FAQ On REAL ID Act

by The American Civil Liberties Union

What is the Real ID Act?

The Real ID Act is a law signed by President Bush in May 2005, which, if it is accepted by and carried out by the states, would turn state driver's licenses into a genuine national identity card and impose numerous new burdens on taxpayers, citizens, immigrants, and state governments.

What would the Real ID Act do?

Real ID would force the states to standardize driver's licenses cards across the nation into a single national identity card and database. It does this by stipulating that state driver's licenses and state ID cards will not be accepted for "federal purposes" – including boarding an aircraft or entering a federal facility – unless they meet all of the law's numerous conditions, which include:

- Standardized data elements and security features on the IDs

- A "machine readable zone" that will allow for the easy capture of all the data on the ID by stores or anyone else with a reader

- The construction of a 50-state, interlinked database making all the information in each person's file available to all the other states and to the federal government

A requirement that states verify the "issuance, validity and completeness" of every document presented at motor vehicles agencies (usually called "DMVs") as part of an application for a Real ID card

What is the status of Real ID?

The Real ID Act has been passed by Congress and signed into law by President Bush. But its acceptance in the states is far from assured. And the states have just three years – until 2008 – after enactment to come into compliance, or their citizens' driver's licenses will no longer be accepted for federal purposes. But the Department of Homeland Security (DHS) must first complete work creating regulations that spell out in more detail exactly what the states must do to make compliant IDs. Those regulations are not expected until the summer of 2006 at the earliest – leaving the states even less time to complete the complex and gargantuan overhauls the legislation requires.

If the battle in Congress is over and the legislation has been passed, why is it still controversial?

There are several reasons the Act remains controversial.

1. **The Act was not passed through a true democratic process.** It was slipped through Congress in May 2005 in a "must-pass" Iraq War/Tsunami relief supplemental bill, as part of a deal reached between the powerful Rep. James Sensenbrenner (R, Wis.) and the Congressional leadership. There was no time for sufficient consideration of the Act and its sweeping implications; in the Senate, there was not even a single hearing held on the Act. The result is that Real ID lacks the legitimacy that comes from having been studied, debated, considered, and directly voted upon by Americans' elected representatives.

2. **The game is not over, it has just moved into the states.** Although the Act was passed by Congress, Real ID cannot go into effect without a multitude of actions in the states. State legislatures must appropriate money and, in most cases, change state laws. State executives must remake or build anew all the administrative machinery required to comply with the Act's numerous mandates. And a lot of people at the state level do not like what they see.

3. **Broad interest-group opposition.** Opponents range from privacy and civil liberties organizations like the ACLU to conservative groups to immigration groups.

4. **It's a bad Act.** Most fundamentally, the Real ID Act has sparked opposition because it would not be good for our country.

The opposition to Real ID is broad and deep, and despite its passage by Congress, there remains an excellent chance that it will be reversed in part or in whole.

Why is Real ID bad for our country?

Simply put, Real ID would offer significant costs and disadvantages without any corresponding advantages:

- By definitively turning driver's licenses into a form of national identity documents, Real ID would have a tremendously destructive impact on privacy.

- The Act would impose significant administrative burdens and expenses on state governments, and would mean higher fees, longer lines, repeat visits to the DMV, and bureaucratic nightmares for individuals.

- Yet, it would not be effective at increasing security against terrorism or bring any other benefits which would justify those costs.

What burdens would it impose on state governments?

Real ID would significantly strain state governments. Among the most significant burdens:

- It would require the states to remake their driver's licenses, restructure many of their computer databases and other systems, create an extensive new document-storage system, and considerably expanded their security measures.

- It would require the states to set up an interstate data-sharing network, which would also require complex administrative, technical, and security measures.

- It includes a devilishly difficult mandate that states verify the "issuance, validity and completeness" of every birth certificate, immigration document, utility bill, and any other document presented at DMVs as part of an application for a Real ID card.

- Yet, it leaves the DMVs with no way to compel utility companies or other document issuers to cooperate with that verification.

- It would require states to expand their DMV payrolls, initiate or expand employee training in such areas as security, document verification, and immigration law, and initiate or expand security clearance procedures for their workers.

Many in state government are saying that it would be simply impossible to comply with Real ID by the Act's deadline in 2008.

What burdens would it impose on individuals?

Real ID would mean higher fees, inconveniences, and bureaucratic nightmares for individuals.

- **Higher fees.** Because the Act's mandates would cost states billions of dollars that Congress is not paying for, fees on individuals applying for driver's licenses would inevitably rise, perhaps steeply. State taxes might also go up.

- **Worse service.** Because of the new document requirements for individuals, the labor-intensive complexities involved in verifying those documents, and the need for DMVs to reprocess the bulk of the population that already has driver's licenses, individuals would be likely to confront slower service, longer lines, and the need for repeat visits to the DMV.

- **Bureaucratic problems.** The complicated yet often ambiguous maze of requirements created by the Act would throw many unlucky individuals into a bureaucratic quagmire as they try to overcome inflexible verification requirements, bureaucratic errors or mismatches, lost documents, unique circumstances, or other problems. Some individuals, inevitably, would find themselves unable to obtain these new identity papers.

These kinds of problems would be significant for anyone. In addition, for many low-income workers for whom taking off time from work is difficult or expensive, the need for repeated trips to the DMV (and to other agencies such as registrar's offices in search of birth certificates) would be an even greater burden.

What about people who don't have driver's licenses?

Millions of Americans do not have driver's licenses. Out of a population of 290 million residents, there are only 194 million licensed drivers. In addition to millions of children and teenagers, the elderly are particularly likely to lack licenses. An estimated 36 percent of Georgia residents over age 74, for example, lack driver's licenses.[1]

By creating strict new identity requirements for federal identification and, inevitably, expanding them over time to cover a growing list of purposes, Real ID would force the people in this population to figure out a way to jump through the bureaucratic hoops required to get compliant identity documents – and leave DMVs struggling with how to process them.

What about people who don't have birth certificates?

In some cases, individuals would not be able to obtain birth certificates, or the documents they have in hand upon arriving at the DMV would not be able to be verified.

- Over the decades, records are lost through fires, floods, and disasters such as Hurricane Katrina.

- Documents can be rendered suspect due to fraud or malfeasance. In 2004, for example, thousands of Hudson County, NJ residents received word that their birth

certificates had been declared invalid because of an ongoing fraud investigation at the County Clerks' office. [i]

- Over 30 million people in the U.S. are foreign-born, and many of them were born in remote undeveloped nations or other places where no birth records are kept, or in places (such as what is now North Korea) where any records might be difficult or impossible to obtain.

- Some people are not sure when or even where they were born.

It is far from clear what would happen to such people. Real ID is silent on how such individuals should be handled, so DMVs would need to figure out if they would simply be denied identity papers, or if their applications could be processed in some other way consistent with the Act.

What effect would Real ID have on legal immigrants?

Real ID specifically targets immigrant drivers, and that group would be among those hardest-hit by the Act. The Act bars states from issuing a Real ID to any non-citizen who cannot prove that they are in an enumerated lawful immigration status through verified documentary evidence; fails the database check; or cannot prove their identity because they rely on foreign documents other than an official passport.

Real ID would turn DMVs into sub-branches of the immigration service, forcing clerks to try to decide who can and cannot be given a license – despite the complexity of our immigration laws, which rivals that of our tax code, and the numerous legal categories that allow an individual to obtain legal status in the United States, and the even greater number of documents that verify that status. Training for motor vehicles employees could not possibly cover all of the technicalities of the immigration laws. And immigration databases are notoriously incomplete and error-ridden and might fail to verify the status of people who are in fact legally present. And many non-citizens who have lawful status, particularly refugees, might be unable to obtain federally-qualified licenses simply because they do not have official passports from their home countries.

What would happen to those who cannot get a Real ID?

It is unclear, but life would become tougher and tougher for them.

Some states might create a "second class" driver's license that they can provide to those who can't meet the requirements for getting a Real ID. These licenses would likely be viewed as a badge of real or suspected illegal-immigrant status, and trigger suspicion by law enforcement officers, government agencies, employers, landlords, financial institutions, utilities, and others who demand ID.

But whether or not they obtain second class licenses, those who cannot get Real ID-compliant identity documents could in theory be left unable to fly on commercial aircraft, enter federal facilities such as courthouses or office buildings, or even possibly get a job legally.

Furthermore, the list of activities for which these IDs are required is sure to expand, if the current mindless trend of seeking security through identity papers is not reversed. In fact, the Real ID Act explicitly says that Real IDs shall be required not only for activities like

boarding aircraft, but also for "any other purposes that the Secretary [of Homeland Security] shall determine."

How much would Real ID cost?

The short answers is that at this point, no one knows.

The ACLU has produced a template that outlines many of the factors that must be taken into account by a state in estimating the costs it would face in coming into compliance with Real ID. However, existing technology standards, state administrative structures, and laws within the different states vary widely, with the result that Real ID would prove even more expensive for some states than for others, and no one has actually performed a comprehensive national study of those costs.

However, state officials in Washington State have put together an estimate for the Act's 5-year cost in their state, which they estimated to be $251 million. Virginia officials also did an estimate, which they put at $232 million. By extending those estimates to the rest of the states, we can obtain a ballpark estimate for the national expense of implementing this legislation.

That basic estimate indicates that Real ID's total cost to the states would be between **$9.1 billion** and **$12.8 billion**.

This is of necessity a crude estimate of the Act's costs, but until a detailed, comprehensive study is performed that looks closely at the full range of known factors, this is the best we have.

Why do opponents call Real ID a tax increase?

The legislation that was rammed into law provided no money to pay the states' costs to comply, so those costs would ultimately be borne by the residents of each state – if not in the form of higher fees at the DMV, then in the form of higher taxes.

That is why Real ID is for all intents and purposes a hidden tax increase. If Congressional leaders want to impose a multi-billion-dollar "security tax" on the American citizens, they must do so only through well-established mechanisms and after a proper period of open debate and exploratory hearings that examine the costs and benefits of such a measure. Congressional leaders must not impose an enormously expensive (and dubiously effective) security scheme while trying to weasel out of paying for such a scheme by sneaking its costs along to taxpayers through higher license fees and/or state tax increases.

How would Real ID hurt privacy?

Real ID would become a key infrastructure for, and dramatically accelerate, the surveillance society that is already being constructed in the United States. Once put in place, it would be used more and more for the routine tracking, monitoring, and regulation of individuals' movements and activities, it would be exploited by the private sector, and it would expose individuals to greater risk of identity theft and other security risks. Its centralized database would inevitably, over time, become the repository for more and more data on individuals, and would be drawn on for an ever-wider set of purposes.

How would Real ID create security and ID-theft risks?

The creation of a single interlinked database (as well as the requirement that each DMV store copies of all the birth certificates and other documents presented to it) would create a one-stop shop for identity thieves. Nearly 10 million people, or 5 percent of U.S. adults, were victims of identity theft in one year (2002) alone, according to a U.S. Federal Trade Commission study.[2] The security problems with creating concentrated databases have been repeatedly demonstrated over the years – most recently in the rash of cases where information held by commercial database companies has fallen into the hands of identity thieves or others. (See The Choicepoint ID Theft Case: What it Means) The government's record at information security is little better. And DMV employees around the country have repeatedly been caught in corruption schemes such as selling fraudulent licenses or data to identity thieves.[3]

How would Real ID be exploited by the private sector to invade privacy?

The new identity system created by Real ID would accelerate a larger American trend toward a the construction of a public-private "Security-Industrial Complex." Data aggregators like ChoicePoint, Acxiom, Lexis-Nexis and others make up an enormous, multi-billion-dollar industry that builds dossiers on individuals using a wide array of sources. And the government is increasingly turning to such companies for help with security functions. The FBI, for example, pays millions to ChoicePoint, and the TSA wants to use private-sector firms in performing identity checks on airline passengers.[4]

The "common machine-readable technology" on Real IDs would allow for easy, computerized transfer of the data on the cards not only to the government at checkpoints like airports, but also to private parties. Already, many bars already collect all their customers' information (including such details as height and weight) by swiping driver's licenses handed over to prove legal drinking age.[5] That might prove to be just the tip of the iceberg as every big-box retailer, convenience store, and liquor mart learns to grab that data and sell it to Choicepoint for a dime. The result would be that, even if the states and federal government do successfully protect the data, it would be harvested by private companies, which would then build up a parallel, for-profit database on Americans, free from even the limited privacy rules in effect for the government.

How is Real ID a true national identity card system?

Although individual states' driver's licenses may continue to exhibit cosmetic differences, under Real ID they would contain a standardized set of information collected by all 50 states, in standard format, encoded on a standardized "machine-readable" zone. And although individual states would still maintain their own databases, by requiring them to be interlinked, Real ID would bring into being what is, for all practical purposes, a single distributed database. In short, underneath each state's pretty designs they are really a single standardized national card. Local DMV offices may continue to appear to be state offices, but under Real ID they would become agents acting on behalf of the federal government, charged with administering what amounts to an internal passport without which no one will be able to function in America.

What's wrong with a national identity card?

The true problem is not the piece of plastic itself, but the construction of a larger network of identity papers, databases, status and identity checks and access control points – in short, what has been called an "internal passport." If the old driver's license represented a

license to drive – the government's very specific permission to operate a vehicle on the public roadways – the fear is that the new documents will become tantamount to a license to leave your house.

National IDs would violate privacy by helping to consolidate data. There is an enormous and ever-increasing amount of data being collected about Americans today. One's grocery store, for example, might use a "loyalty card" to keep detailed records of what you buy, while Amazon keeps records of what you read, the airlines keep track of where you fly, and so on. This can be an invasion of privacy, but our privacy has actually been protected by the fact that all this information still remains scattered across many different databases. But once the government, landlords, employers, or other powerful forces gain the ability to draw together all this information, our privacy will really be destroyed. And that is exactly what a national identity system would facilitate.

A national ID like Real ID would also facilitate tracking. When a police officer or security guard scans your ID card with his pocket bar-code reader, for example, it will likely create a permanent record of that check, including the time and your location. How long before office buildings, doctors' offices, gas stations, highway tolls, subways and buses incorporate the ID card into their security or payment systems for greater efficiency? The end result could be a situation where citizens' movements inside their own country are monitored and recorded through these "internal passports."

Shouldn't something be done to improve our driver's licenses?

In fact, before Real ID, something *was* being done: a "negotiated rulemaking" process to update the nation's driver's licenses. That process brought together key stakeholders (from DHS to state officials to automobile interests to privacy groups like the ACLU). But Real ID included language shutting down that process and replacing it with a heavy-handed set of requirements for the states that leaves all the key decisions in the hands of ONE of the interests that was represented at the table: the Department of Homeland Security.

Ultimately, however, we should not place too much emphasis on trying to achieve security through improved identification practices. The fact is, identity-based security is not an effective way to stop terrorism.

Why wouldn't a national ID card improve security?

ID documents do not reveal anything about evil intent.Even with a reliable list of terrorists, the authorities will miss anyone who is not previously known to be a threat.The only solution for that is improved intelligence and old-fashioned law enforcement techniques involving the investigation of known evidence.Even where a person is known to be a threat, determined terrorists will always be able to obtain fraudulent documents (either counterfeit or real documents bought from corrupt officials).Thousands of fraudulent driver's licenses, for example, have been issued through bribed state employees and identity-theft rings that include such employees.

Would Real ID cause discrimination against U.S. Citizens?

Yes. REAL ID would require DMV employees to decide whether someone is a citizen or foreigner before issuing a driver's license – forcing them to distinguish among citizens, permanent resident immigrants – often by making difficult and subtle judgments about

complex immigration issues. That would inevitably cause discrimination against U.S. citizens who may "look" or "sound" "foreign" to a DMV bureaucrat. Such citizens would likely be interrogated more, have their documents scrutinized with suspicion, be treated as suspect, and be denied a license or targeted for further questioning or investigation. Those who did not satisfy the DMV employee might be denied a license altogether or be told that they are eligible only for a license that is not compliant with Real ID.

What can be done about Real ID?

State legislators, interested citizens, and other individuals can join with the many governors and interest groups who oppose this legislation and force Congress to repeal and/or rework it. In addition, if only a few states refuse to make Real ID-compliant driver's licenses for their citizens (an entirely lawful option), the system envisioned by its sponsors will be thrown into crisis, further pressuring Congress to revisit the issue, this time with proper democratic consideration and debate. If this does not happen, this legislation will – in however a chaotic and delayed fashion – go into effect and reshape the power structure of this nation in the most basic ways.

Endnotes

[1] Statistical Abstract of the United States; online at http://www.census.gov/prod/2004pubs/04statab/pop.pdf. For Georgia figure see "States Take Up Photo IDs at Polls Debate," Associated Press, March 30, 2005; available online at http://www.wjla.com/news/stories/0305/217092.html.

[2] "Identity Theft Survey Report," prepared by Synovate for the Federal Trade Commission, September 2003; online at www.ftc.gov/os/2003/09/synovatereport.pdf.

[3] For a survey of press reports documenting problems see Center for Democracy and Technology, "Unlicensed Fraud: How bribery and lax security at state motor vehicle offices nationwide lead to identity theft and illegal driver's licenses," January 2004, pp. 5-7; online at http://www.cdt.org/privacy/20040200dmv.pdf.

[4] On the growing ties between the government and commercial data brokers, see the ACLU Report "The Surveillance-Industrial Complex," p. 26; online at www.aclu.org/surveillance. On airline passenger profiling, see Transportation Security Administration, "Privacy Act of 1974: Notice to establish system of records," *Federal Register*, Vol. 69, No. 185 (Friday, Sept. 24, 2004), p. 57345. See also the explanations of the government's various plans at www.aclu.org/secureflight and www.aclu.org/capps.

[5] Jennifer 8. Lee, "Welcome to the Database Lounge," *New York Times*, March 21, 2002; online at http://tech2.nytimes.com/mem/technology/techreview.html?res=980DE5DE1038F932A1 5750C0A9649C8B63.

[i] Bob Sullivan, "A safer America: The document problem," MSNBC; online at http://www.msnbc.msn.com/id/5946145/.

Additional materials on Real ID can be found at Realnightmare.org

About The Author

The American Civil Liberties Union (ACLU) is one of the nation's leading advocates for the rights of immigrants, refugees and non-citizens, challenging unconstitutional laws and practices, countering the myths upon which many of these laws are based.