

## Memorandum

### Confidential Communication – Attorney Client Privilege

To: Andrew Collier, Commissioner of Motor Vehicles

From: Evangeline James, Assistant Attorney General

Vermont Agency of Transportation, Legal Department

Date: May 28, 2025

Re: S.123 Section 17

Language in the DMV Miscellaneous Bill, S.123, Section 17 could be construed as requiring DMV to act in a manner which the federal government could claim will impede federal enforcement of immigration law and jeopardize grant funds the Agency of Transportation receives from the federal government.

Session law from S.123 Section 17 states:

#### INFORMATION REGARDING PRIVILEGE CARDS AND NONDRIVER IDENTIFICATION CARDS; INTENT

It is the intent of the General Assembly that the Commissioner of Motor Vehicles shall ensure that any individual who is unable to or does not wish to comply with the requirements of the REAL ID Act of 2005, Pub. L. No. 109-13, §§ 201 and 202 **shall** continue to be informed of the option of obtaining an operator's privilege card pursuant to the provisions of 23 V.S.A. § 603(f) or a nondriver identification card pursuant to the provisions of 23 V.S.A. § 115. (Emphasis added.)

This language must be considered with a letter and grant document which the Agency of Transportation received from the federal government.

A letter dated April 25, 2025, signed by Sean P. Duffy, Secretary of Transportation, addressed to "All Recipients of U.S. Department of Transportation Funding" states:

[Y]our legal obligations require cooperation generally with Federal authorities in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law. DOT has noted reported instances where some recipients of Federal financial assistance have declined to cooperate with ICE investigations, have issued driver's licenses to individuals present in

the United States in violation of Federal immigration law, or have otherwise acted in a manner that impedes Federal law enforcement.

An April 22, 2025, document from the Federal Highway Administration, entitled Competitive Grant Program General Terms and Conditions states in Section 18.2 “the Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.”

Section 9.2 of the grant program terms and conditions sets forth remedies for noncompliance with federal law, or the terms and conditions of the grant to include “withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to the FHWA; suspension or termination of the award; or suspension and debarment”; or any other remedy legally available.

The S.123 Section 17 language “unable to [...] comply with the requirements of the REAL ID Act” could be interpreted to require DMV to advise an individual who has been denied a REAL ID credential because the individual does not have legal presence, that they have the option to obtain a non-REAL ID credential.

A strict interpretation of Section 17 could require that while processing a request for a REAL ID credential, if a check of the SAVE program for an individual requires additional verification of their status, and the additional verification indicates the individual is not legally in the United States, DMV has direct knowledge of the individual’s illegal immigration status. For DMV to then advise said individual that they have the option to obtain a non-REAL ID credential and then issue a non-REAL ID credential to that individual, the federal government could say Vermont was intentionally interfering with federal law and impeding the enforcement of federal immigration law. The April 25, 2025 letter and grant program terms and conditions imply such an interpretation by the federal government.

A strict reading of the language in Section 17 could be interpreted as requiring DMV to engage in actions which would be interpreted by the federal government as impeding federal enforcement of immigration law and jeopardizing grant funds received from the federal government.

Section 17 could be modified as suggested below to state to the extent permitted under federal law, the Commissioner notify an individual of the option to apply for alternative credentials.

“It is the intent of the General Assembly that the Commissioner of Motor Vehicles, **to the extent permitted under federal law, shall** ensure that any individual who is unable to or does not wish to comply with the requirements of the REAL ID Act of 2005 [...] **shall** continue to be informed of the option of **obtaining applying for** an operator’s privilege card [...] or a nondriver identification card [...]”.