April 28, 2017

REAL ID & THE STATE OF MAINE

On Friday, April 28, Gov. Paul LePage signed into law LD 306, which requires the State of Maine to comply with the federal REAL ID Act.

The Maine Legislature passed LD 306, "An Act To Require State Compliance with Federal REAL ID Guidelines" a bill sponsored by Senator Bill Diamond, in response to federal enforcement of the 2005 Real ID Act. It will become law 90 days after the Legislature adjourns.

The Department of Homeland Security rejected Maine's request for a waiver in October 2016, so the state is currently not in compliance and has no waiver, which has affected Maine license and ID-holders in their ability to access federal facilities.

With the passage of this law, the State of Maine can now request a new compliance waiver from the Department of Homeland Security. This waiver would be valid through October 2017 and can be renewed annually upon request through 2020, as long as the State can demonstrate efforts towards compliance.

During this waiver period, Maine credentials (driver's licenses and IDs) will be accepted as valid identification for federal purposes, such as entrance to federal facilities.

At this time (April 28, 2017), **the waiver is not yet in effect**, **so Maine licenses and IDs are not acceptable forms of identification for federal purposes**, and the Bureau of Motor Vehicles is not yet able to issue Real ID-compliant licenses and IDs.

Beginning Jan. 22, 2018, citizens in states without either the compliant ID or a compliance waiver will not be able to use their IDs to board commercial aircraft. The State of Maine, however, expects to have a valid waiver at that time.

Beginning Oct. 1, 2020, Homeland Security will not be accepting non-compliant licenses at all, as no more waivers will be issued.

During the waiver period, the Maine Bureau of Motor Vehicles will be working toward implementing the systems and procedures that will enable us to issue Real ID-compliant licenses and IDs. This system must be in place by July 1, 2019, per the new law. At that time, any person who desires a Real ID-compliant license or ID will be able to obtain one at their local BMV office. In addition to the standard license requirements, Real ID applicants must provide proof of legal presence, such as a birth certificate (a copy of which will remain on file with the BMV) and submit to a photograph using facial recognition technology.

Those who have a valid license or ID will not be required to renew it prior to its expiration date, unless they choose to do so because they desire/need a Real ID-compliant credential. Upon renewal, Real ID-compliant credentials will be issued unless you state that you would prefer to

opt out. Those who opt out will be issued a "non-compliant" license. Beginning in 2020, those with "non-compliant" licenses will need to produce a passport or other acceptable identity document for federal purposes that require identification, such as boarding commercial aircraft and accessing federal facilities.

Details of the implementation process at BMV are under development at this time and we will make more information available as the launch date nears.

HISTORY OF REAL ID & MAINE

The Secretary of State, who oversees the Bureau of Motor Vehicles, is bound by Maine law and therefore was barred from issuing REAL ID-compliant licenses and identification cards in the State of Maine.

The Maine Legislature passed a law in 2007 prohibiting the state from participating in the REAL ID Act of 2005 (Title 29A, §1411). The reasons for their decision were many, ranging from privacy concerns to implementation costs. The Act places certain requirements upon states in the licensing process, in an effort to improve security. Some of the more contentious aspects include the use of facial recognition technology on license photos and the retention of copies of identifying documents such as birth certificates.

The Department of Homeland Security (DHS) had been giving Maine (and several other states) extensions (waivers) on the deadline to become Real ID compliant, but declined to issue another extension to the State of Maine in October 2016. As a result, Maine licenses and IDs are no longer acceptable forms of identification at federal facilities.

The following is the press release our office issued on Oct. 12, 2016, outlining the implications of the waiver denial: http://www.maine.gov/sos/news/2016/realidextensiondenied.html

LD 306, signed into law by Gov. LePage on April 29, 2017, repeals the previous law and compels the BMV to comply with the Real ID standards.

WHAT SHOULD I DO IF I NEED TO TRAVEL OR VISIT A FEDERAL BUILDING?

- Maine licenses and IDs are still valid identification for boarding aircraft until Jan. 22, 2018, so if you have travel plans prior to that date, you do not need alternate identification to board. Now that LD 306 has passed, we expect to receive a waiver from the Department of Homeland Security that will allow Maine licenses and IDs as acceptable forms of identification until 2020.
  At that time, if you do not have a Real ID-compliant license, you may want to consider getting a passport unless you have an alternate form of ID that is acceptable. This is the portion of the Transportation Security Administration website that lists alternative IDs

that are acceptable: https://www.tsa.gov/travel/security-screening/identification For passport information, visit the State Department website: https://travel.state.gov/content/passports/en/passports.html

- Until the State is granted a waiver from DHS: If you need to enter a federal facility that requires ID, you will now need to provide an alternate form of photo identification. (See TSA website link above). Please note that REAL ID requirements do not apply to the access of federal benefits, licensing to drive or registering to vote. Additionally, a REAL ID-compliant ID is not required to enter a federal courthouse; your Maine license/ID will suffice.

- To learn more about REAL ID, visit the DHS website: https://www.dhs.gov/real-id-public-faqs

HISTORY OF REAL ID

The REAL ID Act of 2005 was attached to a conference report on must-pass legislation regarding Iraq war funding and relief for the 2004 tsunami. The Act had been introduced a number of times prior to 2005, but had little to no support in Congress.

REAL ID replaced prior legislation that was part of the Intelligence Reform and Terrorism Prevention Act of 2004, which was sponsored by U.S. Sen. Susan Collins of Maine. The Intelligence Reform Bill was written in response to the report of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. Part of the bill called for a rulemaking committee to establish national, minimum standards by which states would issue driver's licenses and identification cards.

This stemmed from the 9/11 Commission's observation that the 9/11 attackers had been able to obtain state credentials with ease, which helped them blend in as they traveled about the United States, reconnoitering security systems and planning the execution of the devastating attack that killed thousands of innocent people. The Commission observed that the broad variety of standards for obtaining these credentials constituted a weakness in our security systems.[1]

As a result, Collins' successful legislation created the Negotiated Rulemaking Committee for the Establishment of Minimum Standards for the Issuance of State-issued Driver Licenses and Identification Cards. The committee was charged with drafting rules by the end of the summer of 2005, which were to be put in place by the United States Department of Transportation by the

[1] Maine began registering vehicles in 1905, but didn't start licensing drivers until the 1920s. Testing and other requirements were adopted at different times in the ensuing years, and it was in the 1980s that Maine, along with many other states, began to include the photograph of the driver as part of the license, with the policy purpose in mind of preventing underage citizens from unlawfully using someone else's license to obtain alcohol. Unintentionally, the credential for driving became a handy state-issued identity document, which we now use to close mortgages, cash checks, rent cars—and apocryphally, as the 9/11 attackers did, to board airliners.

beginning of 2006. The committee was nearly halfway done with its work when the REAL ID Act was signed into law in May of 2005[2]. REAL ID had a three-year implementation window.

REAL ID bypassed state and stakeholder input, and established robust measures for issuing licenses and ID cards. It called for new materials and screening processes for applicants and the civil servants who interacted with each other, and new technologies to capture the nature of documents and to authenticate them. It took nearly the entire three-year implementation schedule for the draft to be completed by the U.S. Department of Homeland Security (which, under REAL ID, assumed oversight of this process from Transportation).

An important fact about REAL ID is that it has never been funded to any significant degree by the federal government, so the act was made voluntary for the states. The price of non-compliance, however, is that citizens in non-compliant states would not be able to use their non-compliant credentials to access many federal or federally-controlled facilities and services, including boarding commercial airliners.

Given the timeline, DHS began to issue waivers from compliance. The nature and scope of the waivers varied widely, and as the deadline for compliance loomed, states began examining the requirements of the act and many rejected compliance. Maine was the first of 16 states to pass statutes prohibiting compliance (many of those have since revisited their stands, but several have not, including Maine, Oklahoma, Pennsylvania, South Carolina and Montana). Maine's law, now enshrined as Title 29-A MRSA § 1411, was adopted unanimously in 2007.

In 2009, facing intense pressure from Homeland Security, administration of Maine Gov. John Baldacci introduced successful legislation that rolled back much of the intent of §1411. Maine had already made significant security improvements to its credentials apart from the debate over REAL ID; for instance, Maine stopped accepting expired foreign-originated documents for identification purposes, required submission of a Social Security number if the applicant was eligible for one, and established that only Maine residents could obtain Maine credentials. But Homeland Security stipulated that for Maine to obtain a waiver, it had to do much more. So Maine, under Baldacci, acceded to subscription to the Systematic Alien Verification for Entitlements (SAVE) system, established that applicants must provide documentation of either citizenship or legal immigration status, and that for non-citizens, credentials must expire the same time as their visa documents (this is "co-terminus expiration). With those changes, Maine obtained the desired waiver from full compliance.

Since 2009, Homeland Security has continued to issue waivers to the states, and has redefined numerous times what it means to be in compliance. Under Homeland Security rules, no one born before 1935 need provide the full complement of documentation to obtain a REAL ID, for

[2] Secretary of State Matthew Dunlap was nominated by Senator Collins and Governor Baldacci to serve on the committee, and was subsequently appointed by U.S. Department of Transportation Norman Mineta to the negotiated rulemaking committee.

example, as prior to that time, such documentation would have been nonexistent for immigrant children. Under immigration laws of the day, minor children immigrating to the United States with their parents would have been *automatically* considered citizens—with no additional paperwork. DHS rules also allowed for citizens born prior to 1964 and who had held valid credentials during their entire period of residency to be exempt from the legal presence requirement, which Maine adopted into law in 2013 (Public Law chapter 163; Title 29-A MRSA § 1301§§ 2-A and § 1410 §§ 8).

During this period, Maine has enjoyed immunity from the enforcement of REAL ID under the auspices of the continuance of the 2009 waiver. Theoretically, the state is supposed to re-apply for the waiver each federal year in October; however, in 2015, the state received notice that the waiver had been granted, even though extension of it had not yet been sought. In the late summer of 2016, we received notice that the waiver would *not* be extended for 2017, and that the schedule of enforcement for non-compliance would begin. Since that notice, the Department of the Secretary of State has been vigorously in communication with Maine citizens, the Executive, and the Legislature about the State of Maine's REAL ID status and the associated implications. What followed was passage of LD 306, to implement REAL ID in Maine, with an option for people to opt out, and a new waiver is being sought.