



**Testimony of Kimberly McCullough, Legislative Director  
Concerning SB 374 and the -1 Amendments  
Senate Committee on Business and Transportation  
March 20, 2017**

Chair Beyer and Members of the Committee:

The American Civil Liberties Union of Oregon<sup>1</sup> has concerns about the privacy implications of both SB 374 and the -1 amendments, which would authorize the Department of Transportation to issue driver licenses that meet the requirements of the federal Real ID Act of 2005. However, understanding the potential implications of Oregon not complying with Real ID requirements at this time, we are seeking further amendments with additional privacy protections and will move to neutral if such amendments are adopted.

REAL ID is a problematic law that endangers privacy. When it was enacted in 2005, Congress held no hearings or meaningful debate on the REAL ID Act; it was just slipped into to a must-pass spending bill. When it was passed, a negotiated rulemaking process among many different stakeholders was already underway to improve the security of U.S. driver's licenses. REAL ID terminated that process and imposed on states drastic, unrealistic, and largely unfunded requirements that have caused many bureaucratic nightmares and other practical obstacles for people trying to get licenses.

REAL ID prohibits the use of state IDs (driver's licenses and non-driver IDs) for "federal purposes" unless they comply with the act's measures, which include requirements for:

- Standardized data elements and security features on the IDs, including photographs that are compatible with facial recognition technologies.
- The presentation and verification of source documents such as birth certificates, and the electronic storage of digital copies of these documents.
- The construction of a 50-state, interlinked database with personal information available to all the other states and to the federal government.

Many states—including Oregon—have rebelled against the REAL ID Act. In 2009, the ACLU of Oregon arranged for the introduction of SB 536, which passed with nearly-unanimous, bipartisan support.

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<sup>1</sup> The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonprofit, nonpartisan organization dedicated to preservation and enhancement of civil liberties and civil rights with more than 37,000 members in the State of Oregon, and that number is growing as we speak.

SB 536 prohibited spending of Oregon funds to comply with Real ID, based on the argument that:

- Real ID would create a rich trove of personal data for determined identity thieves and allow for significant invasions of personal privacy.
- A national identity card system would violate privacy by consolidating data and facilitate tracking, creating a situation where citizens' movements inside their own country would be monitored and recorded through these "internal passports."
- Real ID would be an unnecessary and ineffective federal intrusion into a state-regulated activity, that Oregon—like other states—had worked to improve driver's license security on its own, and had made substantial progress.
- The cost would be significant, placing a burden on the state and Oregonians.

Today, the ACLU of Oregon continues to have deep concerns about the Real ID act and its implications for privacy. At the same time, the federal government has been slowly ratcheting up pressure, with some federal buildings beginning to deny access to individuals without Real ID, and threats that people from noncompliant states will very soon be unable to board domestic flights without Real ID.

This means that noncompliance no longer appears to be a viable option, at least without placing the burden on Oregon residents, who would be limited in their ability to travel and enter federal property without Real ID. Because of this reality, we have been working to craft policy for amendments to SB 374 that will both comply with Real ID and protect Oregonians' privacy to the extent possible under federal law.

We are grateful for the fact that the Oregon Department of Motor Vehicles has been willing to discuss our privacy concerns and attempt to find a path forward that accomplishes the dual goals noted above. We are also happy to report that we are almost there. However, we need a bit more time to sort out the final details, as they are somewhat complex and require a modest amount of additional research and consultation.

To give you some clarity about our privacy concerns, I am including with my testimony a document which charts out the components of our ideal policy for Real ID implementation. I would also be happy to discuss these issues with committee members in greater detail.

For the above reasons, the ACLU of Oregon urges you to allow us more time to finalize policy with DMV that will bring Oregon into compliance with Real ID and provide the greatest privacy protections possible for the people of Oregon. Thank you for your time and consideration.

Storage of Identity Documents (e.g., valid U.S. passport, U.S. birth certificate, another REAL ID compliant license/card)	
REAL ID Compliant	Noncompliant
<ul style="list-style-type: none"> <li>Keep only one digital image of an identity document for each driver's license or identity card holder;</li> <li>Keep the digital image of an identity document for only 10 years and then destroy it.</li> </ul>	<ul style="list-style-type: none"> <li>Prohibit copying and retaining in any form identity-verifying documents such as passports, birth certificates, etc.</li> </ul>

Storage of Other Documents (e.g., the application, documents establishing one's Social Security Number and principal residence)	
REAL ID Compliant	Noncompliant
<ul style="list-style-type: none"> <li>Because the application contains the Social Security Number, retain only the original and do not scan (if currently it is scanned, prohibit inclusion in Identity Document database).</li> <li>After seven years, destroy the application;</li> <li>Do not copy, scan, or store any other documents, including documents used to verify a Social Security Number (e.g., W-2 form, 1099 form, pay stub) or principal residence (e.g., utility bill, rental agreement, 1099 form).</li> </ul>	

Facial Image Capture	
REAL ID Compliant	Noncompliant
<ul style="list-style-type: none"> <li>Store images of applicants' faces, if they do not receive a driver's license or identity card, for only 5 years and then destroy them.</li> </ul>	<ul style="list-style-type: none"> <li>Do not store images of applicants' faces if they do not receive a license or card.</li> </ul>
<ul style="list-style-type: none"> <li>Store images of applicants' faces, if they receive either a REAL ID compliant or noncompliant license or card, for only 2 years after the expiration date and then destroy the images;</li> <li>Do not store images of faces in the multi-state shared database;</li> <li>Do not share images of faces with any other state or with the federal government, e.g., to participate in FBI endeavors to create a facial recognition system for a "next generation identification system."<sup>2</sup></li> </ul>	

<sup>2</sup> "Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy," U.S. Gov't and Accountability Office, May 2016, <http://www.gao.gov/assets/680/677098.pdf>

Multi-State Database <sup>3</sup>	
REAL ID Compliant	Noncompliant
Only provide the information contained in the data fields printed on driver's licenses and identity cards, and drivers' histories in the multi-state database (prohibit providing Social Security Numbers, in whole or in part, images of faces, access to or copies of identity documents).	

Notice & Cost	
REAL ID Compliant	Noncompliant
<ul style="list-style-type: none"> <li>• Charge less for the noncompliant card than the REAL ID complaint cards.</li> <li>• Provide applicants with clear, meaningful notice of the choice between a REAL ID compliant and noncompliant driver's license or identity card; provide notice of the choice with applications, on the DMV website, in renewal notices, and wherever else it is reasonable.</li> </ul>	

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<sup>3</sup> REAL ID Act, Pub. L. No. 109-13, Title II § 202(d)(12) & (13), 119 Stat. 302, 315 (2005).