

Calendar No. 601

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-303

REAL ID MODERNIZATION ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4133

TO MODERNIZE THE REAL ID ACT OF 2005, AND FOR
OTHER PURPOSES



DECEMBER 7, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

19-010

WASHINGTON : 2020

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4133]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4133) to modernize the REAL ID Act of 2005, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 4133, the REAL ID Modernization Act, updates and modernizes the REAL ID Act of 2005 (REAL ID Act).¹ Specifically, the bill authorizes states to receive authentication documents through electronic submission, removes requirements to provide physical documentation of an individual’s social security number and principal address and permits the use of a digital photograph already on file as long as it was taken within the last six years. The bill also terminates the Department of Homeland Security’s (DHS) authority to provide grants to states specifically to implement the REAL ID Act.

¹Real ID Act of 2005, Pub. L. No. 109-13, Division B, §§ 201-07, 119 Stat. 231, 302 (2005).

II. BACKGROUND AND NEED FOR THE LEGISLATION

The National Commission on Terrorist Attacks Upon the United States, better known as the 9/11 Commission, issued a report following the September 11th attacks.² The report outlined how the terrorists involved in the plot to attack the U.S. used fraudulent documents to enter into the country and travel from city to city. “All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.”³ The report went on to recommend that the U.S. heighten the security of identity documents. “The federal government should set standards for the issuance of birth certificates and source of identification, such as driver’s licenses.”⁴ This recommendation was the impetus for the enactment of the REAL ID Act.

The REAL ID Act established a national standard of items and information necessary to be present on a driver’s license or identification card. For instance, it required that a person’s full legal name, date of birth, gender, identification number, photograph, principal residence, and signature are present on the driver’s license or identification card, as well as security features to prevent tampering and fraudulent documents.⁵ It also set a national standard of documents needed to obtain a REAL ID Act—compliant driver’s license or identification card. Specifically, the REAL ID Act required physical documents showing a person’s full name, social security number, and evidence of lawful status, among other things.⁶ States were required to comply with the law within three years in order for the Federal Government to accept a driver’s license or identification card for individuals to access Federal facilities, board a commercial airplane, or enter nuclear power plants.⁷

The law authorized the Secretary of Homeland Security to grant extensions to states if they provided justification, something DHS did frequently to avoid stopping millions of travelers from boarding commercial airplanes.⁸ After the REAL ID Act was enacted, approximately 14 states passed legislation prohibiting their state from complying with the Federal law.⁹ DHS made a concerted effort to bring states into compliance. However, according to DHS, only 26 states had achieved REAL ID compliance by January 9, 2017—nine years after the initial deadline.¹⁰ Many States repealed their state laws fearing constituents would not be able to travel commercially, and by March 26, 2019, 52 states and territories were in compliance, two territories were under review, and two states had received extensions and were expected to become compliant in the near future.¹¹

²National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* 367–428 (2004), <https://govinfo.library.unt.edu/911/report/911Report.pdf>.

³*Id.* at 390.

⁴*Id.*

⁵Real ID Act of 2005, Pub. L. No. 109–13, Division B, §§ 201–07, 119 Stat. 231, 302 (2005).

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹Evyn, *Oregon Bill Rejecting Real ID Becomes Law*, ACLU Or. (May 28, 2009, 6:44 PM), <https://aclu-or.org/en/news/privacy-update-oregon-bill-rejecting-real-id-becomes-law>.

¹⁰Call from Majority and Minority Staff, U.S. Senate Comm. on Homeland Sec. & Governmental Affairs, to Transp. Sec. Admin. (Apr. 8, 2020) (on file with Committee Majority Staff).

¹¹*Id.*

Although every state and territory is in compliance with the REAL ID Act or on a path to compliance, the majority of Americans still do not have a REAL ID. According to a March 26, 2020 survey conducted by the U.S. Travel Association, an estimated 65 percent of all driver's license holders do not believe their driver's license is REAL ID Act compliant or cannot identify REAL ID characteristics, such as a star, on their license.¹² Furthermore, according to the survey, approximately 39 percent of Americans are not even aware of REAL ID Act deadlines or know a REAL ID Act-compliant document is required to travel commercially.¹³ Similarly, DHS reported in January that states have issued approximately 95 million REAL IDs, only 34 percent of all issued licenses.¹⁴ DHS issued a Request for Information (or RFI) in November 2019 to solicit feedback from states and other stakeholders for ways DHS could streamline the REAL ID process and requirements.¹⁵ Their results informed this legislation as some required congressional action.

S. 4133 modernizes the REAL ID Act to ensure the law keeps pace with technological advances and eases the ID application process while maintaining strong security and privacy policies that motivated the original REAL ID Act. For example, the bill updates the definition of a driver's license and identification card to include mobile or digital cards. The bill also allows states to electronically accept source documents like birth certificates or evidence of lawful status.

Although the bill authorizes an individual to present a mobile or digital driver's license to a federal officer, for example a Transportation Security Administration Officer, to board an airplane, the bill is clear that doing so does not grant consent for the officer to search or seize the device.

The bill can also assist states in streamlining the application process by using digital photographs taken within the last six years if it is already on file with the state, and not requiring physical presentation of a person's social security number or principal residence. States already verify much of this information, such as authenticating a social security number through the Social Security Administration, so requiring the physical document is not necessary, and, at times, duplicative. Furthermore, many states require proof of residence when applying through documents, such as utility or mobile phone bills. Many of these documents are not provided by government entities, and therefore do not contain security features in the document. States have other means of verifying an individual's address, so this too can be duplicative. While the bill streamlines the application process, DHS will still need to develop and implement regulations and promulgate rules through the rule-making process in order to establish processes in many of these areas. The Committee urges DHS and the Office of Management and Budget to expeditiously consider these rules and regulations in

¹² *Real ID Survey*, U.S. Travel Ass'n (Mar. 26, 2020), https://www.ustravel.org/sites/default/files/media_root/document/REALID_SurveyFindings_03.20.20.pdf.

¹³ *Id.*

¹⁴ Press Release, U.S. Dep't of Homeland Sec., DHS Steps Up REAL ID Education and Awareness Efforts (Jan. 24, 2020), <https://www.dhs.gov/news/2020/01/24/dhs-steps-real-id-education-and-awareness-efforts>.

¹⁵ Press Release, U.S. Dep't of Homeland Sec., DHS Announces Streamlining Measures to Help States in Issuing REAL IDs (Feb. 19, 2020), <https://www.dhs.gov/news/2020/02/19/dhs-announces-streamlining-measures-help-states-issuing-real-ids>.

order for states to implement these changes in advance of the October 1, 2021 deadline.

In order to assist in raising awareness of the REAL ID deadlines and requirements, the bill also requires airlines and third-party reservation entities to notify passengers of the deadline three months prior to enforcement and for a year afterwards.

Finally, the bill repeals the REAL ID Act section allowing the Secretary to provide grants to states specifically to implement the REAL ID Act. Almost all states are in compliance with the existing law, and according to DHS, no grants have been appropriated for such use since 2011.¹⁶ Additionally, states can apply for existing DHS Homeland Security Grant funding towards their REAL ID efforts.¹⁷

III. LEGISLATIVE HISTORY

Chairman Ron Johnson (R-WI) introduced S. 4133, the REAL ID Modernization Act, on July 1, 2020, with Ranking Member Gary Peters (D-MI) and Senator Ron Wyden (D-OR). The bill was referred to the committee on Homeland Security and Governmental Affairs. Senator Roger Wicker (R-MS) later joined as a cosponsor.

The Committee considered S. 4133 at a business meeting on July 22, 2020. During the business meeting, a substitute amendment as modified was offered by Senators Johnson and Peters making technical edits to the underlying bill. Senator Rick Scott offered an amendment to repeal the availability of grant funding to states for compliance activities. Both amendments were agreed to by voice vote *en bloc*, with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present. The bill, as amended, was ordered reported favorably by voice vote *en bloc*. Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen were present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Sec. 1. Short title

This section names the bill the “REAL ID Modernization Act”.

Sec. 2. REAL ID Act Amendments

Subsection (a) amends the REAL ID Act definition section. Specifically, this section redefines the definition of a driver’s license and identification card to include mobile or digital driver’s licenses or identification cards.

Subsection (b) specifies that the fact of presenting a digital or mobile driver’s license or identification card cannot be construed to grant consent for the Federal officer to search or seize the device or grant access to any information on the device other than that in the driver’s license or identification card. This subsection also allows states to use a photograph already on file if the photograph was taken within the last six years. The subsection also clarifies that states may accept documents electronically if the process fol-

¹⁶Email from Office of Legislative Affairs, U.S. Dep’t of Homeland Sec., to Majority and Minority Staff, U.S. Senate Comm. on Homeland Sec. & Governmental Affairs (July 20, 2020) (on file with Committee Majority Staff).

¹⁷*Id.*

lows regulations and guidelines set by the DHS Secretary and the state certifies compliance. Finally, the subsection makes technical corrections to language in the REAL ID Act.

Subsection (c) repeals Section 204 of the REAL ID Act which authorized the DHS Secretary to make grants to states and authorized appropriations to DHS to carry out the REAL ID Act.

Subsection (d) allows the Secretary to promulgate rules and regulations needed to carry out the bill.

Subsection (e) requires airlines and third-party reservation entities to notify travelers of the REAL ID Act requirements and deadlines for three months prior to enforcement of the REAL ID Act of 2005 and for a period of one year after the date of enforcement.

Sec. 3. Immediate Burden Reduction Measures

This section provides states the ability to no longer accept physical presentation of an applicant's social security number or physical evidence of an applicant's principal address.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 2, 2020.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 4133, the Real ID Modernization Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 4133, Real ID Modernization Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 22, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

S. 4133 would provide flexibility to states to meet the standards established in the Real ID Act of 2005 for identification documents that are enforced by the Department of Homeland Security (DHS). The bill also would allow states to accept identity documents that are transmitted electronically if DHS issues regulations regarding such transmission and states certify with DHS that they are in compliance.

DHS currently allows states to accept identity information electronically in some circumstances. Using information obtained from the department, CBO expects that broadening the rules regarding electronically transmitted documents and tracking state certifications would not require significant DHS staff or resources. On that basis, CBO estimates that implementing the legislation would cost less than \$500,000 over the 2021–2025 period.

The bill contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of the intergovernmental and private-sector mandates would fall below the UMRA thresholds (\$84 million and \$168 million in 2020, respectively, adjusted annually for inflation).

S. 4133 would require states to ensure the security of the production location and of the materials, records, and data from which drivers' licenses and identification cards are produced. That requirement would impose an intergovernmental mandate on state governments. States also would be required to establish training programs for fraud prevention. The training would be provided to employees engaged in the issuance of drivers' licenses and identification cards. According to industry sources, the cost for states to comply with the mandates would be small because the current practices of states are consistent with provisions in the bill.

The bill also would require aircraft operators and some reservation entities to notify passengers of identification requirements and deadlines as established under The REAL ID Act. That requirement would impose a private-sector mandate. The incremental cost of the mandate would be small because the mandated entities al-

ready provide information to passengers on identification documents necessary for travel.

The CBO staff contacts for this estimate are Lindsay Wylie (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND TSUNAMI RELIEF, 2005

* * * * *

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] *The term “driver’s license”*—

(A) *means* a motor vehicle operator’s license, as defined in section 30301 of title 49, United States Code; *and*

(B) *includes* driver’s licenses stored or accessed via electronic means, such as a mobile or digital driver’s licenses, which have been issued in accordance with regulations prescribed by the Secretary.

(2) **IDENTIFICATION CARD.**—[The term “identification card” means] *The term “identification card”*—

(A) *means* a personal identification card as defined in section 1028(d) of title 18, United States Code, issued by a State; *and*

(B) *includes* identification cards stored or accessed via electronic means, such as mobile or digital identification cards, which have been issued in accordance with regulations prescribed by the Secretary.

* * * * *

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

(a) * * *

(1) * * *

(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.

(3) *LIMITATION.*—*The presentation of digital information from a mobile or digital driver’s license or identification card to an official of a Federal agency for an official purpose may not be construed to grant consent for such Federal agency to seize the electronic device on which the license or card is stored or to examine any other information contained on such device.*

(b) **MINIMUM [DOCUMENT] DRIVER’S LICENSE AND IDENTIFICATION CARD REQUIREMENTS.**—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on, *or as part of*, each driver’s license and identification card issued to a person by the State:

(1) * * *

* * * * *

(5) A digital photograph of the person, *which may be the photograph taken by the State at the time the person applies for a driver’s license or identification card or may be a digital photograph of the person that is already on file with the State if the photograph was taken of the person by the State during the 6-year period preceding such application.*

(6) The person’s address of **[principle]** principal residence.

(7) * * *

(8) **[Physical security]** Security features designed to prevent tampering, counterfeiting, or duplication of the **[document]** driver’s license or identification card for fraudulent purposes.

(9) * * *

(c) * * *

(1) * * *

(A) * * *

(B) * * *

(C) **[Proof of the]** *The person’s social security account number or verification that the person is eligible for a social security account number.*

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

(2) * * *

(3) **ELECTRONIC PRESENTATION OF IDENTITY AND LAWFUL STATUS INFORMATION.**—*A State may accept information required under paragraphs (1) and (2) through the use of electronic transmission methods if—*

(A) *the Secretary issues regulations regarding such electronic transmission that—*

(i) *describe the categories of information eligible for electronic transmission; and*

(ii) *include measures—*

(I) *to ensure the authenticity of the information transmitted;*

(II) *to protect personally identifiable information; and*

(III) *to detect and prevent identity fraud;*

(B) *the State certifies to the Department of Homeland Security that its use of such electronic methods complies with regulations issued by the Secretary.*

[(3)] (4) 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] *the information and documentation* required to be presented by the person under paragraph (1) or (2).

* * * * *

(7) Ensure the physical security of locations where drivers’ licenses and identification cards are produced and the security of [document materials and papers] *materials, records, and data* 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] *background checks*.

(9) Establish [fraudulent document recognition] *fraud detection and prevention* training programs for appropriate employees engaged in the issuance of drivers’ licenses and identification cards.

* * * * *

[SEC. 204. GRANTS TO STATES.

[(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

[(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.]

SEC. 205. AUTHORITY.

[(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.]

(a) PROCEDURE.—*At the Secretary’s discretion, the promulgation of regulations and the administration of this title may be made without regard to—*

(1) *chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”); and*

(2) *the notice and comment and delayed effective date provisions under section 553 of title 5, United States Code.*

* * * * *

SEC. 208. NOTIFICATION OF REQUIREMENTS AND DEADLINES.

During the 15-month period beginning 90 days before the date on which Federal agencies will no longer accept, for official purposes, driver’s licenses and identification cards that do not comply with the requirements under section 202, aircraft operators and third

party reservation entities shall notify passengers about the requirements and enforcement deadlines under this Act.

* * * * *

○