



Oregon

Kate Brown, Governor

Department of Transportation

Director's Office

355 Capitol St. NE, MS 11

Salem, OR 97301

DATE: March 20, 2017

TO: Senate Committee on Business and Transportation

FROM: Tom McClellan, DMV Administrator

SUBJECT: SB 374, REAL ID Compliance

INTRODUCTION

The federal REAL ID Act of 2005 and subsequent regulations set standards for states' driver licenses and identification (ID) cards to be accepted for official federal purposes. Oregon is not compliant, and enforcement deadlines are approaching. SB 374, with the -1 amendment, would bring Oregon into compliance in 2020 in conjunction with implementation of the ongoing Service Transformation Program at DMV.

BACKGROUND

REAL ID requires each U.S. jurisdiction to implement 42 specific elements for the security and reliability of its driver licenses and ID cards. Those elements cover three general topics: reliability of the underlying information leading to issuance of a card; security of the procedures and personnel of the DMV and its contractors; and the security features of cards themselves.

The penalty for non-compliance with REAL ID is the state's driver licenses and ID cards will not be recognized by federal agencies for official purposes, such as entering a secure federal building or, eventually, boarding a domestic commercial flight. Alternate acceptable identification includes a valid U.S. passport or passport card, or two forms of identification that meet criteria specified by the federal agency.

Since 2013, the Federal Department of Homeland Security has been implementing enforcement in stages at different types of facilities. Enforcement is now in place at nuclear installations, military facilities, and some federal buildings. The final stage will be enforcement by the Transportation Security Administration (TSA) for boarding domestic flights. According to that schedule, a driver license from a state that is non-compliant and does not have an extension will not be acceptable by TSA on January 22, 2018. Subsequently, on October 1, 2020, any individual driver license or ID card that is not marked as REAL ID compliant will not be accepted by TSA.

In 2009, the Oregon Legislature passed SB 536 (attached). The law prevents state agencies from spending money to implement REAL ID unless federal funds are received to cover those costs and strict security measures are in place. The only federal grant money available for REAL ID is currently slated for emergency management purposes, and is insufficient to achieve REAL ID compliance. DMV has made many improvements to its systems and processes for the sake of security, some of which had the secondary result of moving toward REAL ID compliance. Oregon has received four enforcement deferrals with the current one expiring June 6, 2017. DMV has made all the changes it can within the bounds of SB 536 (2009) and other statutory constraints.

Oregon's driver license and ID card issuance procedures are very secure and protect against identity theft and other fraud. In some ways, protocols in Oregon go beyond federal requirements (such as facial recognition technology), but some REAL ID provisions are not met today.

In 2015, the Oregon Legislature began a 10-year \$90-million investment in DMV's Service Transformation Program (STP) to replace its obsolete and inefficient computer systems, and fundamentally change the way DMV does business with its customers. Now nearly two years in, DMV is finalizing negotiations with a vendor of a commercial off the shelf (COTS) computer system. This system can be configured to be REAL ID compliant, and negotiations with the vendor have contemplated potential changes in state law that may occur this session.

DISCUSSION

Senate Bill 374 would repeal SB 536 (2009), and direct DMV to provide the option of REAL ID compliant driver licenses, driver permits, and ID cards. The bill creates a two-tiered system in which the default is the credential issued under current law. For this standard card all existing requirements remain in place, such as: proof of identity, proof of Oregon residency, a valid social security number (or proof of ineligibility), and proof of legal presence in the United States. DMV checks the social security number (SSN) against a federal database to verify it matches the customer, verifies immigration documents using another federal database, and employees examine the legal presence documents to ensure they are legitimate. Once a person has established citizenship or permanent legal residency with DMV, they no longer need to present legal presence documentation at subsequent issuances.

Under SB 374-1, an applicant may choose to apply for a REAL ID compliant version of the credential. From the applicant's perspective, there will be more documents to present and a higher fee to pay. At least for the first issuance of a REAL ID, the customer will need to show documentary proof of identity, residency, and lawful status in the U.S., even if the customer did so in the past. The applicant will also need to present an official document showing their SSN. U.S. citizens will show most of these documents only once: at initial issuance - not renewal. Any non-citizen (permanent or temporary legal residents) will need to bring in their documents every time they seek to renew or replace their driver license or ID Card. DMV will retain digital copies of these documents. The fee will be higher for a REAL ID; the bill requires DMV to set the fee to recover all implementation and on-going costs of compliance with the federal law.

It is very likely that some Oregonians will not be able to meet the document requirements to obtain a REAL ID. Over eight years of administering the legal presence requirement, Oregon DMV developed standards for granting exceptions to the usual requirement of a passport or government-issued birth certificate. This process is used rarely, but is critical to DMV's ability to look at individual circumstances and determine the person is legally present in the U.S., and to treat similarly situated people consistently. Examples of people who have benefited from the exceptions process include people born at home in the U.S. who never had a government-issued birth certificate, and people born abroad to U.S. citizen parents who never completed the process to document their child's (the customer's) citizenship. The exceptions process DMV has developed, while rigorous, is unlikely to be approved for REAL ID purposes.

From the agency's perspective, several significant changes will be taking place. DMV will make digital copies of the identity source documents proving identity, residency, lawful status, date of birth, and social security number, and will store them for at least 10 years. In addition to verifying the SSN and immigration documents against federal databases, as is currently done, DMV will also check U.S. passports and birth certificates against federal databases. DMV will also determine through a federal electronic pointer system whether the applicant has a driver license or ID card issued by another state.

Apart from the actual issuance process, several other changes will be necessary to achieve REAL ID compliant status. For example, DMV will work with its card issuance vendor on changes to the cards themselves: REAL ID-compliant cards will have a distinguishing symbol; standard cards will be marked with words indicating they are not acceptable for federal identification purposes. Also, employees and contractors who have the potential to access and change customer records will be subjected to name and fingerprint-based criminal background checks, whereas today the background check is name-based only.

DMV would work with the vendor of the COTS system (being procured for the Service Transformation Program) to configure it to meet the requirements of the bill. Because of the timing of the session, procurement negotiations, and staging of the work to successfully deliver STP, DMV anticipates being able to issue REAL IDs in mid-2020. As noted above, the current federal enforcement schedule sets October 1, 2020, as the date when a state-issued driver license or ID card must be marked REAL ID compliant for boarding domestic flights. States that work diligently toward compliance could apply for another enforcement deferral beyond October 2020, but there is no assurance of approval by Homeland Security. Otherwise, another form of identification such as a U.S. passport or passport card will be necessary as of October 1, 2020.

DMV estimates 30% of Oregonians would opt for a REAL ID, and because of the timing of the enforcement schedule we anticipate an immediate influx of customers to secure the new credential once available. We anticipate seeking additional position authority during the 2019 session to handle the customer increase, while attempting to manage customer wait times to acceptable levels.

The specific capabilities and business processes arising from the COTS system are several years away, so we cannot forecast the staffing needs with much certainty at this time. DMV is also under contract with a separate vendor to begin producing Oregon's driver licenses and ID cards during the summer of 2018, and work is underway to collect digital images of driver-related documents instead of using microfilm. All three projects have direct relevance upon the eventual cost and staffing impacts of SB 374.

There are 56 jurisdictions subject to REAL ID (including territories and D.C.). Homeland Security has certified 26 as compliant. Nevada is the only state bordering Oregon that is compliant. (See attached map for current REAL ID compliance status of all U.S. jurisdictions.)

SUMMARY

SB 374, as amended, would provide the statutory authority to bring Oregon into compliance with REAL ID in 2020. The bill would provide Oregonians the option of a standard credential or a REAL ID-compliant version. Additional identity source documents and fees will be necessary for customers who choose a compliant card, and some Oregonians may not be able to locate or obtain the documents necessary for REAL ID issuance. DMV will electronically verify more types of documents through federal systems, and will store images of documents for 10 years. DMV would implement this bill by working with its vendor to configure the COTS system being procured for the Service Transformation Program authorized by the legislature in 2015. DMV also may seek additional staff during the 2019 session to handle the anticipated influx of customers choosing to purchase a REAL ID credential in Oregon.

Attachments:
SB 536 (2009) codified at ORS 801.060 - .066
Potential Oregon Non-Compliance with Federal Real ID Provisions
Map showing REAL ID compliance of all U.S. jurisdictions

Enrolled
Senate Bill 536

Sponsored by Senator METSGER; Senators BONAMICI, BURDICK, DINGFELDER, GEORGE, JOHNSON, KRUSE, MORSE, PROZANSKI, WHITSETT, Representatives BARKER, BARNHART, BEYER, CANNON, D EDWARDS, FREEMAN, GARRETT, GILMAN, GREENLICK, KOTEK, MAURER, NOLAN, RICHARDSON, SCHAUFLE, SHIELDS, J SMITH, THOMPSON, WEIDNER

CHAPTER

AN ACT

Relating to the federal Real ID Act of 2005.

Whereas the federal Real ID Act of 2005 is a costly unfunded mandate because the federal government has no plans to adequately reimburse the states for the costs of implementing the Act; and

Whereas the federal Real ID Act of 2005 would expose all Oregonians to an unprecedented level of identity theft by requiring, for the first time, the Department of Transportation to store electronic copies of all birth certificates, Social Security numbers and other private documents used to establish identity, which contain names, dates of birth, gender information, photographs, addresses and signatures, creating a digital repository gold mine for identity thieves; and

Whereas the Federal Trade Commission estimates that 10 million Americans are victims of identity theft annually; and

Whereas the federal Real ID Act of 2005 eliminates a process of negotiated rulemaking initiated under the Intelligence Reform and Terrorism Prevention Act of 2004 in which federal, state and local policymakers, privacy advocates and industry experts convened to address the problem of misuse of identity documents; and

Whereas the federal Real ID Act of 2005 would provide few security protections, leaving identification systems open to insider fraud, counterfeit documentation and database failures; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. A state agency or program may not expend funds to implement the Real ID Act of 2005, P.L. 109-13, unless:

(1) Federal funds are received by this state and allocated in amounts sufficient to cover the estimated costs to this state of implementing the Real ID Act of 2005; and

(2) The requirements of section 2 of this 2009 Act are met.

SECTION 2. (1) Before issuing, replacing or renewing a driver license, driver permit or identification card in order to comply with the requirements of the Real ID Act of 2005, P.L. 109-13, and before storing data about individuals in any database, records facility or computer system in order to comply with the requirements of the Real ID Act of 2005, the Department of Transportation shall implement the following:

(a) Sufficient measures to protect the privacy of individuals; and

(b) Sufficient safeguards against unauthorized disclosure or use of an individual's personal identifying information by department personnel or any contractor, agency or other person who may have access to the database, records facility or computer system.

(2) The department may not, in order to comply with the requirements of the Real ID Act of 2005:

(a) Participate in any multistate or federal shared database program unless the department is able to provide sufficient security measures to protect the privacy of individuals and sufficient safeguards against unauthorized disclosure or use of an individual's personal identifying information.

(b) Charge unreasonable fees or place unreasonable record keeping burdens on an applicant for issuance, renewal or replacement of a driver license, driver permit or identification card.

SECTION 3. (1) Prior to implementation of the Real ID Act of 2005, P.L. 109-13, the Department of Transportation shall prepare a report that analyzes the cost to this state, and to applicants for issuance, renewal or replacement of driver licenses, driver permits and identification cards, of implementing the requirements of the Real ID Act of 2005 and any related federal regulations.

(2) The department shall make the report available for public inspection.

SECTION 4. Sections 1 to 3 of this 2009 Act apply to expenditures made and actions taken on or after the effective date of this 2009 Act.

Passed by Senate April 15, 2009

.....
Secretary of Senate

.....
President of Senate

Passed by House May 29, 2009

.....
Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State

Potential Oregon Non-Compliance with Federal Real ID Provisions

Section 37.11(g)	Requires documentation of lawful status
Section 37.13(b)(3)	Verifies birth certificates
Section 37.13(b)(4)	Verifies U.S. passports
Section 37.13(b)(5)	Verifies REAL ID driver licenses and ID cards with the state of issuance
Section 37.17(n)	Requires fully compliant driver licenses and ID cards to have a DHS-approved security marking
Section 37.25(a)(2)	Prior to renewing a REAL ID DL/ID requires re-verification of applicant's SSN and lawful status, as well as information it was unable to verify at previous issuances or renewals because systems or processes did not exist
Section 37.25(b)(1)	If remote REAL ID renewals are permitted, requires re-verification of applicant's information through SAVE and Social Security Online Verification (SSOLV) (or other methods approved by DHS)
Section 37.31(a)(1)-(3)	Requires retention of copies of the application, declaration and source documents. Paper copies and microfiche must be retained for seven years. Digital images must be retained for a minimum of 10 years.
Section 37.45	Conducts name-based and fingerprint-based criminal history and employment eligibility checks on employees in covered positions or an alternative procedure approved by DHS
Section 37.51	Commits to be in full compliance with Subparts A through D.
Section 37.55	Submitted Final Certification package to DHS
Section 37.71(a)	If the State chooses to issue both compliant and noncompliant documents, clearly states on the face of the noncompliant document and in the machine readable zone that the card is not acceptable for official purposes and incorporates a unique design or color indicator that clearly distinguishes them from compliant licenses and identification card.

States and Territories Certified by DHS as being Real ID Compliant

Updated January 2017

