

State of California
Department of Motor Vehicles

REAL ID Act 2009 Report to the Legislature

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Arnold Schwarzenegger
Governor

Dale E. Bonner, Secretary
Business, Transportation and Housing Agency

George Valverde, Director
Department of Motor Vehicles



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Preface

Pursuant to legislative request, the REAL ID Act 2009 Report to the Legislature is being submitted for the time period of January 1, 2009 to December 31, 2009. This report is consistent with the REAL ID Legislative Reports previously required by language contained within the Supplemental Report of the 2007 Budget Act.

The REAL ID Act was one of several programs implemented by the federal government in response to the September 11, 2001, terrorist attacks in the United States. Signed into law on May 11, 2005, the federal strategy has been to leverage state-issued driver licenses and identification (DL/IDs) cards as the primary identification tool to control domestic air travel and access to federal facilities.

With the naming of Janet Napolitano as the Secretary of the Department of Homeland Security (DHS) in 2009, a different approach was adopted. To address ongoing concerns from state representatives regarding current financial difficulties, as well as how to respond to future mandates of the REAL ID Act, the new administration expressed the intent to form a more unified approach and revise the REAL ID Act. As a result, DHS staff worked with the National Governor's Association to revisit the more problematic areas associated with current federal programs and their impact to the states.

California is an active and successful participant in forming more consistent and secure licensing and identification programs and continues to implement best business practices that are consistent with certain provisions of the REAL ID Act. Mainly, these efforts have been directed toward meeting material compliance requirements. Although California complies with many of the REAL ID Act requirements, it does not meet all 18 material compliance requirements, as several of the requirements would need state legislation.

Acknowledging that the REAL ID Act is currently law, the California Department of Motor Vehicles (DMV) must address any potential negative impact to the citizens of Californians. However, concerns still exist related to privacy and security, lack of federal funding, and the required use of national verification systems that are undeveloped and it continues to be premature to make a commitment to full compliance with the REAL ID Act.

California Activities and Approach

California continues its effort to resolve REAL ID-related issues by working with the Department of Homeland Security (DHS), other states, and industry representatives including the National Governors Association (NGA) and National Conference of State Legislatures (NCSL). This ongoing effort has allowed California to advocate for a consistent level of readiness that all states must meet to address concerns related to the lack of federal funding; development of electronic verification systems; and the lack of privacy protection of personally identifiable information. To address these issues, California has continued to improve operational procedures and position itself as a lead state and proponent for uniform licensing and identification standards.

California has implemented best business practices that are consistent with some of the provisions of the REAL ID Act. Mainly, these efforts have been directed toward requirements and focus for organization, privacy and security, governance, and infrastructure. As a result, California complies with some of the REAL ID Material Compliance benchmarks; however, all of the benchmark requirements would not be met by the original January 1, 2010 deadline.

On December 18, 2009, the DHS eliminated the REAL ID material compliance deadline. The extension was based on the DHS determining that 46 of the 56 states and territories were unable to comply with the 18 material compliance requirements by the deadline. The extension served to provide additional time to states in their ongoing effort(s) to meet future DHS deadlines. The May 11, 2011, deadline for "full compliance" remains in effect.

The Providing for Additional Security in States' Identification Act of 2009 (PASS ID) was crafted by DHS and the NGA to address the more problematic areas of the REAL ID Act. PASS ID requires states to issue secure state-issued DL/ID cards and also addresses concerns that California has identified, including those related to privacy and security, lack of federal funding, and requirements to verify data with electronic systems that do not exist.

The DMV continues to advocate that a more strategic approach be taken to enhance the security and integrity of DL/ID cards and has implemented best business practices consistent with certain provisions of the REAL ID Act. In addition, DMV continues to implement policies and procedures to better serve the public, as evidenced by more services being provided online and the incorporation of the highest security standards to protect security and privacy.

Although consistent with provisions of the REAL ID Act to provide Californians with a federally-accepted DL/ID that can be used for official federal purposes, business activities, and travel, the intent is to issue driver licenses and identification cards in a secure manner that will ensure the protection of personal

identity information. At the same time, the DMV must be vigilant of the potential impact of enacted and proposed legislation and prepare its citizens for the prospective impacts of the REAL ID Act that may occur in the future.

Significant Events

California continues to be proactive to ensure its issues are being heard and addressed. Dialogue with the U.S. Department of Homeland Security has been positively received and California continues to work with other states and industry groups (e.g., American Association of Motor Vehicle Administrators (AAMVA) and NGA) to resolve ongoing concerns. The following activities occurred between January 1, 2009, and December 31, 2009:

- **Submission of Grant Proposal Application**

- **February 27, 2009**

- DMV submitted a grant proposal application to DHS to be used for privacy and security enhancements.

- **Inspector General Releases Audit Report**

- **March, 2009**

- The audit report, “Potentially High Costs and Insufficient Grant Funds Pose a Challenge to REAL ID Implementation”, identifies strengths and weaknesses of the REAL ID program.

- **Providing for Additional Security in States’ Identification Act of 2009**

- **June 15, 2009**

- This legislation was introduced to address issues related to REAL ID:

- More flexibility to implement a program that coincides with state statutes, available funding and regulations.
- Reduces state costs by requiring the federal government to provide access to the Systemic Alien Verification for Entitlement (SAVE) and Social Security Online Verification (SSOLV) systems without charging a fee.
- Provides for a five (5) year implementation program.
- Eliminates collateral costs directed to the establishment of verification systems that do not currently exist.
- Establishes the State Driver License Enhancement Grant Program to award grants to states based on the total number of licensees.

- **California REAL ID Act Steering Meeting**

- **October 27, 2009**

- The California REAL ID Act Steering Committee met to discuss significant issues related to the REAL ID Act and PASS ID Act including:

- Lack of federal funding
 - Requirements to use non-existent national electronic verification systems
 - Privacy and security considerations
 - California's status of material compliance requirements
 - Upcoming due dates for material compliance
 - Extension Request to be submitted to DHS by December 1, 2009

- **California Congressional Delegation Conference Call**

- **November 9, 2009**

- The California delegation was provided with an updated review of the outstanding issues and concerns related to REAL ID and the Providing for Additional Security in States' Identification Act of 2009 (PASS ID); and discussed the material compliance requirements and California's request for an extension.

- **Submission of Extension Request**

- **November 18, 2009**

- A Request for Extension was submitted to DHS that would extend the date of compliance for REAL ID until May 11, 2011.

- **Submission of Revised Grant Narrative**

- **December 8, 2009**

- DMV submitted an updated grant proposal for the FY 2008 REAL ID Demonstration Grant Program to DHS. The \$3.2 million federal grant proposal would enhance the collection of personal data by purchasing digital imaging systems for field offices statewide.

- **Federal Grant Funding - 2010 Driver's License Security Grant Program**

- **December 21, 2009**

- The Department of Homeland Security (DHS) informed states that they would be eligible for the same amount from the Driver's License Security Grant Program in 2010 as they were eligible for in 2009. California would be allocated (approximately) \$1.6 million.

Federal Legislative Activity

The DMV monitors and tracks federal legislation related to the REAL ID Act to determine the impact on California residents and whether the legislation will require changes to departmental processes and procedures. To date, no REAL ID-related bill has been passed or enacted during the 111th Congressional Session (January 3, 2009 – January 3, 2011).

Federal legislation is analyzed by congressional staff after introduction; however, bills do not necessarily move through the process of a formal committee review. Pending federal legislation currently includes the possible repeal or amendment of the REAL ID Act.

The following represents the federal legislative activity related to the provisions of the REAL ID Act during the 111th Congressional Session:

PENDING LEGISLATION

S.1261: Akaka (Hawaii)

This legislation (the PASS ID Act) would repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002. The bill amends the Homeland Security Act of 2002 to prohibit federal agencies from accepting state-issued driver licenses and personal identification (DL/ID) cards unless the DL/ID cards issued by the state are materially compliant with the minimum standards of the Act; and does not allow persons to board commercial aircraft due to the failure to present a DL/ID issued pursuant to the Act. Additionally, this bill would specify the minimum requirement and issuance standards for such DL/ID cards.

Status

- June 15, 2009, introduced, sponsor introductory remarks on measure.
- June 15, 2009, referred to Committee on Homeland Security and Governmental Affairs.
- July 15, 2009, Committee on Homeland Security and Governmental Affairs; hearings held.
- July 29, 2009, Senate committee/subcommittee actions. Status: Committee on Homeland Security and Governmental Affairs. Ordered to be reported with an amendment in the nature of a substitute favorably.
- November 19, 2009, Committee on Homeland Security and Governmental Affairs; reported by Senator Lieberman with an amendment in the nature of a substitute. Without written report.
- November 19, 2009, Placed on Senate Legislative Calendar under General Orders. Calendar No. 217.

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- December 9, 2009, by Senator Lieberman from Committee on Homeland Security and Governmental Affairs filed written report. Report No. 111-104.

H.R.140: Gallegly (California)

This bill would withhold certain specified percentages of (fiscal year) highway funds from a state if it does not comply with certain REAL ID Act requirements in issuing a driver license or identification card, and for other purposes.

Status

- January 6, 2009, introduced.
- January 6, 2009, referred to House Transportation and Infrastructure for a period to be subsequently determined by the Speaker; for consideration of such provisions as fall within the jurisdiction of the committee concerned.
 - January 6, 2009, referred to Subcommittee on Highways and Transit.
- January 6, 2009, referred to House Oversight and Government Reform for a period to be subsequently determined by the Speaker; for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 2892: Price (North Carolina)

This appropriation bill would provide funding for the Department of Homeland Security for the fiscal year ending September 30, 2010. The bill includes \$50 million for the Driver's License Security Grants Program in accordance with Section 204 of the REAL ID Act of 2005. The funds will be used to help states comply with the REAL ID Program.

Status

- June 16, 2009, introduced in House.
- June 16, 2009, the House Committee on Appropriations reported an original measure.
- June 24, 2009, passed/agreed to in House.
- July 6, 2009, received in Senate; read twice; placed on Senate Legislative Calendar under General Orders. Calendar No. 95.
- July 7, 2009, Senate considering for unanimous consent.
- July 8, 2009, Cloture motion presented in Senate.
- July 9, 2009, Senate considering Cloture motion; Cloture motion withdrawn by unanimous consent.
- July 9, 2009, amended in Senate; passed in Senate; conference with House requested.
- July 13, 2009, message on Senate action sent to the House.
- October 1, 2009, on motion that the House disagree to the Senate amendment, and agree to a conference Agreed to without objection.

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- October 13, 2009, Conference report H. Rept. 111-298 filed. (text of conference report: CR H11195-11257)
 - October 14, 2009, Rules Committee Resolution H. Res. 829 reported to House. Rule provides for consideration of the conference report to H.R. 2892. Previous question shall be considered as ordered without intervening motions except motion to recommit. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.
 - October 15, 2009, Rule H. Res. 829 passed House; on agreeing to the conference report; agreed to by the Yeas and Nays: 307 - 114 (Roll no. 784).
 - October 15, 2009, conference papers: message on House action held at the desk in Senate.
 - October 20, 2009, conference report considered in Senate. (consideration: CR S10542-10544, S10544-10559); Senate agreed to conference report by Yea-Nay Vote. 79 - 19. Record Vote Number: 323. (consideration: CR S10558)
 - October 20, 2009, message on Senate action sent to the House; cleared for White House.
 - October 22, 2009, presented to President; signed by President.
 - October 28, 2009, became Public Law No: 111-83.

H.R. 3174: Blackburn (Tennessee)

This legislation provides that only certain forms of identification of individuals may be accepted by the Federal Government and financial institutions. The proposed forms are considered acceptable identification for both the Federal Government and financial institutions:

Status

- July 10, 2009, introduced in House.
- July 10, 2009, referred to House Committee on Oversight and Government Reform for a period to be subsequently determined by the Speaker; for consideration of such provisions as fall within the jurisdiction of the committee concerned.
 - July 31, 2009, Referred to Subcommittee on Government Management, Organization, and Procurement.
- July 10, 2009, referred to the Committee on Financial Services for a period to be subsequently determined by the Speaker; for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 3471: Cohen (Tennessee)

This bill repeals title II of the REAL ID Act of 2005, to reinstitute section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provides States additional regulatory flexibility and funding authorization to more rapidly produce tamper and counterfeit-resistant driver licenses, and to protect privacy and civil liberties by providing interested stakeholders on a negotiated rulemaking with guidance to achieve improved 21st century licenses to improve national security.

Status

- July 31, 2009, introduced in House.
- July 10, 2009, referred to House Committee on Oversight and Government Reform for a period to be subsequently determined by the Speaker; for consideration of such provisions as fall within the jurisdiction of the committee concerned.
 - October 23, 2009, referred to Subcommittee on Information Policy, Census, and National Archives.
- July 31, 2009, Referred to House Judiciary
 - September 14, 2009, referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.

California Legislative Activity

PENDING LEGISLATION

S.B.60: Cedillo

This bill would require the Department of Motor Vehicles to issue driver licenses and identification (DL/ID) cards that are in compliance with specified requirements of the federal REAL ID Act of 2005 (Public Law 109-13).

Status

- January 20, 2009, introduced.
- January 22, 2009, Senate; read first time.
- January 29, 2009, to Senate Transportation and Housing Committee.
- April 15, 2009, re-referred to Committee on Appropriations.
- April 27, 2009, placed on Committee on Appropriations Suspense File.
- May 28, 2009, from committee; do pass as amended.
- June 1, 2009, read third time; passed; sent to Assembly.
- June 1, 2009, Assembly; read first time.
- June 8, 2009, to Committee on Transportation.
- June 22, 2009, hearing cancelled at request of author.

Federal Funding

Since the enactment of the REAL ID Act, the federal government has provided federal funds to states through:

- FY 2008 REAL ID Demonstration Grant Program (RIDGP)
- FY 2009 Driver's License Security Grant Program (2009 DLSGP)
- FY 2010 Driver's License Security Grant Program (2010 DLSGP).

The 2009 DLSGP and 2010 DLSGP are for the same purpose, to prevent terrorism, reduce fraud, and improve the reliability and accuracy of identification documents that states issue. The Federal Emergency Management Agency provides \$48.6 million to state motor vehicle/driver license authorities through the 2009 DLSGP and \$48.0 million with the 2010 DLSGP. The funds for the 2009 DLSGP and 2010 DLSGP are allocated on a formula basis and are dependent on the total number of driver licenses and identification cards issued in each state or territory.

To date, California has received a total of \$5.0 million in federal funds from the RIDGP (\$3.2 million) and the DLSGP (\$1.8 million). As determined by the Department of Homeland Security (DHS), these funds may be used "towards securing driver licenses consistent with the REAL ID requirements and prioritizing 15 of the 18 benchmarks", to meet the material compliance benchmarks.

To take advantage of these opportunities, California has submitted the following three grant proposals to be directed to privacy and security enhancements and the implementation of a digital imaging system in field offices statewide:

- A grant proposal was submitted for the FY 2009 DLSGP for \$1.8 million on February 27, 2009, to be used for privacy and security enhancements.
- A revised proposal was submitted to DHS for the 2008 RIDGP on December 8, 2009, to indicate the \$3.2 million will be directed to the Field Office Digital Imaging System.
- A grant proposal was submitted for the 2010 DLSGP for \$1.6 on February 18, 2010, to be directed to the Field Office Digital Imaging System.