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# Wisconsin Briefs

*from the Legislative Reference Bureau*

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## REAL ID

### INTRODUCTION

Following the terror attacks of September 11, 2001, the federal government began devising ways to increase domestic security in the United States. News that the 19 hijackers had fraudulently obtained 30 different state driver's licenses and identification cards made standardizing and securing state-issued identification a high priority.

In response to these concerns, Congress passed the Real ID Act of 2005, requiring states to make significant changes to their state-issued identification procedures. Soon after the legislation was signed, states began making plans to conform with the new federal requirements. In Wisconsin, 2005 Wisconsin Act 126 added a citizenship inquiry to the process of acquiring state-issued identification; 2007 Wisconsin Act 20, the 2007-2008 biennial state budget, later made more substantive and significant changes to the state's procedures.

### REAL ID ACT OF 2005

The terror attacks of 9/11 were the primary impetus behind the Real ID Act, but there were ongoing concerns over illegal immigrants and identity thieves obtaining legitimate state-issued identification in another person's name.

The bipartisan 9/11 Commission recommended in its 2004 final report that the federal government require states to employ more restrictive application procedures and more uniform standards when issuing driver's licenses. Some states, such as California and New York, had already increased security in this area due to immigration and identity theft

concerns. Congress took elements of the 9/11 Commission's recommendations and the law of these and other states to craft the Real ID legislation.

### Federal Legislation

Real ID was originally introduced by U.S. Representative James Sensenbrenner of Wisconsin as H.R. 418, standalone legislation that passed the House of Representatives but was not acted on in the Senate. It was later re-introduced as a rider to a spending bill which eventually became the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005. President Bush signed the bill into law on May 11, 2005, and states began readying for the impending changes to state-issued identification procedures.

### Federal Law

The federal Real ID Act requires states to do two things: increase security when issuing driver's licenses and identification cards, and standardize record keeping to facilitate sharing of state-issued identification information between states and with the federal government. Increased security requires states to be more stringent in identifying the person applying for identification, and requires changes to the physical driver's license or identification card, as well as the information it contains. Standardized record keeping requires that states create uniform data collection policies and interoperable databases to hold the information, as well as procedures for sharing information with other state and federal government entities and agencies.

## State Response

Some states responded negatively to Real ID when it was first signed into law, alleging that it was an unfunded mandate from the federal government that would cost the states, collectively, billions of dollars, and that its terms were imprecise and open to broad interpretation. The federal government responded to many of these concerns on January 11, 2008, when the U.S. Department of Homeland Security issued its final rule order to the states containing the specific requirements of the law, pushing back the initial implementation deadline, and staggering the dates for final, complete compliance so fewer individuals would be immediately affected.

Some states continue to resist the changes. Seventeen states have passed legislation or resolutions objecting to the Real ID Act and its requirements. The majority of these legislative objections are nonbinding, but some, like a Montana law passed in April 2007, prohibit the state's Motor Vehicles Division from enforcing the federal Real ID law or meeting its requirements. This opposition is met by new federal rules that will require an individual to present a Real ID-compliant form of state identification, or a form of federal identification such as a passport, in order to enter a federal building, board an airplane, or receive financial services from certain federally insured institutions, among other things.

Despite the initial resistance, most states are now conforming or planning to conform to the new requirements, and it is anticipated that Real ID will soon be in effect across the United States.

## REAL ID IN WISCONSIN

The Real ID Act requires Wisconsin to make changes to its state-issued identification application process, physical driver's licenses and identification cards, and Department of Transportation (DOT) record-keeping, data-sharing, and personnel procedures. These

changes were originally required to begin by May 11, 2008, but states' concerns prompted the federal government to push back the deadline for initial compliance. The federal government announced in January 2008 that states can obtain up to two waivers from the original May 2008 deadline for initial compliance, the first granting a reprieve of over a year, and the second, which requires a showing of some material efforts toward compliance by the state, waiving the deadline until May 11, 2011.

The federal government also created a staggered final deadline by which all state-issued identification must be compliant with Real ID requirements. States will have until December 2014 to issue Real ID-compliant identification to all applicants under the age of 50, and until December 2017 to bring all applicants over the age of 50 into compliance with the Real ID Act requirements.

## Application

Changes in the application process for state-issued identification will be the primary means of addressing the security concerns targeted by Real ID.

Historically, an applicant for a driver's license or identification card in Wisconsin had to provide proof of identity, date of birth, and state residency. Documents that qualified as proof of identity and date of birth had to identify the applicant by name and contain either a signature or a photograph. Among other forms of documentation, DOT approved birth certificates, driver's licenses and identification cards from Wisconsin or other states, social security cards, military discharge papers, and, in certain cases, some foreign documents as adequate proof of identity. Documents such as recent utility bills, financial statements from state institutions, and certified transcripts from state schools all met the requirements for proof of residency. Applicants also had to provide DOT with a social security number or a sworn affirmation that the applicant did not

have a social security number to receive a driver's license or identification card.

**2005 Wisconsin Act 126.** The first significant change to this system came with 2005 Wisconsin Act 126, which, in anticipation of the Real ID Act requirements, requires applicants to prove that they are citizens of the United States or are in this country legally to obtain state-issued identification. A United States birth certificate or passport is proof of citizenship, and various documents from the U.S. Department of Homeland Security can constitute proof that a noncitizen is present in the country legally. Under Act 126, DOT can also cancel the Wisconsin driver's license or identification card of anyone not in the country legally if DOT is notified of such illegal presence by a federal, state, or local government agency. Finally, under Act 126, a driver's license or identification card issued to a noncitizen will expire on the date that the individual is no longer eligible to legally remain in the United States if that date is sooner than the typical eight-year renewal period. 2005 Wisconsin Act 126 became effective April 1, 2007, and DOT is currently following its requirements.

**2007-2008 biennial budget provisions.** Under the 2007-2008 biennial budget provisions that will bring Wisconsin into full compliance with the federal Real ID law, DOT will issue a driver's license or identification card only to those who can provide an identification document containing either a photograph or the applicant's full legal name and date of birth, as well as documentation of date of birth, if not provided as part of the preceding identification. DOT will also require proof of social security number or verification that the applicant is not eligible for a social security number, proof of primary residence address, and proof that the applicant is a United States citizen or is in the country legally.

Real ID provisions will require subtle but significant changes to many DOT processes. As discussed above, the citizenship inquiry

implemented in 2005 Wisconsin Act 126 was not previously required in Wisconsin. The Real ID Act provisions in the 2007 budget make a further change to the application process with regard to social security numbers. In the past, Wisconsin required a social security number from those applying for a driver's license or identification card, and if an applicant did not have a social security number, he or she was required to make a statement to that effect under oath. Under the Real ID Act requirements, an applicant cannot simply affirm that he or she does not have a social security number, but must affirm that he or she is not *eligible* for a social security number and explain why that is the case, which may lead to further inquiry into citizenship and legal presence in the United States. This will eliminate a DOT rule that has, in the past, allowed individuals who were eligible for social security numbers but chose not to obtain them for religious reasons to obtain a state-issued identification.

To be in compliance with the Real ID Act, DOT is also prohibited from accepting any foreign documentation as proof of identity other than an official foreign passport. In the past, there were limited circumstances under which DOT would consider foreign documents such as birth certificates or identification cards as proof of identity after special consideration. Some states have had much broader allowances for foreign identification. Under the new Real ID Act requirements, however, no state will be allowed to accept foreign documentation, other than an official passport, as proof of identity when issuing a Real ID-compliant driver's license or identification card.

### The Card

Complying with the Real ID Act requirements will require some changes to the contents and appearance of the physical driver's license or identification card. Some of these are very minor, for example, requiring that an

individual's full *legal* name and *principal* residence address appear on any state-issued identification.

Other changes are more significant. Driver's licenses or identification cards issued to noncitizens who are legal temporary residents must now note this temporary status on the license or identification card itself. All state-issued identification will now require a photograph, which means that DOT will no longer be able to waive the photograph requirement for those who object to photography on religious grounds. Wisconsin was one of about a dozen states that offered such a religious waiver for the photograph requirement. Additionally, the photograph on identification must be standardized and digital to create uniform identification and allow the image to be shared between jurisdictions. The identification itself must also be standardized by presenting information in machine-readable, industry-standard bar code form, and containing a security feature to prevent tampering or counterfeiting, such as the hologram seal that Wisconsin currently employs.

### **Expiration**

In addition to the requirements regarding expiration of noncitizens' driver's licenses and identification cards, the Real ID Act will affect state-issued identification expiration dates in other ways. The deadline for complete compliance with the Real ID Act for those under age 50 will come in December 2014, but DOT estimates that up to 800,000 such individuals will still carry a valid, unexpired Wisconsin driver's license or identification card that is not Real ID compliant. These individuals will need to renew their license or identification card before it expires in order to receive a Real ID-compliant form or be denied access by federal agencies when attempting to board an airplane or enter a federal building.

### **Cost to Applicants**

The 2007-2008 biennial budget created a \$10 federal security verification mandate fee that was added to the fee for issuing, renewing, upgrading, or reinstating any driver's license or identification card. DOT estimates that the new fee, which went into effect on January 1, 2008, will generate \$20.7 million through the middle of 2009. This revenue will be used to offset the costs of verifying documentation from other jurisdictions and maintaining Wisconsin records. The current fees, including the security verification fee, now stand at \$28 for an identification card issuance or renewal, \$28 for an initial two- or three-year driver's license issuance, and \$34 for an eight-year driver's license renewal. The additional security verification fee will not apply to fees for duplicate replacement driver's licenses or identification cards.

### **DOT Responsibilities and Security**

Complying with the Real ID Act will require DOT to change more than its application procedures; the department will also be required to maintain a secure database of state-issued identification application materials and information on the applicants themselves.

The data collection and retention changes will begin at the start of the application process, when a digital photograph of an applicant will be taken. This is a departure from past DOT procedure, where the photograph was taken at the end of the process and only used on the identification itself. Under the Real ID Act requirements, the photograph will be stored for at least 10 years, regardless of whether identification is ultimately issued, in order to create a visual database of state-issued identification recipients and applicants who have applied and been found ineligible.

The photograph will be part of a larger file on each applicant that must also contain digital copies of each document provided by an

applicant to prove identity, date of birth, residency, social security number, and legal presence in the United States. These records, like the photograph, will be maintained for at least 10 years, and must contain the date that each document provided by an applicant is verified by DOT with the issuing authority.

### **Verification**

The verification requirement will also be a new duty for DOT. The department will be required to verify every document submitted in the application process. The department will be responsible for determining the exact process and mechanism for this verification, but it is hoped that the standardization and data-sharing provisions of the Real ID Act will make this requirement easier to meet.

### **Sharing**

Another element of the Real ID Act that will impact DOT is the requirement that all data be shared between the states and with local and federal government. This will facilitate verification of documents presented by applicants, as well as limit the risk that an individual could apply for and receive state-issued identification from multiple jurisdictions. To allay privacy concerns, the Real ID Act also contains a prohibition on sharing any personally identifying data with any entity beyond the authorities in local, state, and federal government who have legitimate use for the information. It is expected that this sharing requirement will necessitate the creation of interoperable databases and standardized record-keeping procedures between the states. The Wisconsin DOT will have to consult with other states and the federal government to determine the best way to easily and efficiently share this data between formerly autonomous agencies and departments.

### **Background Checks**

Real ID provisions also require DOT to perform a background check on any individ-

ual responsible for issuing driver's licenses and identification cards at a Division of Motor Vehicles (DMV). Background checks are also required on any individuals who have access to any information system containing data maintained by a DMV. This means that certain individuals not employed by the state, such as outside contractors, are also required to undergo background checks. The expense of performing background checks on those individuals who have access to this data, but are not state employees will be paid for by the employer of those individuals. DOT is required to promulgate administrative rules to govern the procedure to be followed in background checks, and to protect the confidentiality of the information that the background checks reveal. Implementation of background checks began on January 1, 2008.

### **FUNDING**

#### **Wisconsin Appropriations**

Funding for compliance with the federal Real ID Act was provided in 2007 Wisconsin Act 20, the 2007-2008 biennial budget. The budget allocates \$9.8 million in fiscal year 2008, and \$12.2 million in fiscal year 2009, to pay for compliance with the Real ID Act requirements. These funds will be held in the Joint Committee on Finance supplemental appropriation and are available to DOT upon request as the money becomes necessary. The committee may provide funds from the supplemental appropriation up to the amounts listed in the budget. If the funds held in the supplemental appropriation are not needed to implement Real ID Act compliance, then DOT can request that those funds be used for any DOT state funds appropriation from the segregated transportation fund up to the amount budgeted for the Real ID Act, less any amount spent on compliance. The budget also creates 25.9 new full-time positions within DOT for duties related to the implementation and continued support of Real ID Act compliance.

## **Fees**

In addition to the appropriation from the state budget, the federal security verification fee is projected to generate \$6.9 million in fiscal year 2008 and \$13.8 million in fiscal year 2009. The fee has been in effect since January 1, 2008, and applies to any renewal or application for a new driver's license or identification card.

## **Federal Assistance**

The federal government is assisting the states with \$35 million in state grant money to be used for Real ID Act compliance and operation. Most of that grant money is dedicated to the \$31-million Real ID Demonstration Grant fund, and is to be used for projects to assist states in checking other states' motor vehicle records to confirm that an applicant does not have state-issued identification in another jurisdiction, and to verify federal documents submitted by applicants such as immigration and citizenship records. The remaining \$4 million will be available through the Real ID Vital Events Verification State Project Grant fund, which will be used to help states create interoperable information systems to facilitate sharing information and verifying birth certificate records between the states. The federal government hopes that states will explain how funding for their own programs can benefit other states' efforts when requesting grant money.

## **Homeland Security**

In addition to the federal Real ID grants, the federal government has invited states to use up to 20 percent of their State Homeland Security Grant funds for Real ID implementation and operation.

## **Mandate Concerns**

Despite the contributions and allowances made by the federal government, many states are still concerned that this is a largely unfunded mandate. Estimates of the total cost of nationwide compliance with Real ID ranged

from \$11 billion to \$14 billion before the federal government's deadline waivers in January 2008. The total, immediate cost to all states is now estimated by the federal government to be around \$3.9 billion. While less than initially contemplated, this amount is still causing some state leaders to charge that the Real ID Act is an unfunded mandate. The federal government does not appear poised to make any more concessions, but the final deadlines for total Real ID compliance are still years away.

## **Future Funding**

Future funding for Real ID is intended to come from the federal security verification fee attached to all driver's licenses and identification cards issued. The primary expense of Real ID Act compliance is expected to be the creation of new procedures and information services, and the hiring of additional employees who will require background checks. These are considered short-term expenses that will require large sums up front, but little in the way of maintenance.

## **EFFECTIVE DATE**

Some of the changes required for Wisconsin's state-issued identification to be Real ID compliant have already begun. The citizenship inquiry prompted by 2005 Wisconsin Act 126 took effect on April 1, 2007. The federal security verification fee that passed as part of the 2007-2008 biennial budget took effect on January 1, 2008, as did the new DOT and DMV hiring standards and background check requirements, also contained in the budget.

The remaining provisions of the budget pertaining to Real ID were originally intended to take effect on either May 11, 2008, or the date that DOT announced in the Administrative Register it would be prepared to comply. The language was drafted during a time of uncertainty about the requirements and deadlines that would be set by the federal government, so giving DOT the power to set the effective date gave the state flexibility.

The department remains free to announce that it will implement Real ID on May 11, 2008, but it now also has the option of seeking a waiver from the initial federal deadline. Under the federal deadline waiver, states will have until December 31, 2009, to comply with the requirements that citizenship and social security number are verified, and confirm that other jurisdictions have not issued a driver's license or identification card to an applicant. A further waiver, available upon showing compliance with the above, will push the deadline for verifying all of an application's supporting documents back to May 11, 2011. DOT applied for the first waiver, and received approval of the extension on January 28, 2008. Depending on how compliance with Real ID progresses, Wisconsin may also request the second deadline waiver in the future. In any

event, the deadline for final and complete compliance with Real ID Act requirements for those under the age of 50 has been set for December 1, 2014, and December 1, 2017, for those over age 50.

#### **FOR MORE INFORMATION**

For more information on Real ID, visit:

United States Department of Homeland Security – Real ID Questions and Answers:

[www.dhs.gov/xprevprot/laws/gc\\_1172767635686.shtm](http://www.dhs.gov/xprevprot/laws/gc_1172767635686.shtm)

National Conference of State Legislatures – Countdown to Real ID:

[www.ncsl.org/realid](http://www.ncsl.org/realid)

Wisconsin Department of Transportation

– Getting a Driver's License:

[www.dot.wisconsin.gov/drivers/drivers/apply](http://www.dot.wisconsin.gov/drivers/drivers/apply)