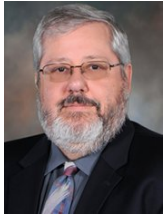


# Understanding REAL ID



By Paul Engel

May 17, 2025

- After 20 years, the REAL ID Act of 2005 is finally being enforced.
- Is this a REAL ID or a new National ID?
- Does Congress have the authority to tell states how to issue drivers' licenses?

It took more than 20 years, but the REAL ID Act of 2005 is finally being enforced. While several people have talked about the requirements for a REAL ID, and whether or not they even need one, I haven't heard anyone ask one very important question: Is it legal?

## History

After the attacks on September 11, 2001, politicians were scrambling to find ways to claim they were protecting the American people. The Patriot Act, the Transportation Security Administration, and the explosion of surveillance cameras are just a few examples. In the middle of this maelstrom of security came "The REAL ID Act of 2005." What was the purpose of this legislation?

To establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.

## [The REAL ID Act of 2005](#)

If there's one thing I've learned about reading legislation, it's don't believe the title. Yes, this is the REAL ID Act, and yes it does claim to create standards for REAL IDs, but that's not all it does. As a matter of fact, less than 20% of the words in this legislation have anything to do with REAL IDs. Most of the language deals with terrorists and immigration.

The logic behind the REAL ID portion of this legislation is to insure that those who've been issued these "enhanced" identifications really are the people they claim to be. This is supposed to enhance security for air travel and access to federal and military locations.

### Title II—Improved Security For Drivers' Licenses And Personal Identification Cards

The first thing we need to understand about REAL ID is that it is only for federal recognition.

### SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

## [The REAL ID Act of 2005](#)

This act places no requirements that a state not only recognize a REAL ID, it simply defines the requirements for a state issued ID to be recognized by the federal government. However, even with this simple goal, things did not work out as planned.

#### (a) Minimum Standards for Federal Use.—

(1) In general.—Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

## [The REAL ID Act of 2005](#)

Even though the requirement for federal agencies to accept only REAL IDs was three years after the enactment of this legislation, it took 20 years to get everything in place.

(b) Minimum Document Requirements.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

## [The REAL ID Act of 2005](#)

Part of the reason for the delay were the requirements for a state issued ID to meet these new standards. Most of the standards are pretty simple: Full name, date of birth, address, etc. However, a couple of requirements made things difficult.

(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

(9) A common machine-readable technology, with defined minimum data elements.

## [The REAL ID Act of 2005](#)

Remember, there are 50 states plus the District of Columbia, not to mention territories like Puerto Rico and Guam, that had to both agree to and adopt these standards. What security features would the states implement? Could all of the states produce IDs with those features or would they have to buy new equipment? Did all of the states have data systems to collect and process the minimum data elements? And who would decide which security features and data elements would be required?

## **Federal Overreach**

It seems Congress can hardly pass legislation without going beyond the powers vested in them by the Constitution. Take for

example this demand of the legislation.

(c) Minimum Issuance Standards.—

(1) In general.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

[The REAL ID Act of 2005](#)

Nothing in the Constitution of the United States delegates to its government the power to regulate driver's licenses or identification. Congress can determine the rules for identifications that federal agencies are allowed to accept, but they cannot dictate to the states what their ID's must include. While technically the states are only required to meet these standards if they want the federal government to recognize them, like voter registration, it will be difficult for states to create a two-tiered identification system. That is not the only overreach in this section:

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

[The REAL ID Act of 2005](#)

Tell me, what does participation in the illegal government retirement program have to do with your identification? How does a social security number verify who you are, especially since these documents do not include a photo or other information used for identification purposes? Could this be another attempt to make sure everyone participates in this illegal program?

Then there are the "special requirements," some of which will make things quite difficult for some people.

(2) Special requirements.—

...

(B) Evidence of lawful status.—A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person—

(i) is a citizen of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;

...

### [The REAL ID Act of 2005](#)

My first thought is this will make things more difficult for “sanctuary” cities and states. After all, they won't be able to go 100% to REAL IDs since illegal aliens are not eligible for them. Then I thought, what if an illegal alien needs to enter a federal courthouse, possibly to turn themselves in or appear for a hearing? They will be required to have a REAL ID to enter, so they will need some other form of ID, which they may not possess. So how could they comply with a federal order to appear if courthouse security won't let them in?

On the other hand, this would also stop someone from recreating Biden's catch and release program, where his administration flew illegal aliens around the country. I guess they would have to make sure that someone has acceptable ID to apply for amnesty.

(3) Verification of documents.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

### [The REAL ID Act of 2005](#)

And who verifies that the documents were verified? What if those documents were issued by entities that don't share information? For example, states can accept official foreign passports for identification, but how do states verify those passports?

## **Expanding the Police State**

As if the examples of the federal government becoming a police state aren't numerous enough, this REAL ID expands them further.

(d) Other Requirements.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

## [The REAL ID Act of 2005](#)

More instances of governments trying to capture images of you to search later. I've talked before about [Automated License Plate Readers](#); now the government wants a copy of your driver's license photo, and they want it in a database. As if that weren't bad enough, the federal government will bribe the states into sharing this data with others.

## SEC. 203. LINKING OF DATABASES.

(a) In General.—To be eligible to receive any grant or other type of financial assistance made available under this title, a State shall participate in the interstate compact regarding

sharing of driver license data, known as the 'Driver License Agreement,' in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.

(b) Requirements for Information.—A State motor vehicle database shall contain, at a minimum, the following information:

(1) All data fields printed on drivers' licenses and identification cards issued by the State.

(2) Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

### [The REAL ID Act of 2005](#)

How is the federal government going to get the states to join in this database? With bribery, of course, but I'll talk more about that later. And just what restrictions will be placed on the access of this database? Will law enforcement require a warrant to search it? Because there will be more in this database than just your identification and driving record.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

### [The REAL ID Act of 2005](#)

That's right, your social security number is part of the verification of who you are. While your SSN doesn't have to be printed on your license, and therefore isn't required to be included in this interstate database, the state is required to retain that data for future use. I wonder what that could be about?

### **More Federal Bribery**

Since this legislation has put requirements on the states that will cost them money if they wish their IDs to be federally recognized, Congress can't seem to resist waving a bribe before them.

#### SEC. 205. GRANTS TO STATES.

(a) In General.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

#### [The REAL ID Act of 2005](#)

That's right, the Secretary of Homeland Security is not only authorized to bribe the states with grants not authorized by the Constitution of the United States. Congress has already appropriated whatever money the Secretary claims is necessary for previous years. Do you really think Congress won't embezzle more funds for this ID program?

#### **Conclusion**

Now, after 20 years of trying, this legislation is finally going into effect. While I recognize the need for identification to be trustworthy, I don't think Congress should be allowed to violate the Constitution to do so. Yes, what I've covered is mostly within the section for federal recognition of IDs, but even there Congress seems to have ignored the supreme law of the land.

One of the obvious purposes of this so-called REAL ID appears to be to make sure everyone has their illegal social security number. I'm still baffled by why the federal government wants to link their illegal retirement system to your photo ID? Could it be this is their attempt to create a national ID



system? Congress has tried in the past to create a national ID, and failed. Could linking REAL ID to your social security number be a back-door to do so? By placing any financial assistance to the states to their participation in an interstate compact to share data, Congress has effectively created a national ID database, including not only your name and birthdate, but a facial recognition image. And this data is linked to your state ID, which includes copies of the documents you used to prove your identity. In other words, everything law enforcement needs to find you if they want. This would be scary enough if Congress and the courts required law enforcement to follow the Fourth Amendment, but in general they haven't.

Does the federal government have the authority to determine the requirements for the identification documents they accept? Yes. Can Congress limit access to federal buildings to those with proper ID? Generally yes, but I do see some problems with the limitations they've put place. Does the federal government have the right to limit air travel to those with these documents? I see nothing in the Constitution that would grant to them that power. After all, the act of flying is not commerce. While Congress can regulate both the interstate and foreign commerce parts of commercial flight, where do they get to regulate who can fly? It's not the Constitution of the United States.

After asking about the Constitutionality of The REAL ID Act, the next most common question is: Do I need one? Ultimately, it's up to you. When I lived in New York State, I got an enhanced driver's license to allow me to drive across the Canadian border without other documentation. That was my decision, which I made for my convenience. While many "news" outlets imply that people will need a REAL ID to fly or enter a federal building, that is not true. There are other federally recognized IDs, like a passport, which will work just fine for these purposes. So the answer to the question,

“Do you need a REAL ID?” ultimately comes down to your convenience vs your concerns about a federal ID database. If you have no immediate need to fly or enter a federal building, you can put off this decision until you renew your driver’s license.

The major concern I have personally regarding REAL IDs is that national database. Will Congress one day try to force the states to only issue REAL ID driver’s licenses? While unconstitutional, illegal, and void, it would not surprise me one little bit. And if you’re hoping the courts would prevent such unconstitutional legislation, recent history shows that would be unlikely.

© 2025 Paul Engel – All Rights Reserved

E-Mail Paul Engel: [paul@constitutionstudy.com](mailto:paul@constitutionstudy.com)