

**PRESENTATION OF ACTING ATTORNEY GENERAL
CAROL THOMAS JACOBS
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HOMELAND SECURITY, JUSTICE AND PUBLIC
SAFETY
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Good afternoon, Chairman Gittens, members of the Committee on Homeland Security, Justice & Public Safety, legislative staff, and to those of you listening and viewing today. My name is Carol Thomas-Jacobs, and I am the Virgin Islands Acting Attorney General. I am pleased to be invited to say a few remarks regarding proposed Bill No. 35-0013. The purpose behind this measure is to amend Title 20 of the Virgin Islands Code to allow applicants for a driver's license or identification card to obtain either or both for limited local purposes irrespective of their legal status in the Territory.

In 2005, the United States Congress enacted the REAL ID Act which created standards for federally approved state-issued driver's licenses and identification cards, including requiring an applicant for a REAL ID driver's license or identification card provide evidence of lawful status in the United States.¹ In addition to establishing minimum security standards for state issued driver's licenses and identification cards, the REAL ID law prohibits federal agencies from accepting for official purposes, such as accessing federal facilities, boarding federally regulated

¹ National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants*, <https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants>.

commercial aircraft and entering nuclear power plants, licenses and identification cards from states that do not meet the standards set forth in the REAL ID Act. The REAL ID Act applies to all states and territories. It defines State to mean: “a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.”²

The REAL ID Act, however, specifically allows states to issue limited purpose driver’s licenses and identification cards that do not comply with the requirements of the REAL ID Act. In other words, jurisdictions across the United States have the authority to issue their own requirements for local identification cards and purely local driver’s licenses that do not comply with the stringent legal presence requirement of the REAL ID. To date, nineteen states, Puerto Rico, and the District of Columbia have modified their laws regarding the requirements for obtaining these documents for purely local purposes.³ Approximately ten years ago in 2013, California, Colorado, Connecticut, District of Columbia, Nevada, Vermont and Puerto Rico, were among the first jurisdictions to pass laws providing access to driver’s licenses or identification cards regardless of immigration status. In March of this year, Minnesota became the most recent state to enact similar legislation.

² REAL ID Act of 2005, Section 201(7); 49 U.S.C §30301.

³ <https://www.nilc.org/issues/drivers-licenses/state-laws-providing-dl-access>

While all such statutes vary to a certain degree, the common theme that runs throughout is that unauthorized immigrants or persons who cannot prove legal presence in the United States, or persons who do not have a social security number, are afforded the right to obtain either an identification card, driver's license, or both. Today, this legislation seeks to accomplish the same objective as that of the aforementioned jurisdictions by allowing unauthorized immigrants and persons who do not have a social security number the right to acquire a local identification card and local driver's license which cannot be used for purposes that would violate federal law.

As stated above, under the REAL ID Act and regulations that govern the Act, States that the Department of Homeland Security determines are compliant with the REAL ID Act may choose to also issue driver's licenses and identification cards that are not acceptable by Federal agencies for official purposes. Section 202(d)(11) of the Act states that, "[i]n any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, [it must] 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.”⁴

Based on our research, it appears that the language contained within today's legislation tracked the REAL ID Act requirements for the issuance of a non-Real ID driver's license or identification card but may have fallen just short in adding required language. The requirement under subsection A is satisfied; however, the Department would like to see the language of subsection (B) included within today's legislation so there can be no question that the Virgin Islands is comporting with federal law. The limited purpose identification card and driver's license should have a unique design or color indication that clearly distinguishes the limited purpose identification card and driver's license from the Territory's federally compliant driver's license and identification cards. For example, the Department would recommend using similar language contained in a similar statute from Puerto Rico which states that the driver's license “must have a unique design or color indicator that distinguishes it from other driver's licenses [issued] in accordance with the

⁴ See also 6 C.F.R. § 37.71, which states as follows:

- (a) Except as authorized in § 37.27, States that DHS determines are compliant with the REAL ID Act that choose to also issue driver's licenses and identification cards that are not acceptable by Federal agencies for official purposes must ensure that such driver's licenses and identification cards—
 - (1) Clearly state on their face and in the machine readable zone that the card is not acceptable for official purposes; and
 - (2) Have a unique design or color indicator that clearly distinguishes them from driver's licenses and identification cards that meet the standards of this part.
- (b) DHS reserves the right to approve such designations, as necessary, during certification of compliance.

[REAL ID Act of 2005.]" 2013 PR LAW 97 § 8C. With that I want to thank the Committee for the invitation to testify on Bill No. 35-0013. This concludes my formal remarks and I remain available for any questions the members may have.