

# STATE OF NEW YORK

1747--A

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

Introduced by Sens. SEPULVEDA, BAILEY, BENJAMIN, BIAGGI, CARLUCCI, COMRIE, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MAYER, MONTGOMERY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to the issuance of non-commercial drivers' licenses and learners' permits; and to repeal certain provisions of such law relating to driver's license applications

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "driver's  
2 license access and privacy act".

3 § 2. Section 201 of the vehicle and traffic law is amended by adding  
4 five new subdivisions 8, 9, 10, 11, and 12 to read as follows:

5 8. Any portion of any record retained by the commissioner in relation  
6 to a non-commercial driver's license or learner's permit application or  
7 renewal application that contains the photo image or identifies the  
8 social security number, telephone number, place of birth, country of  
9 origin, place of employment, school or educational institution attended,  
10 source of income, status as a recipient of public benefits, the customer  
11 identification number associated with a public utilities account,  
12 medical information or disability information of the holder of, or  
13 applicant for, such license or permit is not a public record and shall  
14 not be disclosed in response to any request for records except: (a) to  
15 the person who is the subject of such records; or (b) where expressly  
16 required pursuant to chapter three hundred three of part A of subtitle  
17 vi of title forty-nine of the United States code; or (c) where necessary  
18 to comply with a lawful court order, judicial warrant signed by a judge  
19 appointed pursuant to article III of the United States constitution, or  
20 subpoena for individual records issued pursuant to the criminal proce-  
21 dure law or the civil practice law and rules.

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

LBD05648-05-9

1     9. The commissioner shall not disclose or otherwise make accessible  
2 original documents or copies of documents collected from non-commercial  
3 driver's license or learner's permit applicants or renewal applicants to  
4 prove identity, age, or fitness except: (a) to the person who is the  
5 subject of such documents; or (b) where expressly required pursuant to  
6 chapter three hundred three of part A of subtitle vi of title forty-nine  
7 of the United States code; or (c) unless necessary to comply with a  
8 lawful court order, judicial warrant signed by a judge appointed pursu-  
9 ant to article III of the United States constitution, or subpoena for  
10 individual records properly issued pursuant to the criminal procedure  
11 law or the civil practice law and rules.

12     10. The commissioner shall not disclose or otherwise make accessible  
13 any portion of any record that identifies whether the type of driver's  
14 license or learner's permit that a person holds either meets federal  
15 standards for identification or does not meet federal standards for  
16 identification except: (a) to the person who is the subject of such  
17 record; or (b) where expressly required pursuant to chapter three  
18 hundred three of part A of subtitle vi of title forty-nine of the United  
19 States code; or (c) unless necessary to comply with a lawful court  
20 order, judicial warrant signed by a judge appointed pursuant to article  
21 III of the United States constitution, or subpoena for individual  
22 records properly issued pursuant to the criminal procedure law or the  
23 civil practice law and rules.

24     11. For the purposes of this section, whenever a lawful court order,  
25 judicial warrant, or subpoena for individual records properly issued  
26 pursuant to the criminal procedure law or the civil practice law and  
27 rules is presented to the commissioner, only those records, documents,  
28 or information specifically sought by such court order, warrant, or  
29 subpoena may be disclosed.

30     12. (a) The commissioner, and any agent or employee of the commission-  
31 er, shall not disclose or make accessible in any manner records or  
32 information that he or she maintains, to any agency that primarily  
33 enforces immigration law or to any employee or agent of such agency,  
34 unless the commissioner is presented with a lawful court order or judi-  
35 cial warrant signed by a judge appointed pursuant to article III of the  
36 United States constitution. Upon receiving a request for such records  
37 or information from an agency that primarily enforces immigration law,  
38 the commissioner shall, no later than three days after such request,  
39 notify the individual about whom such information was requested, inform-  
40 ing such individual of the request and the identity of the agency that  
41 made such request.

42     (b) The commissioner shall require any person or entity that receives  
43 or has access to records or information from the department to certify  
44 to the commissioner, before such receipt or access, that such person or  
45 entity shall not use such records or information for civil immigration  
46 purposes or disclose such records or information to any agency that  
47 primarily enforces immigration law or to any employee or agent of any  
48 such agency. In addition to any records required to be kept pursuant to  
49 subdivision (c) of section 2721 of title 18 of the United States code,  
50 any person or entity certifying pursuant to this paragraph shall keep  
51 for a period of five years records of all uses and identifying each  
52 person or entity that received department records or information from  
53 such certifying person or entity. Such records shall be maintained in a  
54 manner and form prescribed by the commissioner and shall be available  
55 for inspection by the commissioner or his or her designee upon his or  
56 her request.

1 (c) For purposes of this subdivision, the term "agency that primarily  
2 enforces immigration law" shall include, but not be limited to, United  
3 States immigration and customs enforcement and United States customs and  
4 border protection, and any successor agencies having similar duties.

5 § 3. Subdivision 1 of section 502 of the vehicle and traffic law, as  
6 amended by chapter 465 of the laws of 2012, the third undesignated para-  
7 graph as amended by chapter 248 of the laws of 2016, is amended to read  
8 as follows:

9 1. Application for license. Application for a driver's license shall  
10 be made to the commissioner. The fee prescribed by law may be submitted  
11 with such application. The applicant shall furnish such proof of identi-  
12 ty, age, and fitness as may be required by the commissioner. With  
13 respect to a non-commercial driver's license or learner's permit which  
14 does not meet federal standards for identification, in addition to the  
15 acceptable proofs of age and identity approved by the commissioner as of  
16 January first, two thousand nineteen, acceptable proof of identity shall  
17 also include, but not be limited to, a valid, unexpired foreign passport  
18 issued by the applicant's country of citizenship (which shall also be  
19 eligible as proof of age), a valid, unexpired consular identification  
20 document issued by a consulate from the applicant's country of citizen-  
21 ship, or a valid foreign driver's license that includes a photo image of  
22 the applicant and which is unexpired or expired for less than twenty-  
23 four months of its date of expiration, as primary forms of such proof.  
24 Nothing contained in this subdivision shall be deemed to preclude the  
25 commissioner from approving additional proofs of identity and age. The  
26 commissioner may also provide that the application procedure shall  
27 include the taking of a photo image or images of the applicant in  
28 accordance with rules and regulations prescribed by the commissioner. In  
29 addition, the commissioner also shall require that the applicant provide  
30 his or her social security number [~~and~~] or, in lieu thereof, with  
31 respect to an application for a non-commercial driver's license or  
32 learner's permit which does not meet federal standards for identifica-  
33 tion, an affidavit signed by such applicant that they have not been  
34 issued a social security number. The commissioner also shall provide  
35 space on the application so that the applicant may register in the New  
36 York state organ and tissue donor registry under section forty-three  
37 hundred ten of the public health law with the following stated on the  
38 application in clear and conspicuous type:

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

42 The commissioner of health shall not maintain records of any person  
43 who checks "skip this question". Except where the application is made in  
44 person or electronically, failure to check a box shall not impair the  
45 validity of an application, and failure to check "yes" or checking "skip  
46 this question" shall not be construed to imply a wish not to donate. In  
47 the case of an applicant under eighteen years of age, checking "yes"  
48 shall not constitute consent to make an anatomical gift or registration  
49 in the donate life registry, except as otherwise provided pursuant to  
50 the provisions of paragraph (b) of subdivision one of section forty-  
51 three hundred one of the public health law. Where an applicant has  
52 previously consented to make an anatomical gift or registered in the  
53 donate life registry, checking "skip this question" or failing to check  
54 a box shall not impair that consent or registration. In addition, an  
55 applicant for a commercial driver's license who will operate a commer-  
56 cial motor vehicle in interstate commerce shall certify that such appli-

1 cant meets the requirements to operate a commercial motor vehicle, as  
2 set forth in public law 99-570, title XII, and title 49 of the code of  
3 federal regulations, and all regulations promulgated by the United  
4 States secretary of transportation under the hazardous materials trans-  
5 portation act. In addition, an applicant for a commercial driver's  
6 license shall submit a medical certificate at such intervals as required  
7 by the federal motor carrier safety improvement act of 1999 and Part  
8 383.71(h) of title 49 of the code of federal regulations relating to  
9 medical certification and in a manner prescribed by the commissioner.  
10 For purposes of this section and sections five hundred three, five  
11 hundred ten-a, and five hundred ten-aa of this title, the terms "medical  
12 certificate" and "medical certification" shall mean a form substantially  
13 in compliance with the form set forth in Part 391.43(h) of title 49 of  
14 the code of federal regulations. Upon a determination that the holder of  
15 a commercial driver's license has made any false statement, with respect  
16 to the application for such license, the commissioner shall revoke such  
17 license.

18 § 4. Subdivision 7 of section 502 of the vehicle and traffic law is  
19 REPEALED and two new subdivisions 7 and 8 are added to read as follows:

20 7. Selective service act. The commissioner shall provide separate  
21 space on the application for a learner's permit, driver's license, non-  
22 driver identification card, or renewal thereof so that any person who is  
23 at least eighteen years of age but less than twenty-six years of age who  
24 applies to the commissioner for such permit, license, or card or renewal  
25 thereof may opt to register with the selective service in accordance  
26 with 50 U.S.C. App 451 et. seq., as amended, if such person is subject  
27 to such act, and consent to have the commissioner forward the necessary  
28 personal information in accordance with this subdivision. Such consent  
29 shall be separate from any other certification or signature on such  
30 application. The commissioner shall include on the application a brief  
31 statement about the requirement of the law, a citation of the act, and  
32 the consequences for failing to meet the same. The commissioner shall  
33 forward to the selective service system, in an electronic format, the  
34 necessary personal information required for registration only of indi-  
35 viduals who have affirmatively opted and consented, pursuant to this  
36 subdivision, to authorize the commissioner to forward such information  
37 to the selective service system.

38 8. Non-commercial drivers' licenses and learners' permits which do not  
39 meet federal standards for identification. (a) Non-commercial drivers'  
40 licenses and learners' permits which do not meet federal standards for  
41 identification shall be issued in such form as the commissioner shall  
42 determine, provided that such licenses and permits shall be visually  
43 identical to non-commercial drivers' licenses and learners' permits  
44 which do meet federal standards for identification except that such  
45 licenses and permits may state "Not for Federal Purposes" in a font no  
46 larger than the smallest font otherwise appearing on the face of such  
47 license and permit. Provided, however, that the commissioner may promul-  
48 gate regulations providing for additional design or color indicators for  
49 both such non-commercial drivers' licenses and learners' permits if  
50 required to comply with federal law.

51 (b) Applicants for a non-commercial driver's license or learner's  
52 permit or a renewal thereof shall not be required to prove that they are  
53 lawfully present in the United States.

54 (c) Application forms for non-commercial drivers' licenses and lear-  
55 ners' permits which do not meet federal standards for identification or  
56 for renewal thereof shall not state (i) the documents an applicant used

1 to prove age or identity, or (ii) an applicant's ineligibility for a  
2 social security number where applicable, or (iii) an applicant's citi-  
3 zenship or immigration status.

4 (d) The commissioner and any agent or employee of the commissioner  
5 shall not retain the documents or copies of documents presented by  
6 applicants for non-commercial drivers' licenses or learners' permits  
7 which do not meet federal standards for identification to prove age or  
8 identity except for a limited period necessary to ensure the validity  
9 and authenticity of such documents.

10 (e) (i) A non-commercial driver's license or learner's permit which  
11 does not meet federal standards for identification shall not be used as  
12 evidence of a person's citizenship or immigration status, and shall not  
13 be the basis for investigating, arresting, or detaining a person. (ii)  
14 Neither the commissioner nor any agent or employee of the commissioner  
15 shall inquire about the citizenship or immigration status of any appli-  
16 cant for a non-commercial driver's license or learner's permit which  
17 does not meet federal standards for identification.

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

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

26 3. License record. The commissioner shall keep a record of every  
27 license issued which record shall be open to public inspection during  
28 reasonable business hours. Provided, however, that the following infor-  
29 mation whenever contained within the record of non-commercial drivers'  
30 licenses and learners' permits shall not be open to public inspection:  
31 the photo image, social security number, client identification number,  
32 name, address, telephone number, place of birth, country of origin,  
33 place of employment, school or educational institution attended, source  
34 of income, status as a recipient of public benefits, the customer iden-  
35 tification number associated with a public utilities account, medical  
36 information or disability information of any holders of, or applicants  
37 for, such licenses and permits, and whether such licenses or permits  
38 meet federal standards for identification or do not meet federal stand-  
39 ards for identification. Neither the commissioner nor his agent shall be  
40 required to allow the inspection of an application, or to furnish a copy  
41 thereof, or information therefrom, until a license has been issued ther-  
42 eon.

43 § 6. Any system or method established by the commissioner of motor  
44 vehicles to determine eligibility for a non-commercial driver's license  
45 or learner's permit which does not meet federal standards for identifi-  
46 cation shall not be structured in a manner that substantially disadvan-  
47 tages or denies such licenses or permits to applicants who do not have  
48 social security numbers or who use documents issued by a foreign govern-  
49 ment to prove age or identity.

50 § 7. This act shall take effect on the one hundred eightieth day after  
51 it shall have become a law. Effective immediately, the addition, amend-  
52 ment and/or repeal of any rule or regulation necessary for the implemen-  
53 tation of this act on its effective date are authorized to be made and  
54 completed on or before such date.