

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 2/1/2016
LAST UPDATED _____ HB _____
SHORT TITLE Driver's License Issuance & Federal Real ID SB 231
ANALYST Malone/Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$75.0	\$300.0- \$2,071.5	\$0.0	\$375.0- \$2,146.5	Non-recurring	TRD-MVD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 94, HB 99, HB 123, HB 144, SB174, SB 216, and SB 256

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 231 amends and enacts statutory sections of the Motor Vehicle Code to provide for the issuance of identification cards that meet the requirements of the federal REAL ID Act of 2005 that are distinguishable from a driver's license and an identification card. Except for REAL ID cards, all driver's licenses and identification cards issued by the state shall bear the statement "NOT FOR FEDERAL PURPOSES." The bill has an emergency clause.

The bill provides that a person who is a New Mexico resident and who has "lawful status" may be issued a REAL ID card providing lawful status and residency are verified. Lawful status" means the legal right to be present in the United States, as that phrase is used in the federal REAL ID Act of 2005. Applications for a REAL ID card shall contain an applicant's social security number except for an applicant ineligible for a social security number. Every REAL ID card shall be issued for a period not to exceed four years. However, at the option of the applicant, a period of eight years shall may be issued provided the applicant pays an amount required and relative to the term of eight years, and except as provided in Subsections E and G, which outline terms of renewal.

SB 231 specifically requires written notification of either a name change or an address change within ten days of moving to a different address not named in the application for a REAL ID.

Finally, the bill establishes existing criminal sanctions (from misdemeanor to felony status) applicable to the unlawful use and issuance of a REAL ID.

FISCAL IMPLICATIONS

TRD anticipates that necessary changes related to design and production of new REAL ID compliant credentials as well as training would cost the department \$75 thousand (see administrative implications below).

Due to the emergency clause requirement that the department establish and issue REAL ID compliant credentials immediately upon the effective date of the legislation, TRD anticipates that the costs for overtime to issue an estimated 500 thousand credentials would be \$2.1 million. However, because the REAL ID is optional, it is unlikely that all credentials would be issued immediately and the cost could be much lower.

The bill does pose an uncalculated additional financial impact to individuals who are required to pay for the costs associated with obtaining a REAL ID identification card.

SIGNIFICANT ISSUES

This bill seeks to create driver's licenses that meet the requirements of the federal REAL ID Act of 2005. The Department of Homeland Security (DHS) explains that REAL ID is a coordinated effort by the states and the Federal Government to improve the reliability and accuracy of state issued identification documents. REAL ID establishes mandatory standards governing state issuance of secure driver's licenses and identification cards. Residents of states which fail to comply with REAL ID will ultimately be unable to utilize their state-issued identification cards to board airplanes, enter federal buildings, or for a range of other "official [federal] purposes." REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 312 (May 11, 2005). New Mexico is currently in the process of complying with the terms of REAL ID, but many of the state's provisions governing the issuance of driver's licenses and identification cards remain inconsistent with the requirements of the federal law.

According to the National Conference of State Legislatures, On Jan. 8, 2016 the U.S. Department of Homeland Security (DHS) released an updated timeline for the implementation of the final phase of REAL ID, which pertains to enforcement by the Transportation Security Administration (TSA) at airports regarding domestic air travel. Beginning Jan. 22, 2018, passengers with a driver's license issued by a state that is still not compliant with the REAL ID Act (and has not been granted an extension) will need to show an alternative form of acceptable identification for domestic air travel in order to board their flight. Passengers with driver's licenses issued by a state that is compliant with REAL ID (or a state that has been issued an extension) will be able to use their driver's licenses or identification cards. Starting on Oct. 1, 2020, every air traveler will need a REAL ID-compliant license, or another acceptable form of identification, for domestic air travel.

The Department of Homeland Security 18 point checklist for material compliance with the REAL ID Act is attached.

According to AOC, the SB 231 addresses most of the detailed requirements of the federal rule with the exception that there is no reference to the American Association of Motor Vehicle Administrators training and or a requirement of background checks for issuing staff.

ADMINISTRATIVE IMPLICATIONS

TRD notes that the requirement that NM begin issuing REAL ID compliant credentials immediately is impossible and would put enormous strain on MVD. Furthermore, the agency notes that is unnecessary to petition for an extension with DHS and that the state must be certified in compliance before issuing REAL ID compliant credentials.

TRD anticipates that implementation would take about 14 weeks, not accounting for the amount of time for MophoTrust (the state's license provider) to make appropriate changes and perform testing.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 94, HB 99, HB 123, HB 144, SB174, SB 216, and SB 256 all conflict with SB231 as they also make changes to the Motor Vehicle Code for REAL ID compliance.

OTHER SUBSTANTIVE ISSUES

The AGO has indicated on other bills related to the REAL ID Act that because the legislation may result in the enactment of distinctions in legal rights based upon the alienage (or nationality) of the applicant, it potentially runs afoul of state and federal constitutional provisions that demand equal treatment of people by the government. In New Mexico, where the people are afforded heightened constitutional equal protection rights, disparate treatment of a disfavored group potentially gives rise to especially searching scrutiny by the judiciary. AGO has also observed that the courts are especially skeptical of government actions which withdraw existing rights from such disfavored groups.

TRD notes that the bill implicates both the Driver's License Compact ("the Compact") and Section 66-5-401 NMSA 1978. Under Section 66-5-401 NMSA 1978 and the Compact, NM does not issue an ID card to someone who has a license or vice versa.

CEM/jle/jo

Attachment: Driver's License Issuance & Federal Real ID

Attachment: Driver's License Issuance & Federal REAL ID

According to the National Conference of State Legislatures, On Jan. 8, 2016 the U.S. Department of Homeland Security (DHS) released an updated timeline for the implementation of the final phase of REAL ID, which pertains to enforcement by the Transportation Security Administration (TSA) at airports regarding domestic air travel. Beginning Jan. 22, 2018, passengers with a driver's license issued by a state that is still not compliant with the REAL ID Act (and has not been granted an extension) will need to show an alternative form of acceptable identification for domestic air travel in order to board their flight. Passengers with driver's licenses issued by a state that is compliant with REAL ID (or a state that has been issued an extension) will be able to use their driver's licenses or identification cards. Starting on Oct. 1, 2020, every air traveler will need a REAL ID-compliant license, or another acceptable form of identification, for domestic air travel.

The federal Department of Homeland Security has published a checklist for material compliance with the REAL ID Act that includes eighteen elements that a state law needs to include. The following are the elements. The citations to laws refer to 6 Code of Federal Regulations Part 37.

1. Subject each applicant to a mandatory facial image capture and retain such image even if a driver license (DL) or identification card "ID" is not issued.
2. Have each applicant sign a declaration under penalty of perjury that the information presented is true and correct, and the State must retain this declaration.
3. Require an individual to present at least one of the source documents listed in subsections (i) through (x) [of section 37.11(c)(1)] when establishing identity.
4. Require documentation of: Date of birth; Social Security Number; Address of principal residence; Evidence of lawful status.
5. Have a documented exceptions process that meets the requirements established in Section 37.11(h)(1)-(3) (if States choose to have such a process).
6. Make reasonable efforts to ensure that the applicant does not have more than one DL or ID already issued by that State under a different identity.
7. Verify lawful status through SAVE or another method approved by DHS.
8. Verify Social Security account numbers with the Social Security Administration or another method approved by DHS.
9. Issue DL and IDs that contain Level 1, 2 and 3 integrated security features.
10. Surface of cards include the following printed in formation in Latin alpha-numeric characters: Full legal name; Date of birth, Gender; Unique DL/ID number; Full facial digital photograph; Address of principal residence [with exceptions]; Signature [with exceptions]; Date of transaction.
11. Commit to marking fully complaint DL and IDs with a DHS-approved security marking.
12. Issue temporary or limited-term licenses to all individuals with temporary lawful status and tie license validity to the end of the lawful status.
13. Have a documented security plan for DMV operation in accordance with the requirements set forth in section 37.41.
14. Have protections in place to ensure the security of personally identifiable information.
15. Require all employees handling source documents or issuing DL or IDs to attend and complete the American Association of Motor Vehicle Administrators (AAMVA)

approved (or equivalent) fraudulent document recognition training and security awareness training.

16. Conduct name-based and fingerprint-based criminal history and employment eligibility checks on employees in covered positions or an alternative procedure approved by DHS.
17. Commit to be in full compliance with Subparts A through D on or before May 11, 2011.
18. Clearly state on the face of non-compliant DLs or IDs that the card is not acceptable for official purposes, except for licenses renewed or reissued under section 37.27.

Dep't of Homeland Security, Office of Inspector General, *Potentially High Costs and Insufficient Grant Funds Pose a Challenge to REAL ID*, OIG 9-36, p. 9 (March 2009) (https://www.oig.dhs.gov/assets/Mgmt/OIG_09-36_Mar09.pdf)