STATE OF NEW YORK

8680

IN SENATE

May 10, 2018

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to authorizing the department of motor vehicles to issue standard drivers' licenses; and to repeal subdivisions 1 and 7 of section 502 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. This act shall be known and may be cited as the "driver's license access and privacy act".

§ 2. Section 201 of the vehicle and traffic law, as added by chapter 380 of the laws of 1980, paragraph (b) of subdivision 1 and subdivision 2 as amended by chapter 568 of the laws of 1994, paragraph (f) of subdivision 1 as amended by chapter 550 of the laws of 1992, paragraph (i) of subdivision 1 as amended by section 2 of part E of chapter 60 of the laws of 2005, item 1 of clause (A) of subparagraph (ii) of paragraph (i) of subdivision 1 as amended by section 1 of part I of chapter 58 of the laws of 2015, item 2 of clause (A) of subparagraph (ii) of paragraph (i) of subdivision 1 as amended by section 1 of part K of chapter 59 of the laws of 2009, paragraph (j) of subdivision 1 as added by chapter 448 of the laws of 1995, paragraph (k) of subdivision 1 as amended by chapter 391 of the laws of 1998, subdivision 5 as amended by chapter 196 of the laws of 1996, subdivision 6 as amended by chapter 432 of the laws of 1997, and subdivision 7 as added by chapter 978 of the laws of 1984, is amended to read as follows:

§ 201. Custody of records. 1. Documents. The commissioner may destroy:

(a) any application, including supporting documents, for registration and/or title of a motor vehicle or trailer, other than an application for renewal of registration, or any notice of a lien on a motor vehicle or trailer, after such application shall have been on file for a period of five years;

(b) any application for renewal of a registration which results in the issuance of a registration renewal of any motor vehicle or trailer, upon entry of an electronic record of renewal on the files;

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

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(c) any application for a **federal-purpose** driver's license, including any document required to be filed with any such application, after such application shall have been on file for a period of five years;

(d) **any application for a standard driver's license, including any document required to be filed with such application, after the application has been reviewed, provided that such application and documents shall be destroyed after having been on file for a period of six months;**

(e) any application, including supporting documents, for the registration, other than a renewal of a registration, of a snowmobile after such application shall have been on file for a period of two years;

[~~(e)~~] **(f)** any application for renewal of a registration which results in the issuance of a registration renewal for any snowmobile, upon the expiration of the registration renewal issued;

[~~(f)~~] **(g)** any application, including supporting documents, for registration and/or title of a motorboat, other than an application for renewal of registration, or any notice of a lien on a motorboat after such application shall have been on file for a period of four years;

[~~(g)~~] **(h)** any application for renewal of a registration which results in the issuance of a registration renewal for any motorboat, upon the expiration of the registration renewal issued;

[~~(h)~~] **(i)** any application, including supporting documents relating to ownership, for any other registration, license or certificate issued under this chapter and not specifically otherwise provided for in this subdivision, after such application shall have been on file for a period of five years;

[~~(i)~~] **(j)** (i) any accident reports filed with the commissioner, conviction certificates, police reports, complaints, satisfied judgment records, closed suspension and revocation orders, hearing records, other than audio tape recordings of hearings, significant correspondence relating to any of the same, and any other record on file after remaining on file for four years except that if the commissioner shall receive, during the last year of such period of four years, written notice to retain one or more of such papers or documents, the same shall be retained for another four years in addition to said period of four years. The provisions of this paragraph shall not apply to certificates of conviction filed with respect to convictions which affect sentencing or administrative action required by law beyond such four year period. Such certificates may be destroyed after they have no legal effect on sentencing or administrative action;

(ii)(A) Notwithstanding the provisions of subparagraph (i) of this paragraph, the commissioner may destroy any conviction certificates and closed suspension and revocation orders after remaining on file for:

(1) fifty-five years where the conviction and suspension or revocation order relates to a conviction, suspension or revocation by the holder of any driver's license when operating a commercial motor vehicle, as defined in subdivision four of section five hundred one-a of this chapter, or by the holder of a commercial driver's license or commercial learner's permit when operating any motor vehicle, who: has refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this chapter or has been convicted of any of the following offenses: any violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this chapter, any violation of subdivision one or two of section six hundred of this chapter, any felony involving the use of a motor vehicle, other than the use of a motor vehicle in the commission of a felony involving manufacturing, distributing, dispensing a controlled substance; or the conviction, suspension

or revocation involves any of the following offenses while operating a commercial motor vehicle: any violation of subdivision five or six of section eleven hundred ninety-two of this chapter, driving a commercial motor vehicle when as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license or commercial learner's permit is suspended or revoked, or has been convicted of causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular manslaughter and criminally negligent homicide as set forth in article one hundred twenty-five of the penal law;

(2) fifteen years for violating an out of service order as provided for in the rules and regulations of the department of transportation while operating a commercial motor vehicle.

(B) Any conviction arising out of the use of a motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance shall never be destroyed.

(C) The provisions of this subparagraph shall only apply to records requested by a state, the United States secretary of transportation, the person who is the subject of the record, or a motor carrier who employs or who prospectively may employ the person who is the subject of the record.

[~~(j) audio tape recordings of hearings, two years after such hearing; provided, however, that audio tape recordings of hearings held pursuant to section two hundred twenty-seven of this chapter may be destroyed ninety days after a determination has been made as prescribed in such section.~~]

(k) any records, including any reproductions or electronically created images of such records and including any records received by the commissioner from a court pursuant to paragraph (c) of subdivision ten of section eleven hundred ninety-two of this chapter or section forty-nine-b of the navigation law, relating to a finding of a violation of section eleven hundred ninety-two-a of this chapter or a waiver of the right to a hearing under section eleven hundred ninety-four-a of this chapter or a finding of a refusal following a hearing conducted pursuant to subdivision three of section eleven hundred ninety-four-a of this chapter or a finding of a violation of section forty-nine-b of the navigation law or a waiver of the right to a hearing or a finding of refusal following a hearing conducted pursuant to such section, after remaining on file for three years after such finding or entry of such waiver or refusal or until the person that is found to have violated such section reaches the age of twenty-one, whichever is the greater period of time. Upon the expiration of the period for destruction of records pursuant to this paragraph, the entirety of the proceedings concerning the violation or alleged violation of such section eleven hundred ninety-two-a of this chapter or such section forty-nine-b of the navigation law, from the initial stop and detention of the operator to the entering of a finding and imposition of sanctions pursuant to any subdivision of section eleven hundred ninety-four-a of this chapter or of section forty-nine-b of the navigation law shall be deemed a nullity, and the operator shall be restored, in contemplation of law, to the status he occupied before the initial stop and prosecution[~~.~~]__; and__

__(l) audio tape recordings of hearings, two years after such hearing; provided, however, that audio tape recordings of hearings held pursuant to section two hundred twenty-seven of this title may be destroyed ninety days after a determination has been made as prescribed in such section.__

2. Reproduction of documents by commissioner. The provisions of subdivision one of this section shall not prevent the commissioner from reproducing a copy of any document specified in that subdivision or from electronically creating and storing an image of any documents maintained by the department. Such image or reproduction may be designated as the official departmental record. The original document may be destroyed after such reproduction or image has been made and filed and the destruction of the reproduction or image shall be governed by the provisions of subdivision one of this section.

3. Electronically or mechanically stored records. Any electronically or mechanically stored record relating to:

(a) certificates of title shall be retained for a period of seven years from the date of the issuance of the title plus an additional three consecutive years of inactivity regarding the titled vehicle;

(b) liens and satisfaction of liens shall be retained for one year from the date of satisfaction;

(c) renewal of the registration of any motor vehicle or trailer shall be retained for a period of one year from the date of expiration of the registration issued;

(d) **federal-purpose** driver's licenses shall be retained for a period of two years from the date of expiration of the last driver's license issued;

(e) **standard driver's license may be retained only for a period of two years from the date of expiration of the last driver's license issued;**

(f) registrations, licenses, or certificates not otherwise provided for in this subdivision shall be retained for a period of one year from the date of expiration of the last registration, license or certificate;

[~~(f)~~] **(g)** documents specified in paragraph [~~(i)~~] **(j)** of subdivision one of this section shall be retained until the document itself may be destroyed.

4. Whenever any document referred to in subdivision one of this section shall have been destroyed, a document produced from the surviving electronically or mechanically stored data record shall be considered the original record of such document.

5. Whenever any document referred to in subdivision one of this section or any record retained in subdivision three of this section has been retained beyond the required retention period of such document or record, the document or record shall not be a public record; and, to the extent that any document referred to in paragraph (k) of subdivision one of this section has not been destroyed at the expiration of the retention period set forth therein, such document shall be deemed destroyed as a matter of law for all purposes upon the expiration of the retention period.

6. Whenever any document referred to in subdivision one of this section is filed with this department when it is not required to be filed and is used by this department for no other purposes, other than for statistics or research, the document shall not be a public record. Provided, however, that an accident report filed with this department when it is not required to be filed shall not be a public record except as follows: for use by the state or any political subdivision thereof for no other purposes other than for statistics or research relating to highway safety; for any lawful purpose by a person to whom such report pertains or named in such report, or his or her authorized representative; and, for use by any other person, or his or her authorized representative, who has demonstrated to the satisfaction of the commis-

sioner that such person is or may be a party to a civil action arising out of the conduct described in such accident report.

7. Where a judge or magistrate reports a license suspension or revocation to the commissioner, following a youthful offender determination, as is required by section five hundred thirteen of this chapter, the commissioner shall not make available the finding of the court of youthful offender status to any person, or public or private agency.

8. Any portion of any record retained by the commissioner that identifies a person's social security number, address, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, or the customer identification number associated with a public utilities account is not a public record and shall not be disclosed in response to any request for records except where expressly authorized by this section.

9. The commissioner shall not disclose records or information collected from driver's license or learner's permit applicants or holders to any law enforcement agency absent a judicial subpoena or judicial warrant that names the individual whose information is sought. If presented with a judicial subpoena or judicial warrant, only those records or information specifically identified in the subpoena or warrant may be disclosed.

10. The commissioner shall not permit any third party, including any law enforcement agency, to have direct physical or electronic access to any databases or indexes maintained by the department.

11. The commissioner shall provide notice to each individual whose information is requested by any third party, including law enforcement. Such notice shall include the identity of the person or agency that made the request.

12. Any databases or indexes maintained by the commissioner of driver's license applicants or holders shall not include an individual's social security number or whether the applicant or holder provided a social security number, and shall not identify whether an individual holds a standard or federal-purpose driver's license.

§ 3. Subparagraphs (iv), (vi), (vii) and (viii) of paragraph (a) of subdivision 2 and paragraph (a) of subdivision 5 of section 501 of the vehicle and traffic law, subparagraphs (vi), (vii) and (viii) of paragraph (a) of subdivision 2 as added by chapter 173 of the laws of 1990, subparagraph (iv) of paragraph (a) of subdivision 2 as amended by chapter 339 of the laws of 2005, paragraph (a) of subdivision 5 as amended by chapter 692 of the laws of 1985, and subparagraph (ii) of paragraph (a) of subdivision 5 as amended by chapter 644 of the laws of 2002, are amended to read as follows:

(iv) Class D. Such license shall be valid to operate any passenger or limited use automobile or any truck with a GVWR of not more than twenty-six thousand pounds or any such vehicle towing a vehicle with a GVWR of not more than ten thousand pounds, or any such vehicle towing another vehicle with a GVWR of more than ten thousand pounds provided such combination of vehicles has a GCWR of not more than twenty-six thousand pounds, or any personal use vehicle with a GVWR of not more than twenty-six thousand pounds or any such vehicle towing a vehicle with a GVWR of not more than ten thousand pounds, except it shall not be valid to operate a tractor, a motorcycle other than a class B or C limited use motorcycle, a vehicle used to transport passengers for hire or for which a hazardous materials endorsement is required, or a vehicle defined as a bus in subdivision one of section five hundred nine-a of this title.

Such licenses may be issued either as a standard driver's license or a federal-purpose driver's license.

(vi) Class DJ. Such license shall be valid to operate only vehicles which may be operated with a class D license by a person under eighteen years of age, except it shall not be valid to operate a motor vehicle with an unladen weight or a GVWR of more than ten thousand pounds or any motor vehicle towing another vehicle with an unladen weight or GVWR of more than three thousand pounds. Such license shall automatically become a class D license when the holder becomes eighteen years of age. Such licenses may be issued either as a standard driver's license or a federal-purpose driver's license.

(vii) Class M. Such license shall be valid to operate any motorcycle, or any motorcycle, other than a limited use motorcycle, towing a trailer. Such licenses may be issued either as a standard driver's license or a federal-purpose driver's license.

(viii) Class MJ. Such license shall be valid to operate any motorcycle or limited use motorcycle by a person under eighteen years of age. Such license shall automatically become a class M license when the holder becomes eighteen years of age. Such licenses may be issued either as a standard driver's license or a federal-purpose driver's license.

(a) The commissioner shall issue learner's permits as provided in this article. Such permits may be issued either as a standard learner's permit or a federal-purpose learner's permit. Such permits shall be valid only:

(i) for the operation of a motor vehicle of a type which could be operated by the holder of the class of license for which application is being made;

(ii) when the holder is under the immediate supervision and control of a person at least twenty-one years of age who holds a license valid in this state for the operation of the type of vehicle being operated; and

(iii) in accordance with any additional restrictions prescribed by the commissioner and noted on such permit.

§ 4. Section 501-a of the vehicle and traffic law is amended by adding three new subdivisions 9, 10 and 11 to read as follows:

9. Standard driver's license or learner's permit. A license or permit card that authorizes a person to operate a motor vehicle as determined by the class of license.

10. Federal-purpose driver's license or learner's permit. A license or permit card that authorizes a person to operate a motor vehicle as determined by the class of license, and which is intended to meet federal standards for identification accepted by the federal government.

11. Judicial warrant. A warrant based on probable cause and issued by a judge appointed pursuant to article III of the United States constitution or a federal magistrate judge appointed pursuant to 28 USC 631, that authorizes federal immigration authorities to take into custody the person who is the subject of such warrant.

§ 5. Subdivisions 1 and 7 of section 502 of the vehicle and traffic law are REPEALED and a new subdivision 1 is added to read as follows:

1. Application for license. Application for a federal-purpose driver's license shall be made to the commissioner pursuant to this section. 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. Applicants who cannot present sufficient proof to obtain a federal-purpose driver's license shall be notified that they may be eligible for a standard driver's license under section five hundred two-b of this article. 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 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'."

The commissioner of health shall not maintain records of any person who checks "skip this question". Except where the application is made in person or electronically, 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, except as otherwise provided pursuant to the provisions of paragraph (b) of subdivision one of section forty-three hundred one of the public health law. Where an applicant has previously consented to make an anatomical gift or registered in the donate life registry, checking "skip this question" or failing to check a box shall not impair that consent or registration. 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.

§ 6. Subdivision 3, paragraph (a) of subdivision 5 and paragraph (a) of subdivision 6 of section 502 of the vehicle and traffic law, subdivision 3 as amended by chapter 97 of the laws of 2016, paragraph (a) of subdivision 5 as amended by chapter 138 of the laws of 1981, and paragraph (a) of subdivision 6 as amended by section 3 of part K of chapter 59 of the laws of 2009, are amended to read as follows:

3. Application for learner's permit. An application for a learner's permit shall be included in the application for a standard or federal-purpose driver's license. A learner's permit shall be issued in such form as the commissioner shall determine but shall not be issued unless the applicant has successfully passed the vision test required by this section and the test set forth in paragraph (a) of subdivision four of this section with respect to laws relating to traffic and ability to

read and comprehend traffic signs and symbols and has satisfactorily completed any course required pursuant to paragraph (a) of subdivision four of this section. Upon acceptance of an application for a learner's permit the commissioner shall provide the applicant with a driver's manual which includes but is not limited to the laws relating to traffic, the laws relating to and physiological effects of driving while ability impaired and driving while intoxicated, the law for exercising due care to avoid colliding with a parked, stopped or standing vehicle pursuant to section eleven hundred forty-four-a of this chapter, explanations of traffic signs and symbols and such other matters as the commissioner may prescribe.

(a) Upon successful completion of the requirements set forth in subdivision four of this section, and upon payment of the fee prescribed by law, the commissioner shall issue an appropriate **federal-purpose driver's** license to the applicant, except that the commissioner may refuse to issue such license**:**

(i) if the applicant is the holder of a currently valid or renewable license to drive issued by another state [~~**or foreign country**~~] unless the applicant surrenders such license, or

(ii) if such issuance would be inconsistent with the provisions of section five hundred sixteen of this chapter.

(a) A license issued pursuant to subdivision five of this section shall be valid until the expiration date contained thereon, unless such license is suspended, revoked or cancelled. Such license may be renewed by submission of an application for renewal, the fee prescribed by law, proofs of prior licensing, fitness and acceptable vision prescribed by the commissioner, the applicant's social security number, and if required by the commissioner a photo image of the applicant in such numbers and form as the commissioner shall prescribe. In addition, an applicant for renewal of a license containing a hazardous material endorsement shall pass an examination to retain such endorsement. The commissioner shall, with respect to the renewal of a hazardous materials endorsement, comply with the requirements imposed upon states by sections 383.141 and 1572.13 of title 49 of the code of federal regulations. A renewal of such license shall be issued by the commissioner upon approval of such application, except that no such license shall be issued if its issuance would be inconsistent with the provisions of section five hundred sixteen of this title, and except that the commissioner may refuse to renew such license if the applicant is the holder of a currently valid or renewable license to drive issued by another state [~~**or foreign country**~~] unless the applicant surrenders such license.

§ 7. The vehicle and traffic law is amended by adding a new section 502-b to read as follows:

§ 502-b. Standard driver's licenses. 1. Issuance of standard driver's licenses and learner's permits. (a) The commissioner shall issue standard driver's licenses and learner's permits in accordance with this section to any eligible applicant who seeks one.

(b) Such licenses and permits shall be made available with the classifications of D, DJ, M, and MJ as defined by subdivision two of section five hundred one of this article, and shall be valid for the same periods as the equivalent class of federal-purpose license.

(c) Such licenses shall be visually identical to federal-purpose driver's licenses issued pursuant to section five hundred two of this article except that such licenses may state "Not for Federal Purposes" in a font no larger than the smallest font otherwise appearing on the face of the card. The commissioner may promulgate regulations to approve addi-

tional design or color indicators for standard or federal-purpose licenses if required to comply with federal law.

2. Eligibility for standard driver's licenses. (a) Notwithstanding any other provision of this article, a standard driver's license shall be issued to any applicant who furnishes proof of identity, age, and fitness as required by this section.

(b) Proof of identity and age. The commissioner shall promulgate regulations to establish acceptable proof of age and identity for standard driver's license and learner's permit applicants, provided that:

(i) the commissioner shall accept a passport or government identification document issued in a foreign country as at least one form of proof; and

(ii) if any applicant is required to furnish a social security number, applicants may have the option of signing an affidavit stating that the applicant has not been issued a social security number.

(c) Proof of fitness. Applicants for standard driver's licenses and learner's permits shall be subject to the same minimum age requirements as provided for in subdivision two of section five hundred two of this article, and shall be subject to the same examination requirements as provided for in subdivision four of section five hundred two of this article.

(d) Notwithstanding any other provision of this article or title, applicants for standard driver's licenses and learner's permits shall not be required to prove that they are lawfully present in the United States.

3. Application form. (a) The commissioner shall provide an application form for standard driver's licenses in accordance with this section.

(b) The application form may include fields for an applicant's name, date of birth, residential and mailing address, sex, height, eye color, veteran status, whether the applicant chooses to be an organ donor, and consent of the applicant's parent or guardian, when applicable.

(c) The applications form shall include a single field to indicate whether an applicant has furnished proof of identity as required by this section, and shall not state the documents used to prove identity.

(d) The applications form shall not state an applicant's ineligibility for a social security number where applicable, and shall not state a person's citizenship or immigration status.

4. Renewals. A standard driver's license or learner's permit may be renewed according to the procedures provided in subdivision six of section five hundred two of this article, except that the applicant shall not be required to provide a social security number.

5. Custody of records. (a) Notwithstanding any other provision of this article, the commissioner shall collect, store, and maintain documents and information furnished by applicants for standard driver's licenses in accordance with this subdivision.

(b) The commissioner shall not collect or retain the documents or copies of the documents furnished by an applicant for a standard driver's license, including those documents furnished as proof of identity and age.

(c) The commissioner may collect the application form completed by an applicant for a standard driver's license for the period necessary to review the application, provided that such application and any copies of such application shall be destroyed after a period of no more than six months. Application forms shall not be public records and shall not be disclosed in response to any public records request.

(d) The commissioner shall not disclose any information collected pursuant to this section to any law enforcement agency absent a judicial subpoena or judicial warrant that names the individual whose information is sought. If presented with a judicial subpoena or judicial warrant, only those records specifically identified in the subpoena or warrant may be disclosed.

6. Prohibition on discrimination. (a) It shall be a violation of law, including but not limited to article fifteen of the executive law, to discriminate against an individual because he or she applies for, holds, or presents a standard driver's license or learner's permit.

(b) A standard driver's license or learner's permit shall not be used as evidence of a person's citizenship or immigration status, and shall not be the basis for investigating, arresting, or detaining a person.

(c) Employees of the department shall not inquire about a standard driver's license or learner's permit applicant's citizenship or immigration status.

§ 8. Subdivisions 2 and 3 of section 508 of the vehicle and traffic law, as added by chapter 780 of the laws of 1972, are amended to read as follows:

2. Any application required to be filed under this article shall be in a manner and on a form or forms prescribed by the commissioner. The applicant shall furnish all information required by statute and, except where otherwise provided in this title, such other information as the commissioner shall deem appropriate.

3. License record. The commissioner shall keep a record of every license issued which record shall be open to public inspection during reasonable business hours. Such record shall not include the social security number, address, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, or the customer identification number associated with a public utilities account of any license holders or applicants. Neither the commissioner nor his agent shall be required to allow the inspection of an application, or to furnish a copy thereof, or information therefrom, until a license has been issued thereon.

§ 9. This act shall take effect immediately.