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I N   S E N A T E

August 13, 2012

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Introduced by Sens. GIANARIS, ADAMS, ADDABBO, AVELLA, BRESLIN, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, OPPENHEIMER, PERKINS, RIVERA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, in relation to the unlawful procurement of a firearm

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The penal law is amended by adding a new section 265.45 to  
2 read as follows:  
3     S 265.45 UNLAWFUL PROCUREMENT OF A FIREARM.  
4     A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF A FIREARM WHEN:  
5     1. HE OR SHE PURCHASES OR TAKES POSSESSION OF MORE THAN ONE FIREARM  
6 FROM ANY DEALER IN FIREARMS DURING ANY THIRTY DAY PERIOD; OR  
7     2. BEING A DEALER IN FIREARMS, HE OR SHE SELLS OR TRANSFERS A FIREARM  
8 TO ANY PERSON WHO HAS PURCHASED OR TAKEN POSSESSION OF A FIREARM DURING  
9 THE PREVIOUS THIRTY DAYS.  
10     UNLAWFUL PROCUREMENT OF A FIREARM IS A CLASS A MISDEMEANOR.  
11     S 2. Section 265.20 of the penal law is amended by adding a new subdi-  
12 vision e to read as follows:  
13     E. SECTION 265.45 OF THIS ARTICLE SHALL NOT APPLY TO:  
14     1. ANY LAW ENFORCEMENT OR CORRECTIONS AGENCY, OR POLICE OR CORRECTIONS  
15 OFFICER ACTING WITHIN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT OR  
16 OFFICIAL DUTIES;  
17     2. A UNITED STATES MARSHAL, MEMBER OF THE ARMED FORCES OF THE UNITED  
18 STATES OR THE NATIONAL GUARD, OR A FEDERAL OFFICIAL, WHO IS REQUIRED TO  
19 POSSESS A FIREARM IN THE OPERATION OF HIS OR HER OFFICIAL DUTIES;  
20     3. LICENSED FIREARMS MANUFACTURERS, IMPORTERS OR DEALERS, WHILE  
21 ENGAGED IN THE COURSE AND SCOPE OF THEIR ACTIVITIES AS LICENSEES,  
22 PROVIDED THAT THE TRANSFERS ARE BETWEEN LICENSEES AND ALL SUCH LICENSEES  
23 ARE PROPERLY LICENSED UNDER FEDERAL, STATE AND LOCAL LAW;  
24     4. A GUNSMITH ACQUIRING FIREARMS SOLELY FOR THE PURPOSES OF SERVICE OR  
25 REPAIR, OR THE LAWFUL OWNER OF THE FIREARMS RETRIEVING THE FIREARMS BACK  
26 FROM SUCH A GUNSMITH;

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

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1 5. A COMMON CARRIER, WAREHOUSEMAN, OR OTHER PERSON ENGAGED IN THE  
2 BUSINESS OF TRANSPORTING OR STORING GOODS, TO THE EXTENT THAT THE  
3 POSSESSION OR RECEIPT OF ANY FIREARM IS IN THE ORDINARY COURSE OF BUSI-  
4 NESS, AND NOT FOR THE PERSONAL USE OF ANY SUCH PERSON;

5 6. A PERSON ACQUIRING FIREARMS BY OPERATION OF LAW UPON THE DEATH OF  
6 THE FORMER OWNER OF THE FIREARMS; OR

7 7. A PERSON WHOSE FIREARM WAS STOLEN OR IRRETRIEVABLY LOST AND WHO  
8 CONSIDERS IT ESSENTIAL THAT THE FIREARM BE REPLACED IMMEDIATELY, IF:

9 (A) THE PERSON PROVIDES THE SELLER OR TRANSFEROR WITH A COPY OF AN  
10 OFFICIAL POLICE REPORT DESCRIBING THE LOSS OR THEFT OF THE FIREARM. THE  
11 OFFICIAL POLICE REPORT MUST CONTAIN THE NAME AND ADDRESS OF THE FIREARM  
12 OWNER, A DESCRIPTION OF THE FIREARM, THE LOCATION OF THE LOSS OR THEFT,  
13 THE DATE OF THE LOSS OR THEFT, AND THE DATE THE LOSS OR THEFT WAS  
14 REPORTED TO THE LAW ENFORCEMENT AGENCY; AND

15 (B) THE LOSS OR THEFT OCCURRED WITHIN THIRTY DAYS OF THE PERSON'S  
16 ATTEMPT TO REPLACE THE FIREARM, AS REFLECTED BY THE DATE OF LOSS OR  
17 THEFT ON THE OFFICIAL POLICE REPORT.

18 S 3. The penal law is amended by adding a new section 400.15 to read  
19 as follows:

20 S 400.15 DUTIES OF DEALERS IN FIREARMS.

21 1. EACH DEALER IN FIREARMS SHALL PRIOR TO THE SALE OF ANY FIREARM TO A  
22 PERSON REQUEST APPROVAL OF SUCH SALE TO SUCH PERSON FROM THE DIVISION OF  
23 CRIMINAL JUSTICE SERVICES.

24 2. UPON RECEIPT OF THE APPROVAL OF THE DIVISION OF CRIMINAL JUSTICE  
25 SERVICES OF A SALE OF A FIREARM, THE DEALER IN FIREARMS SHALL RECORD AND  
26 REPORT SUCH SALE TO THE DIVISION OF CRIMINAL JUSTICE SERVICES WITHIN  
27 TWENTY-FOUR HOURS.

28 S 4. This act shall take effect on the first of January next succeed-  
29 ing the date on which it shall have become a law.