

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 151

99TH GENERAL ASSEMBLY

0401H.02P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 302.065 and 302.183, RSMo, and to enact in lieu thereof two new sections relating to driver's licenses compliant with the federal REAL ID Act of 2005, with an emergency clause.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 302.065 and 302.183, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 302.065 and 302.183, to read as follows:

302.065. 1. Notwithstanding section 32.090 or any other provision of the law to the  
2 contrary, and except as provided in subsection 4 of this section, the department of revenue shall  
3 not retain copies, in any format, of source documents presented by individuals applying for or  
4 holding driver's licenses or nondriver's licenses. The department of revenue shall not use  
5 technology to capture digital images of source documents so that the images are capable of being  
6 retained in electronic storage in a transferable format.

7 2. By December 31, 2013, the department of revenue shall securely destroy so as to make  
8 irretrievable any source documents that have been obtained from driver's license or nondriver's  
9 license applicants after September 1, 2012.

10 3. As long as the department of revenue has the authority to issue a concealed carry  
11 endorsement, the department shall not retain copies of any certificate of qualification for a  
12 concealed carry endorsement presented to the department for an endorsement on a driver's  
13 license or nondriver's license under section 571.101. The department of revenue shall not use  
14 technology to capture digital images of a certificate of qualification nor shall the department  
15 retain digital or electronic images of such certificates. The department of revenue shall merely  
16 verify whether the applicant for a driver's license or nondriver's license has presented a certificate

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 of qualification which will allow the applicant to obtain a concealed carry endorsement. By  
18 December 31, 2013, the department of revenue shall securely destroy so as to make irretrievable  
19 any copies of certificates of qualification that have been obtained from driver's license or  
20 nondriver's license applicants.

21 4. The provisions of this section shall not apply to:

22 (1) Original application forms, which may be retained but not scanned;

23 (2) Test score documents issued by state highway patrol driver examiners;

24 (3) Documents demonstrating lawful presence of any applicant who is not a citizen of  
25 the United States, including documents demonstrating duration of the person's lawful presence  
26 in the United States; and

27 (4) Any document required to be retained under federal motor carrier regulations in Title  
28 49, Code of Federal Regulations, including but not limited to documents required by federal law  
29 for the issuance of a commercial driver's license and a commercial driver instruction permit;

30 [~~and~~]

31 (5) **Any document required to be retained under section 302.183 for applicants who**  
32 **request a REAL ID compliant driver's license or identification card; and**

33 (6) Any other document at the request of and for the convenience of the applicant where  
34 the applicant requests the department of revenue review alternative documents as proof required  
35 for issuance of a driver's license, nondriver's license, or instruction permit.

36 5. As used in this section, the term "source documents" means original or certified  
37 copies, where applicable, of documents presented by an applicant as required under 6 CFR Part  
38 37 to the department of revenue to apply for a driver's license or nondriver's license. Source  
39 documents shall also include any documents required for the issuance of driver's licenses or  
40 nondriver's licenses by the department of revenue under the provisions of this chapter or  
41 accompanying regulations.

42 6. Any person harmed or damaged by any violation of this section may bring a civil  
43 action for damages, including noneconomic and punitive damages, as well as injunctive relief,  
44 in the circuit court where that person resided at the time of the violation or in the circuit court  
45 of Cole County to recover such damages from the department of revenue and any persons  
46 participating in such violation. Sovereign immunity shall not be available as a defense for the  
47 department of revenue in such an action. In the event the plaintiff prevails on any count of his  
48 or her claim, the plaintiff shall be entitled to recover reasonable attorney fees from the  
49 defendants.

302.183. 1. Notwithstanding any provision of this chapter that requires an applicant to  
2 provide reasonable proof of residence for issuance or renewal of a noncommercial driver's  
3 license, noncommercial instruction permit, or a nondriver's license, an applicant shall not have

4 his or her privacy rights violated in order to obtain or renew a Missouri noncommercial driver's  
5 license, noncommercial instruction permit, or a nondriver's license.

6         2. Any data derived from a person's application shall not be sold for commercial  
7 purposes to any other organization or any other state without the express permission of the  
8 applicant without a court order; except such information may be shared with a law enforcement  
9 agency, judge, prosecuting attorney, or officer of the court, or with another state for the limited  
10 purposes set out in section 302.600 or for conducting driver history checks in compliance with  
11 the Motor Carrier Safety Improvement Act, 49 U.S.C. 31309. The state of Missouri shall  
12 protect the privacy of its citizens when handling any written, digital, or electronic data, and shall  
13 not participate in any standardized identification system using driver's and nondriver's license  
14 records. For purposes of this subsection, "commercial purposes" does not include data used or  
15 compiled solely to be used for, or obtained or compiled solely for purposes expressly allowed  
16 under the Missouri or federal Drivers Privacy Protection Act.

17         3. **Subject to the provisions of this section**, the department of revenue shall ~~not~~  
18 amend procedures for applying for a driver's license or identification card in order to comply  
19 with ~~the goals or standards of~~ the federal REAL ID Act of 2005, **and** any rules or regulations  
20 promulgated under the authority granted in such act, ~~or any requirements adopted by the~~  
21 ~~American Association of Motor Vehicle Administrators for furtherance of the act~~ **unless such**  
22 **action conflicts with Missouri law.**

23         4. **The department of revenue shall issue driver's licenses or identification cards**  
24 **that are compliant with the federal REAL ID Act of 2005, as amended, to all applicants for**  
25 **driver's licenses or identification cards unless an applicant requests a driver's license or**  
26 **identification card that is not REAL ID compliant. Upon initial application for a driver's**  
27 **license or identification card, the department of revenue shall inform applicants of the**  
28 **option of being issued a REAL ID compliant driver's license or identification card or a**  
29 **driver's license or identification card that is not compliant with REAL ID. The department**  
30 **shall inform all applicants:**

31         **(1) With regard to the REAL ID compliant driver's license or identification card:**

32         **(a) It is valid for official state purposes and for official federal purposes as outlined**  
33 **in the federal REAL ID Act of 2005, as amended, such as commercial domestic air travel**  
34 **and seeking access to military bases and most federal facilities;**

35         **(b) Paper or electronic copies of source documents will be retained by the**  
36 **department and destroyed after the minimum time required for retention for compliance**  
37 **with the federal REAL ID Act of 2005; and**

38         **(c) Any other information the department deems necessary to inform the applicant**  
39 **about the driver's license or identification under the REAL ID Act;**

40           **(2) With regard to a driver's license or identification that is not compliant with the**  
41 **REAL ID Act:**

42           **(a) It is valid for official state purposes, but it is presumed not to be valid for official**  
43 **federal purposes as outlined in the federal REAL ID Act of 2005, as amended, such as**  
44 **domestic air travel and seeking access to military bases and most federal facilities;**

45           **(b) Source documents will be verified but no paper or electronic copies of such**  
46 **documents will be retained by the department unless permitted under section 302.065; and**

47           **(c) Any other information the department deems necessary to inform the applicant**  
48 **about the driver's license or identification.**

49           **5. Once the department of revenue is so notified by the federal department of**  
50 **homeland security that the department of revenue is able to issue driver's licenses or**  
51 **identification cards that comply with the federal REAL ID Act of 2005, as amended, the**  
52 **department shall give notice of the same to the speaker of the house of representatives, the**  
53 **president pro tempore of the senate, and the revisor of statutes. The department of**  
54 **revenue shall then issue driver's licenses and identifications in accordance with subsection**  
55 **4 of this section.**

56           **6. ~~[Any biometric data previously collected, obtained, or retained in connection with~~**  
57 **~~motor vehicle registration or operation, the issuance or renewal of driver's licenses, or the~~**  
58 **~~issuance or renewal of any identification cards by any department or agency of the state charged~~**  
59 **~~with those activities shall be retrieved and deleted from all databases.] The department of~~**  
60 **revenue shall not use, collect, obtain, share, or retain biometric data, nor shall the**  
61 **department use biometric technology to produce a driver's license, nondriver's license, or**  
62 **identification card, or to uniquely identify licensees or license applicants. This subsection**  
63 **shall not apply to digital images or license signatures required for the issuance of driver's**  
64 **licenses, nondriver's licenses, or identification cards. This subsection also shall not apply**  
65 **to biometric data collected from employees of the department, employees of the office of**  
66 **administration who provide information technology support to the department, contracted**  
67 **license offices, and contracted manufacturers engaged in the production, processing, or**  
68 **manufacture of driver's licenses or identification cards in positions that require a**  
69 **background check in order to be compliant with the federal REAL ID Act. Any such**  
70 **biometric data or source documents collected or retained as necessary to carry out**  
71 **subsections 3 and 4 for the sole purpose of issuing a REAL ID compliant driver's license**  
72 **or identification to a person who has requested such license or identification shall be**  
73 **retained only for purposes of complying with the REAL ID Act and only for so long as**  
74 **minimally required for compliance with the REAL ID Act. For purposes of this section,**  
75 **"biometric data" includes, but is not limited to:**

- 76 (1) Facial feature pattern characteristics;  
77 (2) Voice data used for comparing live speech with a previously created speech model  
78 of a person's voice;  
79 (3) Iris recognition data containing color or texture patterns or codes;  
80 (4) Retinal scans, reading through the pupil to measure blood vessels lining the retina;  
81 (5) Fingerprint, palm prints, hand geometry, measuring of any and all characteristics of  
82 biometric information, including shape and length of fingertips or recording ridge pattern or  
83 fingertip characteristics;  
84 (6) Eye spacing;  
85 (7) Characteristic gait or walk;  
86 (8) DNA;  
87 (9) Keystroke dynamics, measuring pressure applied to key pads or other digital  
88 receiving devices.

89 ~~[5-]~~ **7. The department of revenue may not implement a radio frequency**  
90 **identification (RFID) chip or tag in a driver's license or identification card requested by**  
91 **an applicant under subsection 4 of this section.**

92 **8.** No citizen of this state shall have his or her privacy compromised by the state or  
93 agents of the state. The state shall within reason protect the sovereignty of the citizens the state  
94 is entrusted to protect.

95 **9. Any person, department, or department employee authorized to have access to**  
96 **information obtained under this section who unlawfully and knowingly discloses such**  
97 **information in violation of this section or who uses such information in a manner and for**  
98 **a purpose in violation of this section is guilty of a class E felony starting January 1, 2018,**  
99 **unless the person or employee acted under direction of a supervisor, in which case the**  
100 **supervisor shall be guilty of the class E felony.**

101 **10. Neither the sovereign nor the official immunity doctrines shall apply to a**  
102 **person, department, or department employee authorized to have information obtained**  
103 **under this section in instances when such information is disclosed to an unauthorized**  
104 **party. If the department is responsible in whole or in part for such information being**  
105 **negligently disclosed to an unauthorized party, then the person whose information was**  
106 **disclosed shall have a cause of action to recover liquidated damages in the amount of**  
107 **twenty-five thousand dollars in addition to compensatory economic and non-economic**  
108 **damages, attorney fees, and court costs. If it is determined by a court of competent**  
109 **jurisdiction that such disclosure was done intentionally and maliciously, then the person**  
110 **shall be entitled to punitive damages in addition to the damages above. None of the**

111 **foregoing damages shall be paid out from the state legal expense fund but shall be paid by**  
112 **the person or employee that violated subsection 9.**

Section B. Because the freedom of travel and ability to access federal facilities is of  
2 paramount importance for Missouri citizens, section A of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace and safety, and is hereby declared  
4 to be an emergency act within the meaning of the constitution, and section A of this act shall be  
5 in full force and effect upon its passage and approval.

Section C. Notwithstanding the provisions of section 1.140 to the contrary, the  
2 provisions of this act shall be nonseverable, and if any provision is for any reason held to be  
3 invalid, such decision shall invalidate all of the remaining provisions of this section. If any  
4 provision of the REAL ID Act of 2005 is held to be facially unconstitutional, the provisions of  
5 this act shall expire.

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