

United States Senate

WASHINGTON, DC 20510

January 25, 2017

The Honorable John Kelly
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly:

We write today regarding our concerns about the REAL ID law and the real-life effects its implementation will have on Montanans. The people of Montana have long opposed the burdensome and invasive measures called for under this initiative. Unfortunately, looming deadlines will bar Montanans from entering secured federal government facilities. Further, one year from now, Montanans will be unable to use their state-issued identifications to board commercial aircraft. That is why we ask you to grant non-compliant states with an emergency waiver from Phases 3 and 4 of this law and work with us to protect Americans' privacy while also strengthening our national security. These goals are not mutually exclusive.

Montanans have long been skeptical of the REAL ID law. In April 2007, our governor signed into law HB 287, which stated Montana's opposition to the REAL ID Act of 2005. The bill also ordered the Montana Department of Justice and state offices responsible for issuing licenses to not comply with the law. Then, in early 2008, both houses of the Montana Legislature voted unanimously to prohibit compliance with the Act.

The enforcement of Phases 3 and 4 of REAL ID, which includes access to secured federal facilities and boarding federally regulated commercial aircraft, respectively, could hamper Montanans' freedom of movement, limit commerce and healthcare, and impede upon our ability to visit loved ones. We ask that we work together to solve these problems with REAL ID and further request your support in granting an emergency waiver from the provisions of the law for the State of Montana.

Starting on January 30, 2017, Montanans will no longer be able to use their state issued driver's licenses to enter secured federal government facilities. This will negatively impact Montanans and our economy. For example, a vendor in Great Falls will no longer be able to access Malmstrom Air Force Base to drop off their deliveries without additional identification. Further, some veterans seeking care could face difficulties in entering a base to see their doctor.

Even more Montanans will feel the impact of the January 2018 deadline. Failure to meet this deadline for implementation of Phase 4 will prohibit Montanans from flying without a secondary form of identification, such as a passport. Such fees and requirements are burdensome, expensive, and time consuming. For example, the passport application fee is \$110 for someone over the age of 16 and \$80 for a child. Moreover, it can take up to six weeks to receive a passport

after completing an application. This extended wait can be a significant obstacle to families in cases of emergencies that require air travel.

We continue to oppose the REAL ID law and have introduced legislation to fully repeal it. We feel strongly that the civil liberties and privacy of law-abiding Americans could easily be violated as a result of this law. In particular, we remain troubled by provisions in Sec. 202 (d)(2),(12) and (13) which require the retention of source documents and “electronic access to all other States to information contained in the motor vehicle database of the State”. When individuals with access to state databases are eventually given access to the personally identifiable information of any licensed driver in any state across the United States, the potential for abuse of this information rises exponentially. Moreover, the connection of such servers and unnecessary additional storage of personal information presents a significant cybersecurity risk.


Montana has made numerous improvements to its driver’s licenses, both the issuing process and physical card, in recent years. Many of these enhancements have met REAL ID provisions, without infringing on civil liberties, sacrificing privacy, or subjecting our citizens to unnecessary cybersecurity risks. We believe we must work together to find solutions for states that will not comply, such as Montana. By providing an emergency waiver for Montana, the enforcement of Phases 3 and 4 of REAL ID would only be temporarily paused while an earnest effort to find new and creative solutions is underway. By working together, we know we can find a solution that respects the privacy rights of law-abiding Montanans, while also keeping our state and nation safe from bad actors who want to do us harm.

During your testimony before the Senate Homeland Security and Governmental Affairs Committee, you committed to us that you would work with Montana to find that solution before the January 2018 air travel deadline. We look forward to working with you on this commitment and stand ready to work with you to protect Montanans’ privacy and security.

Sincerely,



Jon Tester
United States Senator



Steve Daines
United States Senator