

HOUSE BILL NO. 287
INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT OPPOSING THE IMPLEMENTATION OF THE FEDERAL REAL ID ACT AND DIRECTING THE MONTANA DEPARTMENT OF JUSTICE NOT TO IMPLEMENT THE PROVISIONS OF THE FEDERAL ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

(1) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

(2) verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;

(3) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card;

(4) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards; and

(5) issue a driver's license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

WHEREAS, use of the federal minimum standards for state driver's licenses and state-issued identification cards will be necessary for any type of federally regulated activity for which an identification card must be displayed, including flying in a commercial airplane, making transactions with a federally licensed bank, entering a federal building, or making application for federally supported public assistance benefits, including Social Security; and

WHEREAS, some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state

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

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

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

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

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

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

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

THEREFORE, the purpose of the Legislature in enacting [this act] is to refuse to implement the REAL

ID Act and thereby protest the treatment by Congress and the President of the states as agents of the federal government and, by that protest, lead other state legislatures and Governors to reject the treatment by the federal government of the 50 states by the enactment of the REAL ID Act.

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

NEW SECTION. Section 1. Legislative finding and direction to state agency not to implement REAL ID Act. (1) The legislature 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, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution.

(2) The state of Montana will not participate in the implementation of the REAL ID Act of 2005. The department, including the motor vehicle division of the department, is directed not to implement the provisions of the REAL ID Act of 2005 and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department.

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

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

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