOWDY,
 Chairman, Committee on Oversight and Government Reform,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3398, the REAL ID Act Modification for Freely Associated States Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Rafferty.

Sincerely,

KEITH HALL,
 Director.

Enclosure.

H.R. 3398—REAL ID Act Modification for Freely Associated States Act

Under the REAL ID Act, states may only issue a temporary driver's license or personal identification card, valid for one year, to noncitizens whose period of authorized stay is indefinite. H.R. 3398 would amend the REAL ID Act of 2005 to allow citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau to be issued regular driver's licenses or personal identification cards that are valid for the maximum period of validity, which is up to eight years. Citizens of those countries can travel to the United States without a visa, and live and work in the U.S. indefinitely.

Based on information from the Department of Homeland Security and the Department of the Interior, CBO estimates that enacting H.R. 3398 would have no significant effect on the federal budget because it would not materially affect the duties or responsibilities of executive branch agencies.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 3398 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3398 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is David Rafferty. The estimate was approved by Leo Lex, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill.

Sec. 2. Amendment

Subsection (a) of section 2 amends section 201(5) of the REAL ID Act of 2005 (49 U.S.C. 30301 note; Pub. L. 109–13), to omit references to “the Trust Territory of the Pacific Islands” from the definition of “State.”

Subsection (b) of section 2 amends section 202(c)(2)(B) of the REAL ID Act of 2005, by adding a new classification under Evidence of Lawful Status. Citizens from: (1) the Republic of the Marshall Islands; (2) the Federated States of Micronesia; and (3) the Republic of Palau, who have been accepted into the United States as non-immigrants pursuant to a Compact of Free Association, are eligible for state-issued driver's licenses or other identification documentation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

REAL ID ACT OF 2005

* * * * *

DIVISION B—REAL ID ACT OF 2005

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**TITLE II—IMPROVED SECURITY FOR
DRIVERS' LICENSES AND PERSONAL
IDENTIFICATION CARDS**

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

(1) **DRIVER'S LICENSE.**—The term “driver's license” means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) **IDENTIFICATION CARD.**—The term “identification card” means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) **OFFICIAL PURPOSE.**—The term “official purpose” includes but is not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(5) **STATE.**—The term “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, [the Trust Territory of the Pacific Islands,] and any other territory or possession of the United States.

SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) **MINIMUM STANDARDS FOR FEDERAL USE.**—

(1) IN GENERAL.—Beginning 3 years after the date of the enactment of this division, a Federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver’s license and identification card issued to a person by the State:

- (1) The person’s full legal name.
- (2) The person’s date of birth.
- (3) The person’s gender.
- (4) The person’s driver’s license or identification card number.
- (5) A digital photograph of the person.
- (6) The person’s address of principle residence.
- (7) The person’s signature.
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
- (9) A common machine-readable technology, with defined minimum data elements.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver’s license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person’s full legal name and date of birth.

(B) Documentation showing the person’s date of birth.

(C) Proof of the person’s social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person’s name and address of principal residence.

(2) SPECIAL REQUIREMENTS.—

(A) IN GENERAL.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS.—A State shall require, before issuing a driver’s license or identification card to a person, valid documentary evidence that the person—

- (i) is a citizen or national of the United States;
- (ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
- (iii) has conditional permanent resident status in the United States;

(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; **[or]**

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States~~...~~; or

(x) is a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau who has been admitted to the United States as a nonimmigrant pursuant to a Compact of Free Association between the United States and the Republic or Federated States.

(C) TEMPORARY DRIVERS' LICENSES AND IDENTIFICATION CARDS.—

(i) IN GENERAL.—If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) DISPLAY OF EXPIRATION DATE.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) RENEWAL.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.

(10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card—

(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and

(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.

(12) Provide electronic access to all other States to information contained in the motor vehicle database of the State.

(13) Maintain a State motor vehicle database that contains, at a minimum—

(A) all data fields printed on drivers' licenses and identification cards issued by the State; and

(B) motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

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