STATE OF NEW YORK

1018--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. SOLAGES, ZACCARO -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2

AN ACT to amend the vehicle and traffic law, in relation to specifying conditions for the issuance of optional mobile or digital alternatives to driver's licenses and non-driver identification cards; and to amend the executive law, in relation to prohibiting law enforcement from seeking consent for phone searches during identity verifications using mobile or digital alternatives to driver's licenses and non-driver identification cards

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

Section 1. The vehicle and traffic law is amended by adding a new section 504-a to read as follows:

§ 504-a. Digital driver's licenses and non-driver identification cards. 1. The department's optional mobile or digital alternatives to driver's licenses and non-driver identification cards shall be subject to all of the following requirements:

(a) The alternative licenses shall be approved by the superintendent of the state police.

(b) The alternative products shall be provided at no cost to the state or to the participant.

(c) A user who no longer wishes to have a digital alternative to a driver's license or non-driver identification card may request the deletion of any data associated with their digital alternative to a driver's license or non-driver identification card. Within ten days of any such request, the department and all entities contracted with the department for the purpose of effectuating the program shall delete all data collected or maintained pertaining to that user.

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

LBD03743-02-4

(d) All users shall receive a physical license or non-driver identification card and shall have the option of downloading the digital driver's license or non-driver identification card. No user shall be required to download the digital driver's license or non-driver identification card.

2. In developing and implementing the use of digital driver's licenses and non-driver identification cards, the department shall ensure the protection of personal information and include security features that protect against unauthorized access to information, including, but not limited to, all of the following:

(a) Ensuring that use of the digital driver's license or non-driver identification card does not require handing over one's digital device to any other person or entity when using the digital driver's license or non-driver identification card.

(b) Ensuring that any remote access to the digital driver's license or non-driver identification card shall require the express, affirmative, real-time consent of the person whose digital driver's license or non-driver identification card is being requested for each piece of information being requested and shall be limited to only that information which is provided on a physical driver's license or non-driver identification card.

(c) Ensuring that the digital driver's license or non-driver identification card, as well as any mobile application required for the digital driver's license or non-driver identification card, shall not contain or collect any information not strictly necessary for the functioning of the digital driver's license, non-driver identification card, or mobile application, including, but not limited to, location information.

(d) Ensuring that the information transmitted to the digital driver's license or non-driver identification card, as well as any mobile application required for the digital driver's license or non-driver identification card, is encrypted and protected to the highest reasonable security standards broadly available and cannot be intercepted while being transmitted from the department.

(e) Prohibiting tracking of the digital driver's license or non-driver identification card or any app pertaining thereto by the issuer of such license or card.

(f) Implementing clear standards for when and where a digital driver's license or non-driver identification card can be used and allow selective disclosures to give holders control over what parts of their data are being shared and with whom.

(g) Prohibiting the sharing, sale or exploitation of data by issuing parties, vendors and verifiers and require warrants where they currently exist.

(h) Implementing strong enforcement mechanisms and a fine structure that compels compliance with the provisions of this section and any applicable rules and regulations of the department or any other relevant department, agency or office of the state.

(i) Mandating registration of verifying parties, including government agencies and privacy companies, with the state to determine what uses of user data by such entities are permissible.

3. (a) In the conduct of any program pursuant to this section, any data exchanged between the department and any electronic device, between the department and the provider of any electronic device, and between any electronic device and the provider of that electronic device, shall be limited to those data necessary to display the information necessary for a driver's license or non-driver identification card.

(b) If the state contracts with non-state entities to develop, in whole or in part, the technology used to implement the provisions of this section, it shall require such entities to use open-source technology. Any such contracts shall mandate that the resulting product or app is owned by the state, to the extent practicable, and that data supplied by the state for development of the resulting product or app shall not be used by the non-state entity in any other product or app. All apps resulting from such contract shall be controlled by the state.

(c) An entity contracted with the department for this purpose shall not use, share, sell, or disclose any information obtained as part of this contract, including, but not limited to any information about the holder of a digital driver's license or non-driver identification card, except as is necessary to satisfy the terms of the contract. Upon termination or expiration of any contract entered into for this purpose, the contracting entity shall delete any data collected or generated in the course of activities pursuant to that contract within thirty days.

4. (a) The holder of a digital driver's license or non-driver identification card shall not be required to turn over their electronic device to any other person or entity in order to use the digital driver's license or non-driver identification card for identity verification.

(b) The holder of a digital driver's license or non-driver identification card showing or turning over their electronic device to any other person or entity in order to use the digital driver's license or non-driver identification card for identity verification shall not constitute consent to a search, nor shall it constitute consent for access to any information other than that which is immediately available on the digital driver's license or non-driver identification card. Information incidentally obtained in the process of viewing a digital driver's license or non-driver identification card in order to verify the identity of the holder shall not be used to establish probable cause for a warrant to search the electronic device.

(c) Any request for remote access to their digital driver's license or non-driver identification card for identity verification shall require the express consent of the holder of the digital driver's license or non-driver identification card, shall be limited to the content of the digital driver's license or non-driver identification card specified in the request for remote access, and shall not exceed the information available on a physical driver's license or non-driver identification card.

(d) Consent to remote access to a digital driver's license or non-driver identification card by the holder shall not constitute consent to a search, nor shall it constitute consent for access to any information other than that which is immediately available on the digital driver's license or non-driver identification card. Information incidentally obtained in the process of remotely accessing a digital driver's license or non-driver identification card shall not be used to establish probable cause for a warrant to search the electronic device.

5. (a) A participant in any program established by the department pursuant to this section shall not be required to use a digital driver's license or non-driver identification card rather than a physical driver's license or non-driver identification card for the purpose of identity verification, nor shall their participation in the program preclude their use of a physical driver's license or non-driver identification card under any circumstances.

(b) A person or entity shall not provide preferential service based on a person's use of a digital driver's license or non-driver identification card rather than a physical driver's license or non-driver identification card.

6. The program may include the issuance of a mobile or digital Real ID driver's license or non-driver identification card upon authorization of the United States Secretary of Homeland Security.

7. The provision of a mobile or digital alternative to a driver's license or non-driver identification card to a law enforcement officer for identity verification during a traffic violation stop or other type of stop shall not be deemed as providing consent to a search of the device upon which such mobile or digital alternative is displayed.

§ 2. The executive law is amended by adding a new section 382-c to read as follows:

§ 382-c. Search of digital device. No police agency, prosecutorial agency or other law enforcement agency shall conduct a search of an electronic device used to display a mobile or digital alternative to a driver's license or non-driver identification card to a law enforcement officer for purposes of identity verification in violation of the provisions of subdivision seven of section five hundred four-a of the vehicle and traffic law. No police agency, prosecutorial agency or other law enforcement agency shall seek the consent of the owner or user of the electronic device to conduct a search of the device.

§ 3. This act shall take effect January 1, 2026.