

## 1 HOUSE BILL NO. 384

2 INTRODUCED BY D. RICE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT NULLIFYING THE REAL ID ACT AS IT WOULD APPLY IN  
5 MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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7 WHEREAS, in May 2005, the U.S. Congress enacted the REAL ID Act of 2005 (REAL ID Act) as part  
8 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief  
9 Act (Public Law 109-13), which was signed by President Bush on May 11, 2005, and which becomes fully  
10 effective May 11, 2008; and

11 WHEREAS, some of the requirements of the REAL ID Act are that states shall:

12 (1) issue a driver's license or state identification card in a uniform format, containing uniform information,  
13 all as prescribed by the Department of Homeland Security;14 (2) verify the issuance, validity, and completeness of all primary documents used to issue a driver's  
15 license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person  
16 holding a valid visa;17 (3) provide for secure storage of all primary documents that are used to issue a federally approved  
18 driver's license or state identification card;19 (4) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses  
20 or state identification cards; and21 (5) issue a driver's license or state identification card in a prescribed format if it is a license or card that  
22 does not meet the criteria provided for a federally approved license or identification card; and23 WHEREAS, use of the federal minimum standards for state driver's licenses and state-issued  
24 identification cards will be necessary for any type of federally regulated activity for which an identification card  
25 must be displayed, including flying in a commercial airplane, making transactions with a federally licensed bank,  
26 entering a federal building, or making application for federally supported public assistance benefits, including  
27 Social Security; and28 WHEREAS, some of the intended privacy requirements of the REAL ID Act, such as the use of common  
29 machine-readable technology and state maintenance of a database that can be shared with the United States  
30 and agencies of other states, may actually make it more likely that a federally required driver's license or state

1 identification card, or the information about the bearer on which the license or card is based, will be stolen, sold,  
2 or otherwise used for purposes that were never intended or that are criminally related than if the REAL ID Act had  
3 not been enacted; and

4 WHEREAS, these potential breaches in privacy that could result directly from compliance with the REAL  
5 ID Act may violate the right to privacy, as secured by Article II, section 10, of the Montana Constitution, of  
6 thousands of residents of Montana; and

7 WHEREAS, the American Association of Motor Vehicle Administrators, the National Governors'  
8 Association, and the National Conference of State Legislatures have estimated, in an impact analysis dated  
9 September 2006, that the cost to the states to implement the REAL ID Act will be more than \$11 billion over 5  
10 years, and the Motor Vehicle Division of the Montana Department of Justice has estimated that the  
11 implementation of the REAL ID Act will cost Montana \$2,660,000 to fully implement the Act, none of which costs  
12 are or will be paid for by the federal government; and

13 WHEREAS, for all of these reasons, the American Association of Motor Vehicle Administrators, the  
14 National Governors' Association, and the National Conference of State Legislatures, in a letter dated March 17,  
15 2005, to the majority and minority leaders of the U.S. Senate, opposed the adoption of the REAL ID Act, but the  
16 opposition of those groups, and the groups' request that Congress rely on driver's license security provisions  
17 already passed by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, was largely ignored  
18 by Congress; and

19 WHEREAS, the regulations that are to be adopted by the U.S. Department of Homeland Security to  
20 implement the requirements of the REAL ID Act have yet to be adopted and, in reality, will probably not become  
21 effective until the spring of 2007, effectively giving the states only 1 year in which to become familiar with the  
22 implementing regulations and comply with those regulations and the requirements of the REAL ID Act; and

23 WHEREAS, the mandate to the states, through federal legislation that provides no funding for its  
24 requirements, to issue what is, in effect, a national identification card appears to be an attempt to "commandeer"  
25 the political machinery of the states and to require them to be agents of the federal government, in violation of  
26 the principles of federalism contained in the 10th amendment to the U.S. Constitution, as construed by the United  
27 States Supreme Court in *New York v. United States*, 488 U.S. 1041 (1992), *United States v. Lopez*, 514 U.S. 549  
28 (1995), and *Printz v. United States*, 521 U.S. 898 (1997); and

29 WHEREAS, some states, or legislative bodies in some states, such as New Hampshire and Washington,  
30 have, through legislation, opposed the implementation of the REAL ID Act.

1           THEREFORE, the purpose of the Legislature in enacting [this act] is to nullify the REAL ID Act and  
2 thereby protest the treatment by Congress and the President of the states as agents of the federal government  
3 and, by that protest, lead other state legislatures and Governors to reject the treatment by the federal government  
4 of the 50 states by the enactment of the REAL ID Act.

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6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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8           NEW SECTION. Section 1. Legislative finding and nullification of REAL ID Act. (1) The legislature  
9 finds that the enactment into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13,  
10 is inimical to the security and well-being of the people of Montana, will cause unneeded expense and  
11 inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism  
12 contained in the 10th amendment to the U.S. constitution.

13           (2) The legislature of the state of Montana hereby nullifies the REAL ID Act of 2005, as it would apply in  
14 this state. The department, including the motor vehicle division of the department, is directed to report to the  
15 governor any attempt by agencies or agents of the U.S. department of homeland security to secure the  
16 implementation of the REAL ID Act of 2005 through the operations of that division and department.

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18           NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an  
19 integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

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21           NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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