

# STATE OF NEW YORK

1747--B

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 -- 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

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

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1 to comply with a lawful court order, judicial warrant signed by a judge  
2 appointed pursuant to article III of the United States constitution, or  
3 subpoena for individual records issued pursuant to the criminal proce-  
4 cedure law or the civil practice law and rules.

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

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

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

34 12. (a) Except as required for the commissioner to issue or renew a  
35 driver's license or learner's permit that meets federal standards for  
36 identification, the commissioner, and any agent or employee of the  
37 commissioner, shall not disclose or make accessible in any manner  
38 records or information that he or she maintains, to any agency that  
39 primarily enforces immigration law or to any employee or agent of such  
40 agency, unless the commissioner is presented with a lawful court order  
41 or judicial warrant signed by a judge appointed pursuant to article III  
42 of the United States constitution. Upon receiving a request for such  
43 records or information from an agency that primarily enforces immi-  
44 gration law, the commissioner shall, no later than three days after such  
45 request, notify the individual about whom such information was  
46 requested, informing such individual of the request and the identity of  
47 the agency that made such request.

48 (b) The commissioner shall require any person or entity that receives  
49 or has access to records or information from the department to certify  
50 to the commissioner, before such receipt or access, that such person or  
51 entity shall not (i) use such records or information for civil immi-  
52 gration purposes or (ii) disclose such records or information to any  
53 agency that primarily enforces immigration law or to any employee or  
54 agent of any such agency unless such disclosure is pursuant to a cooper-  
55 ative arrangement between city, state and federal agencies which  
56 arrangement does not enforce immigration law and which disclosure is

1 limited to the specific records or information being sought pursuant to  
2 such arrangement. In addition to any records required to be kept pursu-  
3 ant to subdivision (c) of section 2721 of title 18 of the United States  
4 code, any person or entity certifying pursuant to this paragraph shall  
5 keep for a period of five years records of all uses and identifying each  
6 person or entity that primarily enforces immigration law that received  
7 department records or information from such certifying person or entity.  
8 Such records shall be maintained in a manner and form prescribed by the  
9 commissioner and shall be available for inspection by the commissioner  
10 or his or her designee upon his or her request.

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

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

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

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

52 The commissioner of health shall not maintain records of any person  
53 who checks "skip this question". Except where the application is made in  
54 person or electronically, failure to check a box shall not impair the  
55 validity of an application, and failure to check "yes" or checking "skip  
56 this question" shall not be construed to imply a wish not to donate. In

1 the case of an applicant under eighteen years of age, checking "yes"  
2 shall not constitute consent to make an anatomical gift or registration  
3 in the donate life registry, except as otherwise provided pursuant to  
4 the provisions of paragraph (b) of subdivision one of section forty-  
5 three hundred one of the public health law. Where an applicant has  
6 previously consented to make an anatomical gift or registered in the  
7 donate life registry, checking "skip this question" or failing to check  
8 a box shall not impair that consent or registration. In addition, an  
9 applicant for a commercial driver's license who will operate a commer-  
10 cial motor vehicle in interstate commerce shall certify that such appli-  
11 cant meets the requirements to operate a commercial motor vehicle, as  
12 set forth in public law 99-570, title XII, and title 49 of the code of  
13 federal regulations, and all regulations promulgated by the United  
14 States secretary of transportation under the hazardous materials trans-  
15 portation act. In addition, an applicant for a commercial driver's  
16 license shall submit a medical certificate at such intervals as required  
17 by the federal motor carrier safety improvement act of 1999 and Part  
18 383.71(h) of title 49 of the code of federal regulations relating to  
19 medical certification and in a manner prescribed by the commissioner.  
20 For purposes of this section and sections five hundred three, five  
21 hundred ten-a, and five hundred ten-aa of this title, the terms "medical  
22 certificate" and "medical certification" shall mean a form substantially  
23 in compliance with the form set forth in Part 391.43(h) of title 49 of  
24 the code of federal regulations. Upon a determination that the holder of  
25 a commercial driver's license has made any false statement, with respect  
26 to the application for such license, the commissioner shall revoke such  
27 license.

28 § 4. Paragraph (a) of subdivision 6 of section 502 of the vehicle and  
29 traffic law, as amended by section 3 of part K of chapter 59 of the laws  
30 of 2009, is amended to read as follows:

31 (a) A license issued pursuant to subdivision five of this section  
32 shall be valid until the expiration date contained thereon, unless such  
33 license is suspended, revoked or cancelled. Such license may be renewed  
34 by submission of an application for renewal, the fee prescribed by law,  
35 proofs of prior licensing, fitness and acceptable vision prescribed by  
36 the commissioner, the applicant's social security number or, in lieu  
37 thereof, with respect to an application for a non-commercial driver's  
38 license or learner's permit which does not meet federal standards for  
39 identification, an affidavit signed by such applicant that they have not  
40 been issued a social security number, and if required by the commis-  
41 sioner, a photo image of the applicant in such numbers and form as the  
42 commissioner shall prescribe. In addition, an applicant for renewal of  
43 a license containing a hazardous material endorsement shall pass an  
44 examination to retain such endorsement. The commissioner shall, with  
45 respect to the renewal of a hazardous materials endorsement, comply with  
46 the requirements imposed upon states by sections 383.141 and 1572.13 of  
47 title 49 of the code of federal regulations. A renewal of such license  
48 shall be issued by the commissioner upon approval of such application,  
49 except that no such license shall be issued if its issuance would be  
50 inconsistent with the provisions of section five hundred sixteen of this  
51 title, and except that the commissioner may refuse to renew such license  
52 if the applicant is the holder of a currently valid or renewable license  
53 to drive issued by another state or foreign country unless the applicant  
54 surrenders such license.

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

1 7. Selective service act. The commissioner shall provide separate  
2 space on the application for a learner's permit, driver's license, non-  
3 driver identification card, or renewal thereof so that any person who is  
4 at least eighteen years of age but less than twenty-six years of age who  
5 applies to the commissioner for such permit, license, or card or renewal  
6 thereof may opt to register with the selective service in accordance  
7 with 50 U.S.C. App 451 et. seq., as amended, if such person is subject  
8 to such act, and consent to have the commissioner forward the necessary  
9 personal information in accordance with this subdivision. Such consent  
10 shall be separate from any other certification or signature on such  
11 application. The commissioner shall include on the application a brief  
12 statement about the requirement of the law, a citation of the act, and  
13 the consequences for failing to meet the same. The commissioner shall  
14 forward to the selective service system, in an electronic format, the  
15 necessary personal information required for registration only of indi-  
16 viduals who have affirmatively opted and consented, pursuant to this  
17 subdivision, to authorize the commissioner to forward such information  
18 to the selective service system.

19 8. Non-commercial drivers' licenses and learners' permits which do not  
20 meet federal standards for identification. (a) Non-commercial drivers'  
21 licenses and learners' permits which do not meet federal standards for  
22 identification shall be issued in such form as the commissioner shall  
23 determine, provided that such licenses and permits shall be visually  
24 identical to non-commercial drivers' licenses and learners' permits  
25 which do meet federal standards for identification except that such  
26 licenses and permits may state "Not for Federal Purposes". Provided,  
27 however, that the commissioner may promulgate regulations providing for  
28 additional design or color indicators for both such non-commercial driv-  
29 ers' licenses and learners' permits if required to comply with federal  
30 law.

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

34 (c) Application forms for non-commercial drivers' licenses and lear-  
35 ners' permits which do not meet federal standards for identification or  
36 for renewal thereof shall not state (i) the documents an applicant used  
37 to prove age or identity, or (ii) an applicant's ineligibility for a  
38 social security number where applicable, or (iii) an applicant's citi-  
39 zenship or immigration status.

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

46 (e) (i) A non-commercial driver's license or learner's permit which  
47 does not meet federal standards for identification shall not be used as  
48 evidence of a person's citizenship or immigration status, and shall not  
49 be the basis for investigating, arresting, or detaining a person. (ii)  
50 Neither the commissioner nor any agent or employee of the commissioner  
51 shall inquire about the citizenship or immigration status of any appli-  
52 cant for a non-commercial driver's license or learner's permit which  
53 does not meet federal standards for identification.

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

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

6 3. License record. The commissioner shall keep a record of every  
7 license issued which record shall be open to public inspection during  
8 reasonable business hours. Provided, however, that the following infor-  
9 mation whenever contained within the record of non-commercial drivers'  
10 licenses and learners' permits shall not be open to public inspection:  
11 the photo image, social security number, client identification number,  
12 name, address, telephone number, place of birth, country of origin,  
13 place of employment, school or educational institution attended, source  
14 of income, status as a recipient of public benefits, the customer iden-  
15 tification number associated with a public utilities account, medical  
16 information or disability information of any holders of, or applicants  
17 for, such licenses and permits, and whether such licenses or permits  
18 meet federal standards for identification or do not meet federal stand-  
19 ards for identification. Neither the commissioner nor his agent shall be  
20 required to allow the inspection of an application, or to furnish a copy  
21 thereof, or information therefrom, until a license has been issued ther-  
22 eon.

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

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