



## DEPARTMENT OF PUBLIC SAFETY: STATE IDENTIFICATION AND THE FEDERAL REAL ID ACT

EXECUTIVE APPROPRIATIONS COMMITTEE  
STAFF: GARY SYPHUS

ISSUE BRIEF

### SUMMARY

Currently state statute provides that “The state may not participate in the implementation of the REAL ID Act” of 2005 (53-3-104.5). Nevertheless, it further clarifies that this “does not preclude the division from complying with provisions of the REAL ID Act that are already: (a) adopted by administrative rule; or (b) authorized under this code.” Until recently, Utah standards for the issuance of sources of identification, issued by the state Department of Public Safety (DPS) have been adequate and certified by the federal Department of Homeland Security (DHS) to be REAL ID compliant, allowing for instance, Utah ID holders to board commercial aircraft, access certain federal facilities, etc.

DHS recently communicated that according to rule they will not accept the current Utah design/markings on the actual ID cards which will put the State out of compliance. This is in part due to a conflict in statute which puts the state statute at odds with federal rules in this particular case. Based on the state law, DPS will not advance official REAL ID implementation (but are preparing in case the law is changed to be compliant with federal law).

Should the Legislature decide to change the law and signal to DPS that the state is to be REAL ID compliant, DPS would move forward with the issuance of a new REAL ID compliant card. This would allow for Utah ID holders to continue to take advantage of any benefits (such as continuing to board commercial aircraft, entering certain federal facilities, etc.) but would have additional costs of reissuing federal REAL ID Act compliant ID cards.

During the August 14<sup>th</sup> Executive Offices and Criminal Justice Appropriations Subcommittee meeting, the Subcommittee unanimously approved a letter of support in the Governor’s and DPS’ efforts to either be certified as compliant or at least allow for more time to resolve the issue for both budgetary and practical reasons.

### LEGISLATIVE ACTION

Based on the analysis provided in this brief, the Legislative Fiscal Analyst (LFA) recommends the Legislature consider the following options:

- 1. Do nothing/maintain current law** – By maintaining the status quo, beginning October 1, 2020, Utah state identification would not be a REAL ID Act accepted form of identification and would not be able to be used for certain federally-related purposes previously mentioned. The state would also avoid reissuance costs described in option #2 below.
- 2. Change statute to be REAL ID ACT compliant** – By changing the current law to allow for REAL ID Act compliance, beginning October 1, 2020 Utah state identification would be an acceptable form of identification for certain federally-related purposes. This change could cost the state between \$3.4 million and \$5 million or more depending on when a change were to be

made. DPS reports that some formal indication from state leadership (Governor, Senate President, and Speaker of the House) may lengthen the time the state has to respond.

## **DISCUSSION AND ANALYSIS**

### ***What is the federal REAL ID Act?***

The federal Department of Homeland Security (DHS) describes federal REAL ID Act:

*Passed by Congress in 2005, the REAL ID Act enacted the 9/11 Commission's recommendation that the Federal Government "set standards for the issuance of sources of identification, such as driver's licenses." The Act established minimum security standards for state-issued driver's licenses and identification cards and prohibits Federal agencies from accepting for official purposes licenses and identification cards from states that do not meet these standards. States have made considerable progress in meeting this key recommendation of the 9/11 Commission and every state has a more secure driver's license today than before the passage of the Act.*

### ***REAL ID Compliance Effects***

Beginning October 1, 2020, in addition to states needing to be REAL ID compliant, (federal) DHS reports that state ID cards themselves have appropriate design/features indicating that they are explicitly REAL ID compliant:

*Starting October 1, 2020, every state and territory resident will need to present a REAL ID compliant license/ID, or another acceptable form of identification, for accessing Federal facilities, entering nuclear power plants, and boarding commercial aircraft. This is what we call "card-based" enforcement. The card, itself, must be REAL ID compliant unless the resident is using an alternative acceptable document such as a passport. The Act does not require individuals to present identification where it is not currently required to access a Federal facility (such as to enter the public areas of the Smithsonian) nor does it prohibit an agency from accepting other forms of identity documents other than documents from non-compliant states (such as a U.S. passport or passport card).*

Because statute provides that we are not to comply with the REAL ID Act, DPS reports that they are maintaining the status quo of not explicitly/officially complying with the REAL ID requirements (which in this case is the design of the State ID's themselves). This would have the effect of state ID not being REAL ID compliant going forward and could result in Utah ID holders not being allowed to board commercial aircraft, enter certain federal facilities, etc. previously mentioned assuming ID holders do not have an alternative form of acceptable identification such as a passport.

Should the Legislature decide to change state law to be REAL ID compliant, the longer it takes to make the change, the more costly it may be. In many cases, DPS would need to reissue cards with the required design/features. Depending on if and when the law were to change, DPS reports that a significant portion of these renewals could be updated with little or no cost as they would be updated with the new required features through their normal course of business.

If DPS renews and issues a license under the current law and the law is then changed to be REAL ID compliant. DPS would need to reissue a new card in place of the one that was already issued before the law change. Conversely if the law is changed before the renewal, DPS can reissue that card with

the required features through their normal course of business and minimize costs. Assuming the law were to change, besides allowing for state ID holders having any benefits from REAL ID compliance, this could have an estimated impact of about \$3.4 million immediately and up to \$5 million or more for reissuing cards depending on how long it takes to change the law up to the October 1, 2020 date reported by DHS.

***Recent Legislative Action***

On August 14<sup>th</sup>, 2018, the Executive Offices and Criminal Justice (EOCJ) Appropriations Subcommittee unanimously moved to issue a letter of support to the efforts of Governor Herbert and DPS. Specifically, they moved to issue a letter of support in allowing for more time to respond to the federal administrative rules/determinations from the Department of Homeland Security (DHS) regarding the federal REAL ID Act of 2005 (REAL ID) including (1) being certified as a compliant state or (2) the granting of an extension in order to better respond to these federal regulations.