

4931--A

2011-2012 Regular Sessions

I N   S E N A T E

May 2, 2011

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Introduced by Sens. BONACIC, LIBOUS, MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the town law, the village law, the not-for-profit corporation law and the general municipal law, in relation to criminal background checks for firefighters and emergency medical services personnel

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

1     Section 1. The section heading and subdivision 1 of section 837-o of  
2 the executive law, as added by chapter 423 of the laws of 1999, are  
3 amended to read as follows:  
4     Search for [arson] conviction records of volunteer firefighter appli-  
5 cants. 1. Any person who applies for membership in a fire company, as  
6 such term is defined in section three of the volunteer firefighters'  
7 benefit law, or who seeks to transfer as a member to another fire compa-  
8 ny, shall be required to authorize the submission of his or her name and  
9 other authorized identifying information to the division which shall  
10 search its files for records indicating whether the person stands  
11 convicted of [the crime of arson] A CRIMINAL OFFENSE. The chief of the  
12 fire company to which application is made shall provide written notice  
13 to the applicant that a search will be conducted, and if the applicant  
14 desires to proceed, he or she shall complete a search request on the  
15 form provided for this purpose by the division of criminal justice  
16 services.  
17     S 2. Subdivision 3 of section 837-o of the executive law, as added by  
18 chapter 423 of the laws of 1999, paragraph (b) as amended by section 41  
19 of part B of chapter 56 of the laws of 2010, is amended to read as  
20 follows:

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

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1 3. (a) All searches concerning the application for membership in a  
2 fire company shall be conducted under the provisions of subdivision six  
3 of section eight hundred thirty-seven of this article without the  
4 assessment of any fee to the applicant or fire company and shall pertain  
5 solely to ascertaining whether the applicant stands convicted of [arson]  
6 A CRIMINAL OFFENSE.

7 (b) The results of the search shall be communicated in writing, within  
8 ten business days of receipt from the division, to the chief of the fire  
9 company from which the search request originated by either the sheriff's  
10 department or the office of fire prevention and control, and shall be  
11 kept confidential by the chief, except as provided in paragraph (c) of  
12 this subdivision. [The results of the search shall only state either  
13 that: (i) the applicant stands convicted of arson, or (ii) the applicant  
14 has no record of conviction for arson. The results of the search shall  
15 not divulge any other information relating to the criminal history of  
16 the applicant.]

17 (c) UPON CONDUCTING A REVIEW OF THE DIVISION OF CRIMINAL JUSTICE  
18 SERVICES RECORDS, THE CHIEF SHALL MAKE A DETERMINATION AS TO WHETHER THE  
19 APPLICANT IS ELIGIBLE TO BE ELECTED OR APPOINTED AS A VOLUNTEER MEMBER  
20 OF A FIRE COMPANY. A CONVICTION OF ARSON IN ANY DEGREE, A FELONY SEX  
21 OFFENSE OR THE MISDEMEANORS OF SEXUAL MISCONDUCT, FORCIBLE TOUCHING OR  
22 SEXUAL ABUSE IN THE SECOND DEGREE SHALL RESULT IN AN IMMEDIATE DISQUALI-  
23 FICATION AS A MEMBER AND A CONVICTION FOR ANY OTHER CRIMINAL OFFENSE  
24 SHALL RESULT IN A DISQUALIFICATION IF IT IS DETERMINED TO BE RELATED TO  
25 HIS OR HER FITNESS TO SERVE AS A VOLUNTEER MEMBER OF A FIRE COMPANY  
26 UPON, AMONG OTHER THINGS, CONSIDERATION OF THE FACTORS SET FORTH UNDER  
27 SECTION SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW. At the time an  
28 applicant is advised that he or she is ineligible for membership due to  
29 a record of conviction [for arson], he or she shall also be advised of  
30 the rights to challenge and appeal the information contained in the  
31 record of conviction as provided in the rules and regulations of the  
32 division. The applicant shall continue to be barred from membership  
33 until all administrative and judicial challenges to the accuracy of such  
34 information or appeals therefrom, are ultimately resolved in his or her  
35 favor, or if such a determination is unchallenged.

36 S 3. Subdivision 16 of section 176-b of the town law, as added by  
37 chapter 719 of the laws of 1985, is amended to read as follows:

38 16. A person who has been convicted of arson in any degree, A FELONY  
39 SEX OFFENSE OR THE MISDEMEANORS OF SEXUAL MISCONDUCT, FORCIBLE TOUCHING  
40 OR SEXUAL ABUSE IN THE SECOND DEGREE shall not be eligible to be elected  
41 or appointed as a volunteer member of a fire company. A PERSON WHO HAS  
42 BEEN CONVICTED OF ANY OTHER CRIMINAL OFFENSE SHALL NOT BE ELIGIBLE TO BE  
43 ELECTED OR APPOINTED AS A VOLUNTEER MEMBER OF A FIRE COMPANY IF THE  
44 OFFENSE IS RELATED TO HIS OR HER FITNESS TO SERVE AS A VOLUNTEER MEMBER  
45 UPON, AMONG OTHER THINGS, CONSIDERATION OF THE FACTORS SET FORTH UNDER  
46 SECTION SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW. The membership  
47 of any volunteer member of a fire company shall immediately terminate if  
48 he OR SHE is convicted of arson in any degree, A FELONY SEX OFFENSE OR  
49 THE MISDEMEANORS OF SEXUAL MISCONDUCT, FORCIBLE TOUCHING OR SEXUAL ABUSE  
50 IN THE SECOND DEGREE while a member of a fire company AND SUCH MEMBER-  
51 SHIP SHALL BE TERMINATED IF HE OR SHE IS CONVICTED OF AN OFFENSE THAT IS  
52 RELATED TO HIS OR HER FITNESS TO SERVE AS A VOLUNTEER MEMBER UPON, AMONG  
53 OTHER THINGS, CONSIDERATION OF THE FACTORS SET FORTH UNDER SECTION SEVEN  
54 HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

55 S 4. Subdivision 17 of section 176-b of the town law, as added by  
56 chapter 423 of the laws of 1999, is amended to read as follows:

1 17. Upon application by any person for membership in a fire company  
2 operating pursuant to this section, the fire chief shall cause the  
3 applicant's background to be checked pursuant to section eight hundred  
4 thirty-seven-o of the executive law for a criminal history involving a  
5 conviction [for arson] OF A CRIMINAL OFFENSE.

6 S 5. Subdivision 18 of section 10-1006 of the village law, as added by  
7 chapter 719 of the laws of 1985, is amended to read as follows:

8 18. A person who has been convicted of arson in any degree, A FELONY  
9 SEX OFFENSE, OR THE MISDEMEANORS OF SEXUAL MISCONDUCT, FORCIBLE TOUCHING  
10 OR SEXUAL ABUSE IN THE SECOND DEGREE shall not be eligible to be elected  
11 or appointed as a volunteer member of a fire company. A PERSON WHO HAS  
12 BEEN CONVICTED OF ANY OTHER CRIMINAL OFFENSE SHALL NOT BE ELIGIBLE TO BE  
13 ELECTED OR APPOINTED AS A VOLUNTEER MEMBER OF A FIRE COMPANY IF THE  
14 OFFENSE IS RELATED TO HIS OR HER FITNESS TO SERVE AS A VOLUNTEER MEMBER  
15 UPON, AMONG OTHER THINGS, CONSIDERATION OF THE FACTORS SET FORTH UNDER  
16 SECTION SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW. The membership  
17 of any volunteer member of a fire company shall immediately terminate if  
18 he OR SHE is convicted of arson in any degree, A FELONY SEX OFFENSE OR  
19 THE MISDEMEANORS OF SEXUAL MISCONDUCT, FORCIBLE TOUCHING OR SEXUAL ABUSE  
20 IN THE SECOND DEGREE while a member of a fire company AND SUCH MEMBER-  
21 SHIP SHALL BE TERMINATED IF HE OR SHE IS CONVICTED OF AN OFFENSE THAT IS  
22 RELATED TO HIS OR HER FITNESS TO SERVE AS A VOLUNTEER MEMBER UPON, AMONG  
23 OTHER THINGS, CONSIDERATION OF THE FACTORS SET FORTH UNDER SECTION SEVEN  
24 HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

25 S 6. Subdivision 19 of section 10-1006 of the village law, as added by  
26 chapter 423 of the laws of 1999, is amended to read as follows:

27 19. Upon application by any person for membership in a fire company  
28 operating pursuant to this section, the fire chief shall cause the  
29 applicant's background to be checked pursuant to section eight hundred  
30 thirty-seven-o of the executive law for a criminal history involving a  
31 conviction [for arson] OF A CRIMINAL OFFENSE.

32 S 7. Subparagraph 4 of paragraph (c) of section 1402 of the not-for-  
33 profit corporation law, as added by chapter 719 of the laws of 1985, is  
34 amended to read as follows:

35 (4) A person who has been convicted of arson in any degree, A FELONY  
36 SEX OFFENSE OR THE MISDEMEANORS OF SEXUAL MISCONDUCT, FORCIBLE TOUCHING  
37 OR SEXUAL ABUSE IN THE SECOND DEGREE shall not be eligible to be named  
38 in the certificate of incorporation of a fire corporation, or to be  
39 elected or appointed as a volunteer member of a fire corporation. A  
40 PERSON WHO HAS BEEN CONVICTED OF ANY OTHER CRIMINAL OFFENSE SHALL NOT BE  
41 ELIGIBLE TO BE NAMED IN THE CERTIFICATE OF INCORPORATION OF A FIRE  
42 CORPORATION OR TO BE ELECTED OR APPOINTED AS A VOLUNTEER MEMBER OF A  
43 FIRE CORPORATION IF THE OFFENSE IS RELATED TO HIS OR HER FITNESS TO  
44 SERVE AS A VOLUNTEER MEMBER UPON, AMONG OTHER THINGS, CONSIDERATION OF  
45 THE FACTORS SET FORTH UNDER SECTION SEVEN HUNDRED FIFTY-THREE OF THE  
46 CORRECTION LAW. The membership of any volunteer member of a fire corpo-  
47 ration shall immediately terminate if he OR SHE is convicted of arson in  
48 any degree, A FELONY SEX OFFENSE OR THE MISDEMEANORS OF SEXUAL MISCON-  
49 DUCT, FORCIBLE TOUCHING OR SEXUAL ABUSE IN THE SECOND DEGREE while a  
50 member of a fire corporation AND SUCH MEMBERSHIP SHALL BE TERMINATED IF  
51 HE OR SHE IS CONVICTED OF AN OFFENSE THAT IS RELATED TO HIS OR HER  
52 FITNESS TO SERVE AS A VOLUNTEER MEMBER UPON, AMONG OTHER THINGS, CONSID-  
53 ERATION OF THE FACTORS SET FORTH UNDER SECTION SEVEN HUNDRED FIFTY-THREE  
54 OF THE CORRECTION LAW.

1 S 8. Subparagraph 5 of paragraph (c) of section 1402 of the not-for-  
2 profit corporation law, as added by chapter 423 of the laws of 1999, is  
3 amended to read as follows:

4 (5) Upon application by any person for membership in a fire corpo-  
5 ration operating pursuant to this section, the fire chief shall cause  
6 the applicant's background to be checked pursuant to section eight  
7 hundred thirty-seven-o of the executive law for a criminal history  
8 involving a conviction [for arson] OF A CRIMINAL OFFENSE.

9 S 9. Section 122-b of the general municipal law is amended by adding a  
10 new subdivision 6 to read as follows:

11 6. ANY MEMBER OF A VOLUNTEER AMBULANCE COMPANY OR EMERGENCY MEDICAL  
12 SERVICE ORGANIZATION SHALL BE SUBJECT TO A CRIMINAL BACKGROUND CHECK  
13 PURSUANT TO SECTION EIGHT HUNDRED THIRTY-SEVEN-O OF THE EXECUTIVE LAW.  
14 THE SHERIFF OF ANY COUNTY IN WHICH SUCH EMERGENCY SERVICES ARE PROVIDED  
15 SHALL BE RESPONSIBLE FOR RECEIVING THE SEARCH REQUESTS AND PROCESSING  
16 THE SEARCH REQUESTS WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES WITH-  
17 IN TEN BUSINESS DAYS OF RECEIPT FROM THE AMBULANCE OR EMERGENCY MEDICAL  
18 SERVICES COMPANY. A PERSON WHO HAS BEEN CONVICTED OF AN OFFENSE THAT IS  
19 RELATED TO HIS OR HER FITNESS TO SERVE AS A MEMBER OF A VOLUNTEER AMBU-  
20 LANCE COMPANY MAY BE FOUND TO BE INELIGIBLE TO BE ELECTED OR APPOINTED  
21 AS A VOLUNTEER MEMBER OF AN AMBULANCE COMPANY OR EMERGENCY MEDICAL  
22 SERVICES ORGANIZATION.

23 S 10. This act shall take effect immediately.