

September 2017

Law and Justice Interim Committee (LJIC)

Rachel Weiss, Research Analyst

# AGENCY OVERSIGHT: DEPARTMENT OF JUSTICE – THE REAL ID ACT OF 2005 AND MONTANA’S COMPLIANCE STATUS

## Background

In May 2005, in response to the attacks on the World Trade Center in New York City and the Pentagon in Washington, D.C., the United States Congress enacted and the president signed the REAL ID Act of 2005. The Act was one part of the larger Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief (Public Law 109-13). The REAL ID Act portion of the legislation established several federal requirements related to state identification cards, driver’s licenses, and the process and documents states use to establish an applicant’s identity. The act limits access to federal facilities (such as military bases) and nuclear plants to cardholders from states that had adopted its minimum standards. The limitation extends to boarding a federally regulated commercial aircraft. The Act was originally scheduled to go into effect in May 2008, though the full implementation of the act’s provisions have been delayed several times, including staggering the timelines for when an individual needs to have a compliant ID to enter various facilities.

At present, the United States Department of Homeland Security (DHS), which is the federal agency responsible for implementing and overseeing the REAL ID Act, has implemented the restrictions on access to military bases, most federal facilities, and nuclear power plants. On January 22, 2018, the DHS will require passengers on commercial flights regulated by the federal government to present REAL ID-compliant identification. People from states without compliant identification cards or driver’s licenses must supply another type of acceptable identification, such as a passport.

As of March 23, 2017, the DHS had classified 26 states and the District of Columbia as REAL ID-compliant. Most other states either had an extension to comply with the minimums standards or were considered noncompliant. At that time, Montana’s status was noncompliant, though the state has since been issued a short extension.

## Montana’s Response to the REAL ID Act

After the REAL ID Act was signed, Montana officials initially refused to implement it. Driven by privacy, cost, and federalism concerns, the 2007 Legislature debated and enacted House Bill No. 287, which prohibited the Montana Department of Justice (DOJ) and the Motor Vehicle Division from implementing REAL ID. The bill passed the House 98-0 and the Senate 50-0. The governor signed the bill, and the prohibition became section 61-5-128, MCA.

As DHS began implementing the REAL ID Act, Montana received several extensions that allowed Montanans to continue to use their state-issued driver’s licenses or identification cards for federal identification purposes. Montana was issued its most recent extension in June of this year. That extension expires October 10, 2017.

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## Efforts by the 2017 Legislature to Address the REAL ID Act Standards

The 2017 Legislature considered at least three bills that related to the REAL ID Act and its minimum standards for federally acceptable identification cards. Senate Bill No. 370, sponsored by Senator Steve Fitzpatrick (R-Great Falls), would have authorized the DOJ to issue enhanced driver's licenses and identification cards to qualified Montana residents who are also U.S. citizens and who chose to apply for the license. The enhanced license would have allowed holders to travel between the U.S. and Canada or Mexico by land or sea, as well as to be used for federal identification purposes. The bill was tabled by the Senate Finance and Claims Committee.

Senate Bill No. 377, also sponsored by Sen. Fitzpatrick, would have repealed section 61-5-128, MCA, and directed the DOJ to prepare a plan to bring the state into compliance with the REAL ID Act by July 1, 2019. The plan would have had to be presented to an interim committee for review and was required to include proposed legislation to bring the state into compliance, a review of potential costs of making Montana's licenses and identification cards compliant, and an analysis of privacy issues related to the state's citizens and the REAL ID Act. SB 377 was tabled by the House Judiciary Committee.

### Senate Bill No. 366 and Implementation Challenges

The third bill, Senate Bill No. 366 proposed by Senator Jill Cohenour (D-East Helena), was the only bill that addressed REAL ID to make it through the legislature and be signed by the governor. It requires the DOJ to issue REAL ID-compliant driver's licenses and identification cards to qualifying applicants. Rather than repeal the prohibition on REAL ID compliance in section 61-5-128, MCA, the bill amends that section to require that the state implement REAL ID. The bill allows a Montana resident to choose between a REAL ID-compliant driver's license or identification card and the standard license or card. A person can hold either the standard driver's license or identification card or the REAL ID-compliant license or card, but not both.

SB 366 grants DOJ the authority to seek a loan from the Board of Investments to help the DOJ finance an information technology system and related costs to implement REAL ID. In addition, it allows the DOJ to charge applicants an additional fee to obtain a REAL ID-compliant license or card and appropriates money to the agency to provide information to the public, for reprogramming or modifying existing IT systems, and for ongoing operational costs related to REAL ID.

Originally, SB 366 contained a delayed effective date of January 1, 2018. However, the bill was amended to include contingency language related to the effective date. The contingency provided that if Montana received another extension from compliance with REAL ID, the bill would be effective January 1, 2019, rather than the original effective date of January 1, 2018. When Montana received an extension on June 21 of this year, the contingency language became effective, meaning the DOJ cannot receive the appropriations, seek grant funding, or offer REAL ID-compliant licenses and cards until January 1, 2019. Unless Montana receives another extension after the current one expires in early October 2017, Montana residents may not use their standard Montana driver's licenses or identification cards to board aircrafts after January 22, 2018.

## Additional Information

The DOJ updated the LJIC members on this topic and the timeline complication at the LJIC's June organizational meeting. The members requested an update from DOJ at the fall meeting and requested background information on SB 366 from legislative staff. The September 2017 meeting packet includes information from DOJ that was previously emailed to

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the committee members. In that packet is a DHS list of the minimum standards in REAL ID and Montana's compliance with those standards.

## Sources Used

This paper was developed using information from the following sources.

- Daniel C. Vock, "Feds Push Gently on 'Real ID'," *Stateline*, Jan. 22, 2014, available from: <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/01/22/feds-push-gently-on-real-id>, last accessed Aug. 16, 2017.
- "DHS Releases Final Implementation Schedule for REAL ID," Office of State-Federal Relations, National Conference of State Legislatures, Jan. 8, 2016, available from: [http://www.ncsl.org/documents/standcomm/scnri/real\\_id.pdf](http://www.ncsl.org/documents/standcomm/scnri/real_id.pdf), last accessed Aug. 16, 2017.
- "Statement by Secretary Jeh C. Johnson on The Final Phase of REAL ID Act Implementation," U.S. Department of Homeland Security, Jan. 8, 2016, available from: <https://www.dhs.gov/news/2016/01/08/statement-secretary-jeh-c-johnson-final-phase-real-id-act-implementation>, last accessed Aug. 16, 2017.
- Countdown to REAL ID webpage, National Conference of State Legislatures, Oct. 14, 2016, available from: <http://www.ncsl.org/research/transportation/count-down-to-real-id.aspx>, last accessed Aug. 16, 2017.
- REAL ID webpage, U.S. Department of Homeland Security, available from: <https://www.dhs.gov/real-id>, last accessed Aug. 16, 2017.
- Bills from the 2017 Legislative Session:
  - Senate Bill No. 366, available from: <http://leg.mt.gov/bills/2017/billhtml/SB0366.htm>
  - Senate Bill No. 370, available from: <http://leg.mt.gov/bills/2017/billhtml/SB0370.htm>
  - Senate Bill No. 377, available from: <http://leg.mt.gov/bills/2017/billhtml/SB0377.htm>
- REAL ID Montana Briefing documents from March 23, 2017, handed out as an exhibit during testimony on SB 370 during the March 28, 2017, hearing in Senate Highways and Transportation: [http://montanalegislature.granicus.com/MediaPlayer.php?clip\\_id=23343&meta\\_id=221544#](http://montanalegislature.granicus.com/MediaPlayer.php?clip_id=23343&meta_id=221544#)

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