

# Heritage Lectures

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## Making REAL ID a Reality: Next Steps for Congress

*The Honorable Jim Sensenbrenner*

**Abstract:** *Based on recommendations by the 9/11 Commission, the REAL ID Act sets minimum legal requirements for driver's licenses and other state-issued identification. Several of the 9/11 hijackers had obtained at least 30 pieces of state identification, including multiple driver's licenses. Most states have made significant progress in updating their identification processes and have indicated they intend to comply with REAL ID. Yet, the Obama Administration has allowed the program to languish over the past two years, and Department of Homeland Security Secretary Janet Napolitano has delayed the compliance deadline until 2013. On June 22, 2011, Representative Jim Sensenbrenner (R-WI) addressed an audience at The Heritage Foundation to explain facts and clarify myths about REAL ID.*

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I'm honored to be here to talk about REAL ID. I was the author of the REAL ID Act of 2005, and have been the defender of the legislation against a lot of urban legends that have been spread around the Internet.

What I want to do today is talk about why the REAL ID Act was necessary, what it does, and most importantly, what it doesn't do. I think that this will clarify why this is really an essential piece of legislation for our homeland security.

The 9/11 Commission found that the hijackers possessed at least 30 pieces of identification—some obtained fraudulently, some multiple driver's licenses issued by several states—and as a result of that, they were able to evade any type of consequences for traffic

### Talking Points

- The 9/11 Commission found that the 9/11 hijackers had at least 30 pieces of state identification—some obtained fraudulently, some multiple driver's licenses issued by several states.
- The REAL ID Act is intended to close the loopholes that let terrorists and others game the system.
- REAL ID does two basic things: (1) Residents from one state cannot simply cross state lines to obtain a second driver's license—one driver's license per person and (2) no driver's license for people who are in the country illegally.
- REAL ID is *not* an unfunded mandate; it is *not* an assault on federalism, and it is *not* a national ID law.
- REAL ID Act simply directs the Department of Homeland Security to establish minimum security standards for state motor vehicle agencies—something that is in all Americans' interest.

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This paper, in its entirety, can be found at:  
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citations that may have been obtained. If they got stopped a second time by the police, they would pull out another driver's license, and when the police checked it out in the National Crime Information Center database, they were found to have been clean. This pointed out the fact that terrorists were able to exploit holes in our driver's license system. It was clear to the 9/11 Commission members that something needed to be done to close that vulnerability.

Most of us use driver's licenses for identification; most of us use it as a "breeder document," meaning that you can use your driver's license to get other kinds of identification, whether it is issued by a government or by a private institution, such as a non-public university. But there have also been people who aren't terrorists who have been gaming the system. For example, if you get up to one point short of losing your license because of multiple convictions, you can simply hop across the border to another state, use your cousin's address and get a brand-new, point-free driver's license that you can whip out the next time you are stopped by a police officer for a moving traffic violation.

Something had to be done to address these vulnerabilities. Now, the REAL ID Act was passed separately by the House in February 2005, and then it was incorporated into a supplemental appropriation bill by the Senate in May 2005. The Senate passed the bill by a vote of 100 to nothing.

What the REAL ID Act did was to direct the Department of Homeland Security to establish minimum security standards for state motor vehicle agencies. REAL ID does two things. First, it says one driver's license per person, so you can't cross the state line and go to the Department of Motor Vehicles and get another driver's license without having your previous driver's license checked. Essentially this means that applicants must prove that they are who they say they are. The second thing is that there are no driver's licenses for illegal immigrants. One of the provisions of the REAL ID Act is that if you are here on a visa that expires in six months, you can't get a six- or eight-year driver's license; you get a license that expires in six months. So, an illegal immigrant cannot use a driver's license to hide the fact that his visa has expired and he is here illegally.

In terms of the "one driver's license per person" rule, the REAL ID Act did the same thing that we have done for over a decade prior to the enactment of REAL ID on commercial driver's licenses, and that is to require a state to check with other states on whether the applicant for a driver's license has a valid driver's license in another state. If he does, he would be required to surrender the other state's driver's license as a precondition to getting a license from his new state of residence.

Now, there are also some security requirements involved that state that you have to prove your identity and legal presence in the U.S. when you apply for or renew a driver's license. Specifically, the states have to put in stronger security features in their licenses and institute internal control on card inventory to reduce counterfeiting. This means: If you're under 21 in a college town, beware. Finally, the states have got to provide instruction to DMV employees on how to spot counterfeit documentation, and also on how to conduct background checks to make sure that DMV employees are not in cahoots with terrorists or other gamers to issue driver's licenses to people who should not get them.

Now, what does REAL ID *not* do? It does not establish a national database (and I've heard an awful lot of complaints that REAL ID is a national ID law). I am opposed to that. All that REAL ID requires is that when someone applies for a driver's license, the DMV of the application state has got to check with other state DMVs to make sure that somebody does not get two driver's licenses—just like has been done, as I've said, for commercial driver's licenses.

REAL ID is also *not* an unfunded mandate. The governors wanted to use REAL ID as a way of unilateral revenue sharing—I would refer to it as deficit and debt sharing—and the Governors Association said it would cost \$12 billion to comply with REAL ID law. In fact, it has cost much less. Congress has appropriated nearly \$300 million in grants to the states through fiscal year 2011 to implement more security for driver's license issuance. Eighteen states have moved forward to attain material compliance with REAL ID Act regulations. Four states have met full compliance.

REAL ID is *not* an assault on federalism. It is voluntary for states to comply with REAL ID. About 12 states have chosen not to do so. Citizens of a state that chooses not to comply with REAL ID cannot use a non-compliant driver's license for a federal purpose—which would be getting on an airplane, gaining access to a nuclear power plant, and the like—and their citizens would have to get a federally approved ID, such as a passport—which I think now costs about \$120, which is a lot more than a driver's license costs in any state.

All of these things are necessary, with the safeguards that I have described, simply to make sure that the person who is sitting next to any one of us on a plane is not a terrorist. So REAL ID is a good

law, it was slow to be implemented, but I would think that within the next couple of years there will be at least 40 states that meet the minimum standards for REAL ID. And we have to keep on pressuring governors and state legislators to do it, because it is in the interest of their citizens that their driver's licenses be used for federal purposes rather than forcing people to get another form of federally approved ID.

—*The Honorable Jim Sensenbrenner represents the Fifth District of Wisconsin in the U.S. House of Representatives. He serves on the Committee on the Judiciary and is Chairman of the Crime, Terrorism and Homeland Security Subcommittee.*