

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 659
Judiciary

(Delegate Gutierrez, *et al.*)

Vehicle Laws - Federally Compliant Identification Cards - Issuance

This bill requires the Motor Vehicle Administration (MVA) to issue an identification card that complies with the federal REAL ID Act to any eligible individual who applies for one, regardless of whether he or she already possess a driver's license or State-issued identification card. To be eligible for a federally compliant identification card under the bill, the applicant must be a resident of the State and either a U.S. citizen or lawfully present in the country pursuant to federal law.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase significantly beginning in FY 2010 to hire additional customer agents at each MVA branch office because of the additional transactions required to provide REAL ID compliant identification cards. TTF expenditures also increase significantly to comply with all other federal REAL ID requirements to the extent that these expenditures have not already been accounted for in the Maryland Department of Transportation (MDOT) budget. TTF revenues increase beginning in FY 2010 or 2011 and each fiscal year thereafter due to the cost-recovery provision.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The federally compliant identification card issued under the bill must in all respects comply with the federal REAL ID Act. Thus, MVA may only accept REAL ID compliant proof of age and identity documentation from an identification card applicant, and the effective term of the card may not exceed the period for which the holder is lawfully present in the United States.

In addition to the existing card design and information standards required for State-issued identification cards, the federally compliant card must also contain a prominent notation on the card that states that it is “federally compliant.”

MVA is required to set a fee for the issuance of a federally compliant identification card at a level that enables it to recover its costs of complying with this bill; no fee revenues may be credited to the Gasoline and Motor Vehicle Revenue Account.

Current Law: An identification card issued by MVA may be used for any purpose as legal identification of the individual for whom it is issued. MVA is required to issue an identification card to any individual who (1) is a resident of this State; (2) does not have a driver’s license; (3) presents a birth certificate or other acceptable proof of age and identity; and (4) presents a completed application for an identification card on a form furnished by MVA. If an identification card holder is issued a Maryland driver’s license, the holder must surrender the identification card at that time.

The identification card must contain the applicant’s (1) name and address; (2) birth date; (3) sex; (4) description; (5) color photograph under a procedure approved by MVA; and (6) signature. MVA is required to make the card tamperproof, to the extent possible, and with the signature and seal of the issuing agent.

An identification card expires after five years for applicants 16 years or older, or after two years for applicants younger than age 16. MVA may cancel an identification card if the holder was never entitled to be issued the card, failed to provide accurate or required information in the application, or obtained the card through a misrepresentation or fraudulent information.

Background: On May 11, 2005, President Bush signed into law the REAL ID Act that requires federal agencies to accept only personal identification cards that meet certain standards. The U.S. Department of Homeland Security (DHS) issued final regulations in January 2008. Pursuant to these regulations, MVA will need to verify the identity and lawful status of each applicant for a driver’s license or identification card. Administration officials have announced that Maryland will comply with the REAL ID

Act and that Maryland has been granted a deadline extension until December 31, 2009, for submission of an initial certification package.

The final regulations also allow a state to request, by October 11, 2009, an additional extension to May 10, 2011. An additional extension may be granted only if a state certifies material compliance by January 1, 2010 with the 18 benchmarks contained in DHS's "Material Compliance Checklist" that was issued as an attachment to the final regulations. The summary of the final regulations states that "[t]he eighteen milestones are all mandatory requirements under the Act; one of the most important ones, however, is the state's ability to verify that the applicant is lawfully present in the United States." If a second extension is granted, a state must begin issuing REAL ID compliant ID cards on May 11, 2011.

Key Features of the REAL ID Act

Major elements of the Act's provisions as amplified by the final regulations are set forth below.

- *Implementation:* Individuals younger than 50 on December 1, 2014, must have a REAL ID compliant card if they are to be authorized to use federal facilities. By December 1, 2017, anyone desiring to use federal facilities must have a compliant card. States have to file requests for an initial extension no later than March 31, 2008.
- *Lawful Presence:* As part of the driver's license application process, all applicants are required to establish their lawful presence in the United States through the production of one of the following identity documents: valid U.S. passport; certified copy of a birth certificate; Consular Report of Birth Abroad issued by the U.S. Department of State; Permanent Resident Card issued by DHS; employment authorization document issued by DHS; foreign passport with valid U.S. visa affixed; Certificate of Naturalization; Certificate of Citizenship issued by DHS; or such other documents as DHS may designate. This mandate imposes a new requirement for applicants of driver's licenses in Maryland and requires a statutory change by the General Assembly.
- *REAL ID Card Standards:* DHS had proposed that each state's ID card consist of a uniform set of nine data elements and security features; however, this uniformity requirement was eliminated in the final regulations.
- *Information Technology Systems Development:* Responding to privacy and security concerns, the final regulations clarified how the REAL ID information technology system would be structured. DHS has initiated a verification systems design project in consultation with the American Association of Motor Vehicle

Administrators (AAMVA) and state representatives. The system is envisioned as a hub-based network with the current AAMVAnet system serving as the platform. Maryland and 47 other states currently verify Social Security numbers through AAMVAnet, and the other documents requiring verification under REAL ID could also be added to this system. DHS indicates that it has already begun work on additional security features such as end-to-end encryption and emphasizes that AAMVAnet is a private network with no connectivity to the Internet.

- *Security:* The final regulations clarify that a state-submitted consolidated security plan must address the security of only those facilities that are critical to the issuance, manufacturing, and production of identification. Thus, MVA personnel are required to undergo background checks of criminal records but are no longer subject to checks of financial records as formerly proposed. Enabling background checks for MVA personnel requires legislative action to revise current statutory law. In addition, the final regulations removed the independent adversarial security testing requirement for ID cards, but DHS is working to develop standard testing procedures for future voluntary use. DHS maintains that certain features are required for the surface of the card; although in lieu of certain card design standards, it has decided to accept state documentation of its fraud control measures. A barcode will be required, though states will not be required to secure the barcode with encryption technology.

State Actions

According to the National Conference of State Legislatures (NCSL), five state legislatures have enacted legislation to comply with REAL ID and 24 have enacted laws rejecting compliance with REAL ID or urging the U.S. Congress to repeal the Act. The National Governors Association, NCSL, and AAMVA have been collaborating for several years to study the Act's provisions and fiscal impacts and to make recommendations to DHS. Generally, this coalition of state groups has been opposed to the Act, although AAMVA has urged its members to move forward with implementation. In December 2008, NCSL reaffirmed its official policy in opposition to REAL ID since final regulations were released.

Since 2007, two states (Indiana and Nevada) enacted laws to comply with federal REAL ID standards. At least three states (Nevada, Tennessee, and Virginia) have appropriated money for REAL ID implementation. Some states have considered proposals to develop multi-tiered licensing systems or to subsidize the use of alternative forms of identification, such as the U.S. passport, which will serve the same purpose as a REAL ID. Utah statutorily established a two-tier licensing system. Altogether, legislators in 28 states proposed compliance legislation or alternative REAL ID bills in 2008.

State Fiscal Effect: MDOT and MVA have achieved significant progress toward compliance with the requirements of REAL ID. Maryland has reached, or is close to reaching, compliance with 15 of the 18 material compliance benchmarks. The 2009-2014 *Consolidated Transportation Program* contains \$1.9 million in fiscal 2010 and over \$6.8 million total for ongoing capital equipment and information technology projects to comply with REAL ID. Maryland has received over \$1.1 million in federal REAL ID grant funds from DHS, and additional federal grant funds may be available in the future. Further, although not required for REAL ID, \$2.4 million is included in the fiscal 2010 budget for central issuance of driver's licenses and identification cards by MVA.

Estimates of the future expenditures necessary to achieve full compliance with REAL ID vary greatly. For example, information provided to the General Assembly in October 2008 indicates that personnel-related costs are estimated to be between \$16.52 million and \$20.23 million between fiscal 2010 and 2014, with additional capital spending of \$5.6 million between fiscal 2009 and 2014, for a total cost range of between approximately \$22.1 million and \$25.8 million. This compares to an estimated range of between \$60 million and \$100 million provided to the General Assembly in a 2007 report, and an estimate of \$83.0 million provided to DLS in February 2008. The substantial variability in cost estimates may be attributed to different time horizons for implementation in each estimate, inclusion of costs that would have been incurred in the absence of REAL ID implementation, changes in federal regulations, different implementation approaches, and general uncertainty associated with forecasting the cost of contracting with outside vendors. Further, DHS has acknowledged that the federal REAL ID regulations still have gaps and other technical issues that need to be resolved in the future.

Legislative Services advises that, due to substantial cost uncertainty, a reliable estimate cannot be made as to the cost of implementing the bill exclusive of the ongoing expenditures currently budgeted for implementation of REAL ID. However, due to the statutory cost-recovery provision, TTF revenues increase beginning in fiscal 2010 or 2011 and each fiscal year thereafter from an increase in fees for the issuance of permits, licenses, and identification cards.

Additional Comments: MVA advises that, although the bill has an effective date of October 1, 2009, it is not possible to begin issuing REAL ID compliant cards on that date.

Additional Information

Prior Introductions: A nearly identical bill was introduced in the 2008 session as HB 1306 and was heard by the House Judiciary Committee but was later withdrawn.

Cross File: None.

Information Source(s): Office of the Attorney General, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, U.S. Department of Homeland Security, National Conference of State Legislatures, National Governors Association, American Association of Motor Vehicle Administrators, Department of Legislative Services

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