



April 11, 2007

The Honorable Bob Huff
State Capitol, Room 4098
Sacramento, CA 95814
Fax: 916/319-2160

AB 1433 -- Oppose

Dear Assemblymember Huff:

The Electronic Frontier Foundation (EFF) respectfully opposes AB 1433, which would implement the Real ID Act in California.

Congress passed the ill-conceived Real ID Act without review or hearings over the objections of many groups. As the potential consequences of this legislation are better understood – serious costs to the civil liberties of U.S. residents and extraordinary financial expenses to the states and the taxpayers, all without improving security – a groundswell of opposition is arising across the states.

Three states, Maine, Idaho, and Arkansas, have already said they will not comply with Real ID. Anti-Real ID legislation has been filed in at least 29 other states.¹ This opposition is being led by Jim Guest, a Republican state legislator from Missouri, among others.

Simply put, Real ID should not have been enacted and should be scrapped entirely; the fact that the Department of Homeland Security (DHS) is unwilling or unable to fix these problems shows that Real ID as currently configured is unworkable. California should not waste taxpayer dollars on Real ID.

1. *Your papers, please.* After 9/11, President Bush and others proclaimed that we must not let the terrorists change American life. It is now clear that – despite its ineffectiveness against actual terrorism – we are allowing our security agencies to make national ID systems a permanent feature of American life. Identification is already necessary to board a plane, open a bank account or participate in many routine activities that are part of modern society. Real ID will dramatically expand the use of identification and its intrusions. Like any national ID system, Real ID will fuel the drive toward ever-expanding government databases of personal information (of dubious security). Mistake-filled secret watch lists will continue to proliferate, enhancing the unaccountable discretion of government officials. The federal government has already abdicated its responsibility to consider the serious civil liberties issues raised by Real ID; California must not do so.

¹ There is more information, including bill numbers and status, on all the states with anti-Real ID legislation at <http://www.realnighmare.org/news/105/>

2. *Discrimination and Racial Profiling.* Citizens and immigrants who look or sound “foreign” may be subject to greater scrutiny as DMV workers must determine and verify the immigration status and then issue a specific class of license depending on that status. Many citizens and lawfully present immigrants will be denied licenses improperly by DMV employees who may not be able to determine their immigration status. Other potentially eligible citizens and immigrants will be unable to secure a license because they do not possess one of the documents on the new narrow list. For example, the Center on Budget and Policy Priorities surveyed U.S. born Medicaid recipients and determined that 3-5 million lacked a birth certificate or U.S. passport.²
3. *Practical Problems and Costs.* Real ID will represent an enormous administrative burden, yet it is unclear whether it can even be implemented properly. There should be *no* implementation of Real ID until the underlying systems are actually built and tested. States will have to copy, store and verify as many as four different documents in order to grant every driver’s license – but how will a DMV employee in California “verify” a birth certificate from Ohio? The DMV will also have to change the composition of its license and the way that information is stored in a machine-readable format (currently a magnetic stripe for California drivers) on the back of the license. The Act also calls for the creation of a system to link all state motor vehicle databases, but no such system has been designed and tested. The Real ID Act could cost Californians between \$500 million and over \$1 billion, based on DMV’s calculations.³ According to DHS, states alone will pay \$14.6 billion over the next 10 years; combined with the costs to individuals, its total costs will reach \$23.1 billion in the next decade – and these numbers are probably low.
4. *Biometrics.* Real ID requires the capture of a digital photograph that lays the groundwork for a sophisticated biometric system that allows for electronic storage and easy comparison against other facial images. Unfettered access by law enforcement agencies to DMV records under Real ID cannot be permitted; law enforcement access should be limited to situations where the peace officer has grounds for and obtains a search warrant.
5. *Private Sector Use.* Requiring that the machine-readable elements of the drivers’ license be standardized also makes it much easier for the private sector to collect and save this information. Bars swiping licenses to collect personal data on customers will be just the tip of the iceberg as every convenience store learns to grab that data and sell it to data aggregators like ChoicePoint. This data – including facial images – will become part of existing private sector databases not subject even to the limited privacy rules in effect for the government.
6. *Identity theft.* The Federal Trade Commission estimates that 10 million Americans are victims of identity theft annually. The drivers’ license contains valuable information for an identity thief including date of birth, gender, driver’s license or identification card number,

² See <http://www.cbpp.org/1-26-06health.pdf>

³ The DMV estimates that implementing Real ID will cost California at least \$500 million. Furthermore, “[a]n estimated \$195-200 million additional will be required if regulations require polycarbonate materials with laser engraving.” Report to the Legislature on the Status of the Real ID Act, California DMV, December 15, 2006, page 3. http://www.dmv.ca.gov/about/real_id/real_id.pdf In addition, the DMV estimates another \$253 million for related IT projects.

digital photograph, address and signature. Real ID will make drivers' license information accessible from tens of thousands of locations across the country.

7. *Domestic Violence and Sexual Assault Victims.* Under the DHS's draft regulations, domestic violence victims and others will be more vulnerable. The regulations only create an inadequate partial exemption to the principal address requirement that covers "individuals who are entitled to enroll in State address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or by a court order," and some individuals protected by immigration law. However, according to the National Network to End Domestic Violence, only 24 states currently have such confidentiality programs and the threshold of proof necessary to enter these programs (or get a court order) is very high.

As a result, even though California has a program to protect victims of domestic violence, judges, and others, we may still not be able to keep some victims from having their address and other personal information printed on their license and placed in a massive database, accessible across the country.

The EFF respectfully urges the Governor and the Legislature to join other states in rejecting the implementation of the Real ID Act. For all of the above reasons we oppose passage of AB 1433.

If you or your staffers wish to discuss this matter, please call us.

Sincerely,

Lee Tien
Senior Staff Attorney

cc: Members and Consultant, Assembly Transportation Committee
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