

REAL ID - COUNTERING GOP LEGISLATOR'S CLAIMS

WHAT HAPPENED: a 1-page Q&A document on REAL ID appeared without attribution at the Washington County Republican Breakfast on 2/11/2017 in Lake Elmo, MN. When an attendee asked where it came from, MN [Rep. Kelly Fenton \(R-Woodbury\)](#) publicly acknowledged distributing it. **NOTE:** The MN legislature is considering GOP-authored bills that would submit MN to the federal REAL ID Act: HF 3 (Smith)/SF 166 (Pratt)

CCHF COMMENT ON CONSTITUTIONALITY: The 2009 MN legislature passed a law prohibiting REAL ID. Legislator opposition was bipartisan and nearly unanimous. As 116 PA legislators wrote President Donald Trump: "By 'federalizing' driver licensing the REAL ID Act usurps this [Tenth Amendment] power which has been reserved to the states. ... Given that the REAL ID law inserts the federal government into a power reserved to the states, we believe that Congress had no constitutional authority to be involved in drivers' licensing." (dated 1/24/2017)

STATEMENTS IN BLUE AND BLACK BELOW: CCHF comments (in BLACK) counter Rep. Fenton's claims (in BLUE) in the order they appeared in the Fenton document:

Is REAL ID a Federal ID? [Fenton]

NO—REAL ID is a Minnesota Drivers License that meets federal guidelines designed to enhance security of identifying documents. The Bill was passed at the federal level in the wake of 9/11 and is only used for federal purposes like traveling on an airplane (which requires passing through the FEDERAL TSA Security Check), entering a military base, or entering a federal building.

YES – IT'S A FEDERAL ID -- REAL ID "federalizes" state driver's licenses and ID cards, as 116 Pennsylvania legislators wrote in a January 24, 2017 [letter to President Trump](#) (see graphic below). If MN hands over control of identification to the federal government, the federal government dictates the design, requirements and uses of the cards, including that the cards



More REAL ID Info: bit.ly/cchfreaid

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must say, “for federal purposes” or “for federal identification.” Or not for federal purposes or identification. The card in your pocket will be a federal ID with state driving privileges.

DOESN'T STOP TERRORISTS -- Matt Dunlap, Maine’s Secretary of State wrote an op-ed opposing REAL ID on February 9, 2017: *“If we were to comply with Real ID today and the 9/11 terrorists were to stroll into the Bangor branch of the Bureau of Motor Vehicles and apply for Real IDs, the irony is that they would get them...So Real ID doesn’t work.”* No Public Debate: the REAL ID Act of 2005 was added as an amendment to an Afghanistan war funding bill in the middle of the night – some say at 2:30 a.m. – and became law without a public hearing.

FEDERAL PURPOSES CAN EXPAND – The REAL ID Act gives the Secretary of the Department of Homeland Security (DHS) unilateral authority to expand the required uses of the federal REAL ID cards. No Congressional approval is required. Section 201 of the law has the following definition: “OFFICIAL PURPOSE- The term ‘official purpose’ includes but is not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.” [Emphasis added.]

Does REAL ID create a federal ID database? [Fenton]

NO–The federal government does not store your data. Minnesota data is collected and stored by the state of Minnesota—just like it is today with your current drivers license. *The state of Minnesota accesses various already-existing databases to verify that you are in the country lawfully, you do not have an ID in another state, and you have a valid social security number. This cuts down on fraud and helps prevent terrorists and other criminals from obtaining fraudulent IDs.*

YES, IT DOES (“NATIONAL IDENTITY REGISTRY”) – The 116 legislators in PA tell President Trump the REAL ID Act *“creates a national identity registry by requiring the personal data of every person with an ID be made available to each state and U.S. territory.”*

The registry is a hub and spoke system called State to State (S2S) Verification Services. The central “hub” is housed by the American Assn. of Motor Vehicle Administrators (AAMVA). Its blueprint includes a central Master Pointer System in the State Pointer Exchange Services (SPEXS) that store 15 data elements on all cardholders (e.g. SSN, DOB, sex, Driver’s License number, Master Pointer ID) sent by each state to AAMVA from 50 state connections (spokes).

As inquiries from states and U.S. territories come into the SPEXS, the system uses the database of 15 personal data points to point the inquirer to the state where the rest of the person’s data, including copies of or data from birth certificates and social security cards is stored by the state.

Maine’s Secretary of State, which calls REAL ID an “Orwellian model,” says significant personal information shared and stored in the hub and spoke system *“will be easily available to the FBI under Real ID.”* **The following is a list of the 15 Master Pointer data elements in the hub:**

6.2 CD20 MASTER POINTER

Description

The CD20 Master Pointer identifies (points to) the jurisdiction in which: (i) for CDLIS purposes, the person's CDL record resides; and (ii) for non-CDLIS purposes, the person's credential record resides.

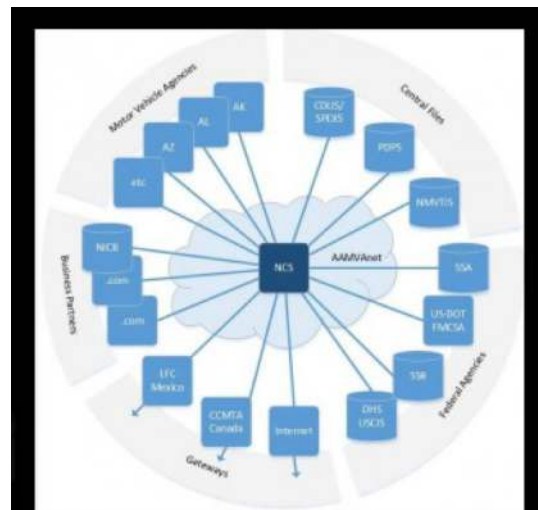
Content

The CD20 Master Pointer consists of the following data attributes:

ID	Clear Name and Identifier	Required (R)
CD20.C1	Master Pointer ID (DCDPID)	R
CD20.C2	Jurisdiction Code - Licensing (DDLJUR)	R
CD20.C3	Driver License Number (DDLNUM)	R
CD20.C4	Person Name Group (BPENGP)	R
CD20.C5	Driver Social Security Number (DDVSSN)	R (only until all Jurisdictions have implemented 5.1 or greater).
CD20.C6	Person SSN Last 5 Digits (BPSSD)	R
CD20.C7	Driver SSN Type (DDVSSI)	R
CD20.C8	Driver Date of Birth (DDVDOB)	R
CD20.C9	Driver Sex (DDVSEX)	R (only until all Jurisdictions have implemented 5.1 or greater).
CD20.C10	State Document Type (BJDTYP)	R
CD20.C11	State Document REAL ID Conformant (BJDRIC)	R
CD20.C12	CDLIS Pointer Indicator (DCDCPI)	R
CD20.C13	Message SOR Change in Progress Indicator (GMSSCH)	R
CD20.C14	Record Creation Date Time Stamp (GRCCDS)	R
CD20.C15	Record Last Update Date Time Stamp (GRCUDS)	R

BREACHES/FRAUD EXPECTED – DHS’ Privacy Office “encourages States to include breach notification as part of the required ‘emergency/incident response’ plan.” Pennsylvania legislators told President Trump that the registry “could increase the potential for fraud and identity theft.”

NATIONAL DATABASE – The REAL ID Act of 2005 requires States to “Provide electronic access to all other States to information contained in the motor vehicle database of the State” DHS calls these “State to State (S2S) Verification Services” and “State Pointer Exchange Services (SPEXS). If HF3/SF166 passes MN will become part of this data system, per testimony in Judiciary Comm. As described by The Identity Project (papersplease.org): “The ‘pointer file’ at the “SPEXS Central Site” is the national ID database created by the REAL-ID Act: a single, aggregated master list and index, held by a private contractor at a single, central site, of every driver’s license or ID card issued by any state that chooses to issue any gold-starred licenses or cards compliant with the REAL-ID Act.”



[The REAL-ID “hub” connects state and Federal agencies, private commercial third parties, and centralized, national database files. AAMVA SPEXS Master Specification (AMIE), r6.0.8, page 5]

What if the federal government decides REAL ID is needed for a gun, health care, etc? [Fenton]

The federal government can only require REAL ID *for federal purposes*. Health care, purchasing guns or ammunition, or checking into a hotel do not involve the federal government and thus cannot require a REAL ID. Under the Minnesota House proposal, the REAL ID can only be used for requirements as of the day the bill is passed (flying on an airplane, entering federal buildings, or entering a military base). If the federal government were to change what a REAL ID is required for or how it is used, it would take legislative action in Minnesota to allow that change. Minnesota citizens, through their elected state legislators, would have an opportunity to reject new federal requirements if the federal government begins using REAL ID for inappropriate purposes—the federal government would be unable to force Minnesota to adopt new requirements for REAL ID without legislative action.

HEALTH CARE, GUNS AND MORE DO INVOLVE FEDERAL GOVERNMENT – DHS can expand the definition to federally-regulated activities. The federal 2008 REAL ID rule uses the term “Federally-regulated commercial aircraft,” yet the airplanes are owned by private industry. Likewise, privately-owned recreational boats are under certain federal regulations. Gas stations have federal regulations. Health care is under hundreds of thousands of pages of federal regulations. Hotels follow federal regulations. There are federal regulations regarding the purchase of guns and ammunition. DHS can include these activities and industries as new “official purposes” for which the “for federal identification” REAL ID would be required.

(3) OFFICIAL PURPOSE- The term 'official purpose' includes but is not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.

MN LEGISLATORS LOSE CONTROL – Although HF3/SF166 purports to limit adoption of any federal changes after enactment, this provides little comfort. For example, when DHS requires the REAL ID for access to medical care, hospitals and clinics will enforce it. When DHS requires REAL ID for gun and ammunition purchases, gun shops will enforce it. Furthermore, we expect state legislators who give in now will readily give in to changes once the system is in place.

Can REAL ID be used to create a secret gun database? [Fenton]

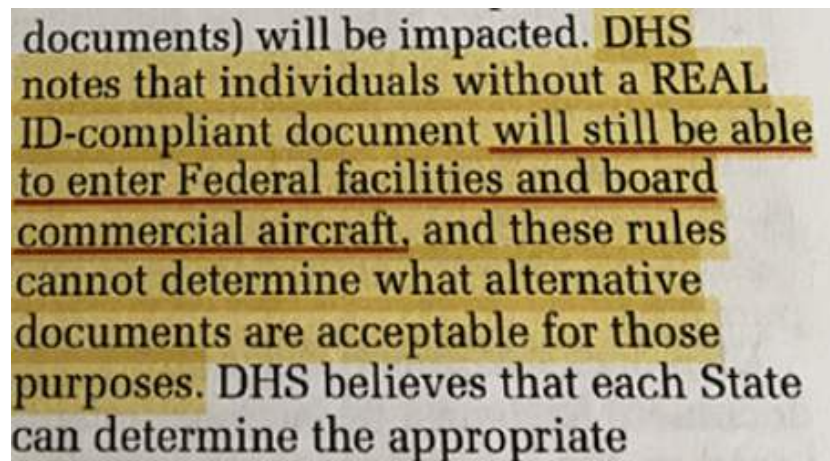
NO—In fact, legislators are working closely with the NRA and other gun-rights groups to adopt language that will specifically prohibit the government from ever using REAL ID to collect information on gun owners. We are fully committing to protecting the rights of gun owners from overreach by the federal government.

“PERMIT TO CARRY” DATA SHARING – The Senate bill, SF 166, includes language to limit federal access to data on individuals with a state permit to carry a gun. There is no language yet in House File 3.

What if we don't pass REAL ID? [Fenton]

Starting January 2018, your drivers license will no longer be valid to board an airplane. You will be forced to purchase an expensive passport or an Enhanced ID—both of which have RFID chips. Your Minnesota license **will no longer be valid** for any federal purposes (flying, entering a military base, entering federal buildings). MSP Airport is already displaying signs warning that Minnesota licenses will not be accepted to board a plane beginning January 18. If you don't travel and don't need to enter federal buildings, not that much will change for you, but for millions of Minnesotans who fly or visit their families on military bases each year, it could cause serious headaches, confusion and inconvenience.

YOU CAN STILL FLY – Homeland Security says in their 2008 rule that *“individuals without a REAL ID-compliant document will still be able to enter Federal facilities and board commercial aircraft, and these rules cannot determine what alternative documents are acceptable for those purposes.”* Second, TSA has 13 acceptable documents for flight, including a \$140 ten-year passport or a \$30 Passport Card. Third, TSA notes in a blog post that you can fly without any ID at all, if you submit to enhanced screening, as several legislators have told us they've experienced in the past year...or month. Fourth, six enforcement “deadlines” have come and gone. For example, on September 18, 2009, DHS wrote to MN Governor Tim Pawlenty saying Minnesota resident would no longer be able to fly after December 31, 2009. THE 2008 DHS RULE, page 5287:



documents) will be impacted. DHS notes that individuals without a REAL ID-compliant document will still be able to enter Federal facilities and board commercial aircraft, and these rules cannot determine what alternative documents are acceptable for those purposes. DHS believes that each State can determine the appropriate

YOU CAN ENTER FEDERAL BUILDINGS WITHOUT REAL ID: For example, the 2008 REAL ID Rule states that an “individual may present other documents, or may not be required to present identification at all, depending on the courthouse’s pre-existing identification policies.” [Emphasis added.]

YOU CAN STILL ENTER MILITARY BASES - Military base requirements vary. Fort Huachuca, the Army installation in Arizona allows **26 different types** of acceptable IDs, including library cards. The Elgin Air Force Base in Florida accepts “**alternate forms** of identification” including “ID cards issued by federal state or local government agencies that include a photo and biographic

information.” Families can still get on the base without an ID: “those who do not have the accepted documentation for installation access will not be permitted to enter the base without an **approved escort**.” And Elgin notes that “commanders may still deny access” even with approved IDs if the background check is unsatisfactory.

Would I be required to obtain a REAL ID? [Fenton]

NO—The bill before the legislature gives you the same freedom you have today. If you want to get a drivers license like the one you have today, and you know you won't be traveling or entering a military base, you have that choice. But for the millions of Minnesotans who travel by air or visit their sons or daughters on a military base each year we want to give them the freedom to purchase an ID that they can use for those purposes.

YES -- YOU'LL BE FORCED TO BE REAL-ID COMPLIANT – There's no opt-out. The driver's license you have today will go away. If you want to drive, you'll be offered one of the two federal ID cards that comply with the REAL ID law: the “for federal purposes” card or the “not for federal purposes” card. Homeland Security will allow states to use both ID cards for driving privileges. For non-drivers, there will be a “for federal purposes” ID card and a “not for federal purposes” ID card. All cards come under authority of the federal REAL ID law if the state submits to this unconstitutional federal law. The other option is a MN Enhanced Driver's License (EDL) with an RFID chip, but that too is REAL ID-compliant. If the state submits, here is what the federal REAL ID law requires for the “not for federal purposes” driver's licenses and ID cards:

(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card--
(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and
(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.

RFID CHIP AND BIOMETRICS: the REAL IDs may get RFID (Radio Frequency Identification) chips in the future. In the 2007 Notice of Proposed Rulemaking for REAL ID, DHS considered requiring an RFID chip, but chose not to. But this demonstrated they have the power to do so and could add that requirement or require additional biometrics (e.g. fingerprint) in the future. If states choose to submit to the federal REAL ID Act, they must recertify compliance every three years.

OTHER PURPOSES: As DHS expands “official purpose” to more daily activities, it may be difficult to live without a “for federal purposes” REAL ID. Notably, “The [REAL ID] rule gives States, local governments, or private sector entities an option to choose to require the use of REAL IDs for activities beyond the official purposes defined in this regulation.” (2008 Rule, p. 5326)