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COUNTY CLERK  
CLERK OF SUPREME  
AND COUNTY COURTS

**MATTHEW BACON**  
DEPUTY CLERK  
**NATALIE METZ**  
DEPUTY CLERK OF OPERATIONS

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

June 20, 2019

Dear President Trump,

Today I write to you regarding the “Green Light” bill recently signed into law by Governor Andrew Cuomo of New York. Respectfully, I ask that you direct the Justice Department to commence an immediate review of the legislation and render an opinion regarding whether this legislation should be reviewed in federal court.

As the Clerk of Oswego County, I have sworn an oath to uphold both the Constitution of the United States of America and also the Constitution of the State of New York. It is my opinion, that this legislation may bring those two oaths into conflict. As County Clerk, I administer three Department of Motor Vehicle offices, which under this legislation would be required to issue driver’s licenses to “undocumented” individuals who are unable to prove their legal immigration status. I am aware that other states offer driver’s licenses in a similar fashion, however, it is my understanding that those states issue licenses that are materially different from the licenses issued to those who can prove citizenship. This legislation requires the licenses to be nearly identical, simply stamped, “not for federal purposes.” Further, this legislation restricts the Department of Motor Vehicles from disclosing information to federal law enforcement agencies.

Mr. President, I am not a judge and cannot determine unilaterally whether this legislation is indeed Constitutional. This legislation I believe circumvents federal immigration laws and should be reviewed at the highest levels of government. As you are aware, state law cannot conflict with federal law and where conflicts may exist, federal law supersedes. It is for those reasons that I am writing to you today and respectfully ask that the Justice Department review this legislation before it goes into effect on December 14, 2019.

I have enclosed for your reference State Senate bill S.1747B and State Assembly bill A.3675B, the legislation signed by Governor Cuomo, along with a relevant news report. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael C. Backus", written over a circular stamp or seal.

Michael C. Backus

Enclosures

# 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.

LBD05648-07-9



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 commission-  
41 er, 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.

# STATE OF NEW YORK

3675--B

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, FAHY, GANTT -- 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 -- reported and referred to the Committee on Codes -- 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

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1 Section 1. This act shall be known and may be cited as the "driver's  
2 license access and privacy act".  
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4 five new subdivisions 8, 9, 10, 11, and 12 to read as follows:  
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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

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

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

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

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

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

41 12. (a) Except as required for the commissioner to issue or renew a  
42 driver's license or learner's permit that meets federal standards for  
43 identification, the commissioner, and any agent or employee of the  
44 commissioner, shall not disclose or make accessible in any manner  
45 records or information that he or she maintains, to any agency that  
46 primarily enforces immigration law or to any employee or agent of such  
47 agency, unless the commissioner is presented with a lawful court order  
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49 of the United States constitution. Upon receiving a request for such  
50 records or information from an agency that primarily enforces immi-  
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52 request, notify the individual about whom such information was  
53 requested, informing such individual of the request and the identity of  
54 the agency that made such request.

55 (b) The commissioner shall require any person or entity that receives  
56 or has access to records or information from the department to certify



1 to the commissioner, before such receipt or access, that such person or  
2 entity shall not (i) use such records or information for civil immi-  
3 gration purposes or (ii) disclose such records or information to any  
4 agency that primarily enforces immigration law or to any employee or  
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6 ative arrangement between city, state and federal agencies which  
7 arrangement does not enforce immigration law and which disclosure is  
8 limited to the specific records or information being sought pursuant to  
9 such arrangement. In addition to any records required to be kept pursu-  
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11 code, any person or entity certifying pursuant to this paragraph shall  
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13 person or entity that primarily enforces immigration law that received  
14 department records or information from such certifying person or entity.  
15 Such records shall be maintained in a manner and form prescribed by the  
16 commissioner and shall be available for inspection by the commissioner  
17 or his or her designee upon his or her request.

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

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23 amended by chapter 465 of the laws of 2012, the third undesignated para-  
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33 January first, two thousand nineteen, acceptable proof of identity shall  
34 also include, but not be limited to, a valid, unexpired foreign passport  
35 issued by the applicant's country of citizenship (which shall also be  
36 eligible as proof of age), a valid, unexpired consular identification  
37 document issued by a consulate from the applicant's country of citizen-  
38 ship, or a valid foreign driver's license that includes a photo image of  
39 the applicant and which is unexpired or expired for less than twenty-  
40 four months of its date of expiration, as primary forms of such proof.  
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42 commissioner from approving additional proofs of identity and age. The  
43 commissioner may also provide that the application procedure shall  
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2 to the Donate Life Registry? Check box for 'yes' or 'skip this ques-  
3 tion'."

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

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

39 (a) A license issued pursuant to subdivision five of this section  
40 shall be valid until the expiration date contained thereon, unless such  
41 license is suspended, revoked or cancelled. Such license may be renewed  
42 by submission of an application for renewal, the fee prescribed by law,  
43 proofs of prior licensing, fitness and acceptable vision prescribed by  
44 the commissioner, the applicant's social security number or, in lieu  
45 thereof, with respect to an application for a non-commercial driver's  
46 license or learner's permit which does not meet federal standards for  
47 identification, an affidavit signed by such applicant that they have not  
48 been issued a social security number, and if required by the commission-  
49 er, a photo image of the applicant in such numbers and form as the  
50 commissioner shall prescribe. In addition, an applicant for renewal of  
51 a license containing a hazardous material endorsement shall pass an  
52 examination to retain such endorsement. The commissioner shall, with  
53 respect to the renewal of a hazardous materials endorsement, comply with  
54 the requirements imposed upon states by sections 383.141 and 1572.13 of  
55 title 49 of the code of federal regulations. A renewal of such license  
56 shall be issued by the commissioner upon approval of such application,



1 except that no such license shall be issued if its issuance would be  
2 inconsistent with the provisions of section five hundred sixteen of this  
3 title, and except that the commissioner may refuse to renew such license  
4 if the applicant is the holder of a currently valid or renewable license  
5 to drive issued by another state or foreign country unless the applicant  
6 surrenders such license.

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

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

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

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

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

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

54 (e) (i) A non-commercial driver's license or learner's permit which  
55 does not meet federal standards for identification shall not be used as  
56 evidence of a person's citizenship or immigration status, and shall not



1 be the basis for investigating, arresting, or detaining a person. (ii)  
2 Neither the commissioner nor any agent or employee of the commissioner  
3 shall inquire about the citizenship or immigration status of any appli-  
4 cant for a non-commercial driver's license or learner's permit which  
5 does not meet federal standards for identification.

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

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

14 3. License record. The commissioner shall keep a record of every  
15 license issued which record shall be open to public inspection during  
16 reasonable business hours. Provided, however, that the following infor-  
17 mation whenever contained within the record of non-commercial drivers'  
18 licenses and learners' permits shall not be open to public inspection:  
19 the photo image, social security number, client identification number,  
20 name, address, telephone number, place of birth, country of origin,  
21 place of employment, school or educational institution attended, source  
22 of income, status as a recipient of public benefits, the customer iden-  
23 tification number associated with a public utilities account, medical  
24 information or disability information of any holders of, or applicants  
25 for, such licenses and permits, and whether such licenses or permits  
26 meet federal standards for identification or do not meet federal stand-

27 ards for identification. Neither the commissioner nor his agent shall be  
28 required to allow the inspection of an application, or to furnish a copy  
29 thereof, or information therefrom, until a license has been issued ther-  
30 eon.

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

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

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# NY AG Says Undocumented Drivers' License Bill Is Constitutional, Sidestepping Cuomo Request

Attorney General Letitia James, in a statement issued just before the Senate approved the bill, gave it her blessing on constitutional grounds.

By Dan M. Clark | June 17, 2019

Legislation that would allow undocumented immigrants to obtain driver's licenses in New York was said to be constitutional in a statement from the state Attorney General's Office, which cleared its way to becoming law following final passage from state lawmakers on Monday.

After passing the state Senate Monday evening by a razor-thin margin, the bill was signed into law by Gov. Andrew



**A protester holds a sign as members of the state Assembly speak in favor of legislation of the Green Light Bill granting undocumented Immigrant driver's licenses during a rally at the state Capitol**



Cuomo. It had already been approved in the State Assembly.

**in Albany, N.Y., on Monday. Photo: Hans Pennink/AP**

“Governor Cuomo has supported this policy for over a decade. The key to this bill is not the political intent but the legal effect,” said Alphonso David, counsel to the governor. “We hope the Attorney General’s assessment is correct for the safety of the thousands of undocumented individuals who are relying on her legal opinion.”

David also took a dig at New York Solicitor General Barbara Underwood, who Cuomo had said earlier in the day he would ask to review the legislation to see if it could put the identifying information of those individuals at risk.

“The solicitor general, a former federal prosecutor and former acting U.S. solicitor general, who presumably knows whether or not the relevant information can be safeguarded, has remained unresponsive on this critical issue,” David said.

The statement capped off a day of confusion over the legislation, which Cuomo has previously said he supports and would sign if approved by lawmakers. That seemed to change early Monday when Cuomo said during a radio interview that he would seek Underwood’s opinion on the legislation before he signs it into law.

But Attorney General Letitia James, in a statement issued hours later just before the Senate approved the bill, gave it her blessing on constitutional grounds.

“I support the Green Light bill, and the Office of Attorney General has concluded that it is constitutional. We will not opine on any actions the federal government may or may not take,” James said. “The legislation is well crafted and contains ample protections for those who apply for driver’s licenses. If this bill is enacted and challenged in court, we will vigorously defend it.”

The statement was accompanied by a memo from Assistant Solicitor General Kathryn Sheingold, who concluded the bill had appropriate protections for the identifying information of immigrants who apply for a driver's license and was otherwise constitutionally sound.

"After a review of the concerns expressed in the press and likely challenges following from them, we have identified no reason to doubt that the proposed legislation is constitutionally and legally sound," Sheingold wrote.

She noted language in the bill that would prevent federal immigration officials from accessing the identifying information of applicants. They would need either a lawful court order, a warrant signed by a federal judge or a subpoena for individual records, according to the bill.

The memo, notably, was sent to James on Friday. That was before Cuomo said Monday morning that he would be requesting a review of the legislation from Underwood.

As such, the analysis is broader than what Cuomo requested. She wrote, for example, that the bill would not be preempted by federal law because lawmakers weren't trying to set any kind of immigration policy. The measure would, instead, provide a different class of driver's licenses to applicants, Sheingold wrote.

"With respect to immigration, New York, through the DMV, will not be making immigration decisions with respect to applicants for a driver's license or classifying immigrants based on their documents," Sheingold wrote. "It will be issuing a license to drive, the particular form of license based on what records the applicant supplies in support of his or her application."

Sheingold wrote that her review of the bill was requested by state Sen. Luis Sepulveda, a Democrat from the Bronx who sponsors the legislation. Sepulveda, when asked about Cuomo's request earlier in the day, said the concerns over identifying information were never mentioned to him or other supporters of the bill before Monday.



"I don't know what the governor's motivation is. I can tell you we commenced these questions with the governor's office back in January and none of these concerns were relayed to us," Sepulveda said. "Why now? I don't know, you'd have to ask the governor."

Cuomo had said during the radio interview Monday morning that he was concerned the bill may create a pool of information that officials from U.S. Immigration and Customs Enforcement could use to target immigrants for deportation. He had previously said he supports the legislation.

"We have to write a law that does not have an unintended consequence. That's what the smart people are worried about," Cuomo said. "In other words, you could be creating a database for the feds to use to actually track down undocumented people. That's the balance; this is a legal question more than anything else."

That issue wasn't addressed at length in Sheingold's memo, but she did mention that the data would be kept confidential, minus an order from the court.

Supporters of the legislation, who were in Albany to push the bill across the finish line Monday, were critical of Cuomo's comments, noting that the bill already has strong measures to protect the information of applicants. Murad Awawdeh of the New York Immigration Coalition said the bill would actually create a more secure program than in other states that have taken similar action.

"The Green Light NY bill has the strongest data protections in the bill than any other state that has given undocumented folks the right to drive," Awawdeh said.

Officers from U.S. Immigration and Customs Enforcement would not be able to use an administrative warrant to obtain identifying information from the state Department of Motor Vehicles, for example. That warrant would have to come from a judge.

The DMV also would not retain copies of any source documents used by immigrants who apply for a license, Awawdeh said. The agency also wouldn't be allowed to ask about citizenship or immigration status of applicants, which would theoretically protect individuals from federal officials.

The legislation could face a legal challenge in the future, though James said her office is prepared to defend it if that happens.

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