

# STATE OF NEW YORK

3675--A

2019-2020 Regular Sessions

## IN ASSEMBLY

January 30, 2019

Introduced by M. of A. CRESPO, NOLAN, GLICK, DINOWITZ, L. ROSENTHAL, ABINANTI, SIMOTAS, QUART, SEAWRIGHT, SIMON, GOTTFRIED, PEOPLES-STOKES, WEPRIN, MOSLEY, DE LA ROSA, HYNDMAN, PERRY, JAFFEE, DILAN, WALKER, DICKENS, ORTIZ, BRONSON, EPSTEIN, SAYEGH, RAMOS, PICHARDO, BUCHWALD, THIELE, CRUZ, OTIS, MAGNARELLI, JACOBSON, CARROLL, REYES, NIOU, PAULIN, FERNANDEZ, BENEDETTO, TAYLOR, RAYNOR, ARROYO, RODRIGUEZ, HEVE-SI, PRETLOW, DenDEKKER, LIFTON, D. ROSENTHAL, RIVERA, CAHILL, BLAKE, D'URSO, JEAN-PIERRE, KIM, HUNTER, DAVILA, STECK, RICHARDSON, GALEF, JOYNER, FALL, LAVINE, FRONTUS, BARRON, O'DONNELL, STIRPE, WRIGHT, SOLAGES -- Multi-Sponsored by -- M. of A. LENTOL, ROZIC, WEINSTEIN -- read once and referred 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

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

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1 applicant for, such license or permit is not a public record and shall  
2 not be disclosed in response to any request for records except: (a) to  
3 the person who is the subject of such records; or (b) where expressly  
4 required pursuant to chapter three hundred three of part A of subtitle  
5 vi of title forty-nine of the United States code; or (c) where necessary  
6 to comply with a lawful court order, judicial warrant signed by a judge  
7 appointed pursuant to article III of the United States constitution, or  
8 subpoena for individual records issued pursuant to the criminal proce-  
9 dure law or the civil practice law and rules.

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

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

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

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

51 (b) The commissioner shall require any person or entity that receives  
52 or has access to records or information from the department to certify  
53 to the commissioner, before such receipt or access, that such person or  
54 entity shall not use such records or information for civil immigration  
55 purposes or disclose such records or information to any agency that  
56 primarily enforces immigration law or to any employee or agent of any

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

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

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

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

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

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

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

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

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

47 8. Non-commercial drivers' licenses and learners' permits which do not  
48 meet federal standards for identification. (a) Non-commercial drivers'  
49 licenses and learners' permits which do not meet federal standards for  
50 identification shall be issued in such form as the commissioner shall  
51 determine, provided that such licenses and permits shall be visually  
52 identical to non-commercial drivers' licenses and learners' permits  
53 which do meet federal standards for identification except that such  
54 licenses and permits may state "Not for Federal Purposes" in a font no  
55 larger than the smallest font otherwise appearing on the face of such  
56 license and permit. Provided, however, that the commissioner may promul-

1 gate regulations providing for additional design or color indicators for  
2 both such non-commercial drivers' licenses and learners' permits if  
3 required to comply with federal law.

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

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

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

19 (e) (i) A non-commercial driver's license or learner's permit which  
20 does not meet federal standards for identification shall not be used as  
21 evidence of a person's citizenship or immigration status, and shall not  
22 be the basis for investigating, arresting, or detaining a person. (ii)  
23 Neither the commissioner nor any agent or employee of the commissioner  
24 shall inquire about the citizenship or immigration status of any appli-  
25 cant for a non-commercial driver's license or learner's permit which  
26 does not meet federal standards for identification.

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

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

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

52 § 6. Any system or method established by the commissioner of motor  
53 vehicles to determine eligibility for a non-commercial driver's license  
54 or learner's permit which does not meet federal standards for identifi-  
55 cation shall not be structured in a manner that substantially disadvan-  
56 tages or denies such licenses or permits to applicants who do not have

1 social security numbers or who use documents issued by a foreign govern-  
2 ment to prove age or identity.

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