S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. CUSICK, LAVINE, JAFFEE, TITONE, CASTRO -- Multi-Sponsored by -- M. of A. COOK, GALEF, MARKEY, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, the election law and the vehicle and traffic law, in relation to creating a state brain donor registry and to repeal certain provisions of the vehicle and traffic law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 4311 to read as follows:

S 4311. NEW YORK STATE BRAIN DONOR REGISTRY. 1. THE DEPARTMENT SHALL ESTABLISH A BRAIN DONOR REGISTRY, WHICH SHALL CONTAIN A LISTING OF ALL BRAIN DONORS WHO HAVE DECLARED THEIR CONSENT TO MAKE AN ANATOMICAL GIFT OF THEIR BRAINS FOR THE PURPOSE OF MEDICAL RESEARCH REGARDING DEVELOPMENTAL DISABILITIES, INCLUDING BUT NOT LIMITED TO AUTISM SPECTRUM DISORDERS OR CEREBRAL PALSY.

2. SUCH REGISTRATION OF CONSENT TO MAKE AN ANATOMICAL GIFT CAN BE MADE THROUGH (A) INDICATION MADE ON THE APPLICATION OR RENEWAL FORM OF A LICENSE, (B) INDICATION MADE ON A NON-DRIVER IDENTIFICATION CARD APPLICATION OR RENEWAL FORM, (C) ENROLLING IN THE REGISTRY WEBSITE MAINTAINED BY THE DEPARTMENT, (D) INDICATION MADE ON A VOTER REGISTRATION FORM PURSUANT TO SUBDIVISION FIVE OF SECTION 5-210 OF THE ELECTION LAW, OR (E) THROUGH ANY OTHER METHOD IDENTIFIED BY THE COMMISSIONER. THE REGISTRATION SHALL TAKE EFFECT UPON THE DEPARTMENT SENDING WRITTEN NOTICE OF THE REGISTRATION TO THE PERSON ENROLLING IN THE REGISTRY.

3. (A) INFORMATION CONTAINED IN THE REGISTRY SHALL BE ACCESSIBLE TO ANY ENTITY FORMALLY APPROVED BY THE COMMISSIONER.

(B) THE INFORMATION CONTAINED IN THE REGISTRY SHALL NOT BE RELEASED TO ANY PERSON EXCEPT AS EXPRESSLY AUTHORIZED BY THIS SECTION SOLELY FOR THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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PURPOSE OF IDENTIFYING POTENTIAL BRAIN DONORS AT OR NEAR THE TIME OF DEATH.

4. IF THE DEPARTMENT HAD AN ESTABLISHED REGISTRY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, IT SHALL BE DEEMED TO MEET THE REQUIREMENTS OF THIS SECTION.

5. A PERSON REGISTERED IN THE BRAIN DONOR REGISTRY BEFORE THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE DEEMED TO HAVE EXPRESSED INTENT TO DONATE, UNTIL AND UNLESS HE OR SHE FILES AN AMENDMENT TO HIS OR HER REGISTRATION OR A NEW REGISTRATION EXPRESSING CONSENT TO DONATE.

6. THE COMMISSIONER SHALL CONTACT EACH PERSON REGISTERED BEFORE THE EFFECTIVE DATE OF THIS SUBDIVISION IN THE BRAIN DONOR REGISTRY IN WRITING TO INFORM HIM OR HER THAT AT THE TIME HE OR SHE REGISTERED, THE REGISTRY WAS THAT OF INTENT AND THAT THE REGISTRY IS NOW ONE OF CONSENT, TO EXPLAIN IN CLEAR AND UNDERSTANDABLE TERMS THE DIFFERENCE BETWEEN INTENT AND CONSENT, AND TO PROVIDE OPPORTUNITY FOR THE PERSON TO CHANGE HIS OR HER REGISTRATION TO PROVIDE CONSENT BY AMENDING HIS OR HER CURRENT REGISTRATION OR EXECUTING A NEW REGISTRATION.

7. THE COMMISSIONER IS AUTHORIZED TO PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 2. Subdivisions 1 and 5 of section 4301 of the public health law, as amended by chapter 348 of the laws of 2009, are amended to read as follows:

1. Any individual of sound mind and eighteen years of age or more may give all or any part of his or her body for any purpose specified in section forty-three hundred two of this article, the gift to take effect upon death. In any case where the donor has properly executed an organ donor card OR A BRAIN DONOR CARD, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, registered in the New York state organ and tissue donor registry under section forty-three hundred ten of this article, REGISTERED IN THE NEW YORK STATE BRAIN DONOR REGISTRY UNDER SECTION FORTY-THREE HUNDRED ELEVEN OF THIS ARTICLE or has otherwise given written authorization for BRAIN, organ or tissue donation, authorization for donation shall not be rescinded by an objection by a member of any of the classes specified in paragraphs (a) through (h) of subdivision two of this section, except upon a showing that the donor revoked the authorization.

5. The donee shall not accept the gift under the following circumstances:

(a) the donee has actual notice of contrary indication by the decedent;

(b) where the donor has not properly executed an organ donor card OR BRAIN DONOR CARD, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, registered in the New York state organ and tissue donor registry under section forty-three hundred ten of this article, REGISTERED IN THE NEW YORK STATE BRAIN DONOR REGISTRY UNDER SECTION FORTY-THREE HUNDRED ELEVEN OF THIS ARTICLE or otherwise given written authorization for BRAIN, organ or tissue donation, or has revoked any such authorization, and the gift is opposed by a person or persons in the highest priority available of the classes specified in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of subdivision two of this section; or

(c) the donee has reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs.

S 3. Paragraph (k) of subdivision 5 of section 5-210 of the election law is amended by adding a new subparagraph (xiii) to read as follows:

(XIII) A SPACE FOR THE APPLICANT TO REGISTER IN THE NEW YORK STATE BRAIN DONOR REGISTRY FOR BRAIN TISSUE DONATIONS ESTABLISHED PURSUANT TO SECTION FORTY-THREE HUNDRED ELEVEN OF THE PUBLIC HEALTH LAW.

S 4. Paragraph (b) of subdivision 3 of section 490 of the vehicle and traffic law, as amended by chapter 487 of the laws of 2012, is amended to read as follows:

(b) The identification card shall contain a distinguishing number or mark and adequate space upon which THE HOLDER MAY RECORD THE DONATION OF an anatomical gift OF THEIR ORGAN, TISSUE OR BRAIN, pursuant to article forty-three of the public health law, [by the holder may be recorded] and SUCH CARD shall contain such other information and shall be issued in such form as the commissioner shall determine; provided, however, every identification card or renewal thereof issued to a person under the age of twenty-one years shall have prominently imprinted thereon the statement "UNDER 21 YEARS OF AGE" in notably distinctive print or format. Provided, further, however, that every identification card issued to an applicant who was a member of the armed forces of the United States and received on honorable discharge or was released therefrom under honorable conditions shall, upon his or her request and submission of proof as set forth herein, contain a distinguishing mark, in such form as the commissioner shall determine, indicating that he or she is a veteran. Such proof shall consist of a certificate of release or discharge from active duty including but not limited to a DD Form 214 or other proof satisfactory to the commissioner. The commissioner shall not require fees for the issuance of such identification cards or renewals thereof to persons under twenty-one years of age which are different from the fees required for the issuance of identification cards or renewals thereof to persons twenty-one years of age or over, nor fees to persons requesting a veteran notation which are different from fees that would otherwise be required.

S 5. Subdivision 1 of section 502 of the vehicle and traffic law, as amended by section 1 of part D of chapter 58 of the laws of 2012, is amended to read as follows:

1. Application for license. Application for a driver's license shall be made to the commissioner. The fee prescribed by law may be submitted with such application. The applicant shall furnish such proof of identity, age, and fitness as may be required by the commissioner. The commissioner may also provide that the application procedure shall include the taking of a photo image or images of the applicant in accordance with rules and regulations prescribed by the commissioner. In addition, the commissioner also shall require that the applicant provide his or her social security number and provide space on the application so that the applicant may register in the New York state organ and tissue donor registry under section forty-three hundred ten of the public health law OR THE NEW YORK STATE BRAIN DONOR REGISTRY UNDER SECTION FORTY-THREE HUNDRED ELEVEN OF THE PUBLIC HEALTH LAW. In addition, an applicant for a commercial driver's license who will operate a commercial motor vehicle in interstate commerce shall certify that such applicant meets the requirements to operate a commercial motor vehicle, as set forth in public law 99-570, title XII, and title 49 of the code of federal regulations, and all regulations promulgated by the United States secretary of transportation under the hazardous materials transportation act. In addition, an applicant for a commercial driver's license shall submit a medical certificate at such intervals as required by the federal motor

carrier safety improvement act of 1999 and Part 383.71(h) of title 49 of the code of federal regulations relating to medical certification and in a manner prescribed by the commissioner. For purposes of this section and sections five hundred three, five hundred ten-a, and five hundred ten-aa of this title, the terms "medical certificate" and "medical certification" shall mean a form substantially in compliance with the form set forth in Part 391.43(h) of title 49 of the code of federal regulations. Upon a determination that the holder of a commercial driver's license has made any false statement, with respect to the application for such license, the commissioner shall revoke such license.

S 6. Subdivision 1 of section 502 of the vehicle and traffic law, as separately amended by chapters 465 and 487 of the laws of 2012, is REPEALED and a new subdivision 1 is added to read as follows:

1. APPLICATION FOR LICENSE. APPLICATION FOR A DRIVER'S LICENSE SHALL BE MADE TO THE COMMISSIONER. THE FEE PRESCRIBED BY LAW MAY BE SUBMITTED WITH SUCH APPLICATION. THE APPLICANT SHALL FURNISH SUCH PROOF OF IDENTITY, AGE, AND FITNESS AS MAY BE REQUIRED BY THE COMMISSIONER. THE COMMISSIONER MAY ALSO PROVIDE THAT THE APPLICATION PROCEDURE SHALL INCLUDE THE TAKING OF A PHOTO IMAGE OR IMAGES OF THE APPLICANT IN ACCORDANCE WITH RULES AND REGULATIONS PRESCRIBED BY THE COMMISSIONER. IN ADDITION, THE COMMISSIONER ALSO SHALL REQUIRE THAT THE APPLICANT PROVIDE HIS OR HER SOCIAL SECURITY NUMBER AND SHALL PROVIDE SPACE ON THE APPLICATION SO THAT THE APPLICANT MAY REGISTER IN THE NEW YORK STATE ORGAN AND TISSUE DONOR REGISTRY UNDER SECTION FORTY-THREE HUNDRED TEN OF THE PUBLIC HEALTH LAW OR THE NEW YORK STATE BRAIN DONOR REGISTRY UNDER SECTION FORTY-THREE HUNDRED ELEVEN OF THE PUBLIC HEALTH LAW WITH THE FOLLOWING STATED ON THE APPLICATION IN CLEAR AND CONSPICUOUS TYPE:

"YOU MUST FILL OUT THE FOLLOWING SECTION: WOULD YOU LIKE TO BE ADDED TO THE DONATE LIFE REGISTRY? CHECK BOX FOR 'YES' OR 'SKIP THIS QUESTION'.

YOU MUST FILL OUT THE FOLLOWING SECTION: WOULD YOU LIKE TO BE ADDED TO THE NEW YORK STATE BRAIN DONOR REGISTRY? CHECK BOX FOR 'YES' OR 'SKIP THIS QUESTION'."

THE COMMISSIONER OF THE DEPARTMENT OF HEALTH SHALL NOT MAINTAIN RECORDS OF ANY PERSON WHO CHECKS "SKIP THIS QUESTION". FAILURE TO CHECK A BOX SHALL NOT IMPAIR THE VALIDITY OF AN APPLICATION, AND FAILURE TO CHECK "YES" OR CHECKING "SKIP THIS QUESTION" SHALL NOT BE CONSTRUED TO IMPLY A WISH NOT TO DONATE. IN THE CASE OF AN APPLICANT UNDER EIGHTEEN YEARS OF AGE, CHECKING "YES" SHALL NOT CONSTITUTE CONSENT TO MAKE AN ANATOMICAL GIFT OR REGISTRATION IN THE DONATE LIFE REGISTRY OR THE NEW YORK STATE BRAIN DONOR REGISTRY. WHERE AN APPLICANT HAS PREVIOUSLY CONSENTED TO MAKE AN ANATOMICAL GIFT OR REGISTERED IN THE DONATE LIFE REGISTRY OR THE NEW YORK STATE BRAIN DONOR REGISTRY, CHECKING "SKIP THIS QUESTION" OR FAILING TO CHECK A BOX SHALL NOT IMPAIR THAT CONSENT OR REGISTRATION. IN ADDITION, THE COMMISSIONER ALSO SHALL REQUIRE THAT SPACE SHALL BE PROVIDED ON THE APPLICATION SO THAT THE APPLICANT MAY REQUEST A NOTATION UPON SUCH LICENSE THAT HE OR SHE IS A VETERAN OF THE UNITED STATES ARMED FORCES. IN ADDITION, AN APPLICANT FOR A COMMERCIAL DRIVER'S LICENSE WHO WILL OPERATE A COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE SHALL CERTIFY THAT SUCH APPLICANT MEETS THE REQUIREMENTS TO OPERATE A COMMERCIAL MOTOR VEHICLE, AS SET FORTH IN PUBLIC LAW 99-570, TITLE XII, AND TITLE 49 OF THE CODE OF FEDERAL REGULATIONS, AND ALL REGULATIONS PROMULGATED BY THE UNITED STATES SECRETARY OF TRANSPORTATION UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT. IN ADDITION, AN APPLICANT FOR A COMMERCIAL DRIVER'S LICENSE SHALL SUBMIT A MEDICAL CERTIFICATE AT SUCH INTERVALS AS REQUIRED BY THE FEDERAL MOTOR CARRIER

SAFETY IMPROVEMENT ACT OF 1999 AND PART 383.71(H) OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS RELATING TO MEDICAL CERTIFICATION AND IN A MANNER PRESCRIBED BY THE COMMISSIONER. FOR PURPOSES OF THIS SECTION AND SECTIONS FIVE HUNDRED THREE, FIVE HUNDRED TEN-A, AND FIVE HUNDRED TEN-AA OF THIS TITLE, THE TERMS "MEDICAL CERTIFICATE" AND "MEDICAL CERTIFICATION" SHALL MEAN A FORM SUBSTANTIALLY IN COMPLIANCE WITH THE FORM SET FORTH IN PART 391.43(H) OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS. UPON A DETERMINATION THAT THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE HAS MADE ANY FALSE STATEMENT, WITH RESPECT TO THE APPLICATION FOR SUCH LICENSE, THE COMMISSIONER SHALL REVOKE SUCH LICENSE.

S 7. Subdivision 1 of section 502 of the vehicle and traffic law, as added by section six of this act, is amended to read as follows:

1. Application for license. Application for a driver's license shall be made to the commissioner. The fee prescribed by law may be submitted with such application. The applicant shall furnish such proof of identity, age, and fitness as may be required by the commissioner. The commissioner may also provide that the application procedure shall include the taking of a photo image or images of the applicant in accordance with rules and regulations prescribed by the commissioner. In addition, the commissioner also shall require that the applicant provide his or her social security number and [shall] provide space on the application so that the applicant may register in the New York state organ and tissue donor registry under section forty-three hundred ten of the public health law or the New York state brain donor registry under section forty-three hundred eleven of the public health law [with the following stated on the application in clear and conspicuous type:

"You must fill out the following section: Would you like to be added to the Donate Life Registry? Check box for 'yes' or 'skip this question'.

You must fill out the following section: Would you like to be added to the New York State Brain Donor Registry? Check box for 'yes' or 'skip this question'.

The commissioner of the department of health shall not maintain records of any person who checks "skip this question". Failure to check a box shall not impair the validity of an application, and failure to check "yes" or checking "skip this question" shall not be construed to imply a wish not to donate. In the case of an applicant under eighteen years of age, checking "yes" shall not constitute consent to make an anatomical gift or registration in the donate life registry or the New York state brain donor registry. Where an applicant has previously consented to make an anatomical gift or registered in the donate life registry or the New York state brain donor registry, checking "skip this question" or failing to check a box shall not impair that consent or registration]. In addition, the commissioner also shall require that space shall be provided on the application so that the applicant may request a notation upon such license that he or she is a veteran of the United States armed forces. In addition, an applicant for a commercial driver's license who will operate a commercial motor vehicle in interstate commerce shall certify that such applicant meets the requirements to operate a commercial motor vehicle, as set forth in public law 99-570, title XII, and title 49 of the code of federal regulations, and all regulations promulgated by the United States secretary of transportation under the hazardous materials transportation act. In addition, an applicant for a commercial driver's license shall submit a medical certificate at such intervals as required by the federal motor carrier safety improvement act of 1999 and Part 383.71(h) of title 49 of the

code of federal regulations relating to medical certification and in a manner prescribed by the commissioner. For purposes of this section and sections five hundred three, five hundred ten-a, and five hundred ten-aa of this title, the terms "medical certificate" and "medical certification" shall mean a form substantially in compliance with the form set in Part 391.43(h) of title 49 of the code of federal regulations. Upon a determination that the holder of a commercial driver's license has made any false statement, with respect to the application for such license, the commissioner shall revoke such license.

S 8. Paragraph (a) of subdivision 1 of section 504 of the vehicle and traffic law, as separately amended by chapters 568 and 639 of the laws of 2006, is amended to read as follows:

(a) Every license or renewal thereof shall contain a distinguishing mark and adequate space upon which THE LICENSEE MAY RECORD THE DONATION OF an anatomical gift OF THEIR ORGAN, TISSUE OR BRAIN, pursuant to [section] SECTIONS forty-three hundred ten AND FORTY-THREE HUNDRED ELEVEN of the public health law, [by the licensee shall be recorded] and shall contain such other information and shall be issued in such form as the commissioner shall determine; provided, however, every license or renewal thereof issued to a person under the age of twenty-one years shall have prominently imprinted upon it the statement "UNDER 21 YEARS OF AGE" in notably distinctive print or format; provided further, however, every license or renewal thereof issued to a person making an anatomical gift shall have prominently printed upon the front of such license or renewal thereof the statement "ORGAN DONOR" OR "BRAIN DONOR" in notably distinctive print or format. The commissioner shall not require fees for the issuance of such licenses or renewals thereof to persons under twenty-one years of age or to persons making an anatomical gift which are different from the fees required for the issuance of licenses or renewals thereof to persons twenty-one years of age or over or to persons not making an anatomical gift.

S 9. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that the amendments to paragraph (b) of subdivision 3 of section 490 of the vehicle and traffic law made by section four of this act shall take effect on the same date and in the same manner as chapter 487 of the laws of 2012, takes effect; provided, however, that section six of this act shall take effect on October 3, 2013; and provided further that section seven of this act shall take effect on October 3, 2016.