

1885--C

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. BONACIC, CARLUCCI, FLANAGAN, GRISANTI, LARKIN, LIBOUS, MARCHIONE, MARTINS, MAZIARZ, O'BRIEN, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the town law, the village law and the not-for-profit corporation law, in relation to qualifications to serve as a volunteer firefighter

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

1 Section 1. Section 837-o of the executive law, as added by chapter 423
2 of the laws of 1999, subdivision 2 and paragraph (b) of subdivision 3 as
3 amended by section 41 of part B of chapter 56 of the laws of 2010, is
4 amended to read as follows:
5 S 837-o. Search for arson AND SEX OFFENSE conviction records of volun-
6 teer firefighter applicants. 1. Any person who applies for membership in
7 a fire company, as such term is defined in section three of the volun-
8 teer firefighters' benefit law, or who seeks to transfer as a member to
9 another fire company, shall be required to authorize the submission of
10 his or her name and other authorized identifying information to the
11 division which shall search its files for records indicating whether the
12 person stands convicted of the crime of arson OR A CRIME WHICH REQUIRES
13 THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE
14 CORRECTION LAW. The chief of the fire company to which application is
15 made shall provide written notice to the applicant that a search will be

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

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1 conducted, and if the applicant desires to proceed, he or she shall
2 complete a search request on the form provided for this purpose by the
3 division of criminal justice services.

4 2. Within ten business days of receipt from the applicant, the chief
5 of the fire company shall send the completed search request form to
6 either (i) the sheriff's department of the county in which the fire
7 company is located, or (ii) the office of fire prevention and control,
8 as follows:

9 (a) the sheriff's department of the county in which the fire company
10 is located shall be responsible for receiving the search requests and
11 processing the search requests with the division within ten business
12 days of receipt from the chief of the fire company, unless the county
13 legislative body adopts and files with the office of fire prevention and
14 control pursuant to the municipal home rule law a local law providing
15 that the sheriff's department shall not have such responsibility;

16 (b) in all other instances where a county legislative body has adopted
17 a local law pursuant to paragraph (a) of this subdivision, the office of
18 fire prevention and control shall be responsible for receiving search
19 requests and forwarding the search requests to the division.

20 The office of fire prevention and control is hereby authorized to estab-
21 lish a communication network with the division for the purpose of
22 forwarding search requests and receiving search results pursuant to
23 paragraph (b) of this subdivision.

24 3. (a) All searches concerning the application for membership in a
25 fire company shall be conducted under the provisions of subdivision six
26 of section eight hundred thirty-seven of this article without the
27 assessment of any fee to the applicant or fire company and shall pertain
28 solely to ascertaining whether the applicant stands convicted of arson
29 OR A CRIME WHICH REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER
30 ARTICLE SIX-C OF THE CORRECTION LAW.

31 (b) The results of the search shall be communicated in writing, within
32 ten business days of receipt from the division, to the chief of the fire
33 company from which the search request originated by either the sheriff's
34 department or the office of fire prevention and control, and shall be
35 kept confidential by the chief, except as provided in paragraph (c) of
36 this subdivision. The results of the search shall only state either
37 that: (i) the applicant stands convicted of arson AND/OR A CRIME WHICH
38 REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF
39 THE CORRECTION LAW, or (ii) the applicant has no record of conviction
40 for arson OR A CRIME WHICH REQUIRES THE PERSON TO REGISTER AS A SEX
41 OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW. The results of the
42 search shall not divulge any other information relating to the criminal
43 history of the applicant.

44 (c) At the time an applicant is advised that he or she is ineligible
45 for membership due to a record of conviction for arson, he or she shall
46 also be advised of the rights to challenge and appeal the information
47 contained in the record of conviction as provided in the rules and regu-
48 lations of the division. The applicant shall continue to be barred from
49 membership until all administrative and judicial challenges to the accu-
50 racy of such information or appeals therefrom, are ultimately resolved
51 in his or her favor, or if such a determination is unchallenged.

52 (D) IF A PERSON IS DENIED ELECTION OR APPOINTMENT AS A VOLUNTEER
53 MEMBER OF A FIRE COMPANY BASED IN WHOLE OR IN PART ON THE FACT THAT HE
54 OR SHE STANDS CONVICTED OF A CRIME WHICH REQUIRES THE PERSON TO REGISTER
55 AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW, HE OR SHE
56 SHALL BE ADVISED BY THE FIRE COMPANY OF THE RIGHTS TO CHALLENGE AND

1 APPEAL THE INFORMATION CONTAINED IN THE RECORD OF CONVICTION AS PROVIDED
2 IN THE RULES AND REGULATIONS OF THE DIVISION, AND PROVIDED BY THE FIRE
3 COMPANY WITH A COPY OF THE CRIMINAL HISTORY RECORD RECEIVED BY THE FIRE
4 COMPANY AND WITH A COPY OF SECTIONS SEVEN HUNDRED FIFTY-TWO AND SEVEN
5 HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

6 S 2. Subdivision 17 of section 176-b of the town law, as added by
7 chapter 423 of the laws of 1999, is amended to read as follows:

8 17. Upon application by any person for membership in a fire company
9 operating pursuant to this section, the fire chief shall cause the
10 applicant's background to be checked pursuant to section eight hundred
11 thirty-seven-o of the executive law for a criminal history involving a
12 conviction for arson AND CONVICTION OF A CRIME WHICH REQUIRES THE PERSON
13 TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW.
14 WHERE SUCH CRIMINAL HISTORY INFORMATION INCLUDES CONVICTION OF A CRIME
15 WHICH REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE
16 SIX-C OF THE CORRECTION LAW, A FIRE COMPANY SHALL DETERMINE WHETHER OR
17 NOT SUCH PERSON SHALL BE ELIGIBLE TO BE ELECTED OR APPOINTED AS A VOLUN-
18 TEER MEMBER OF SUCH FIRE COMPANY. SUCH DETERMINATION SHALL BE MADE IN
19 ACCORDANCE WITH THE CRITERIA ESTABLISHED IN SECTIONS SEVEN HUNDRED
20 FIFTY-TWO AND SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

21 S 3. Subdivision 19 of section 10-1006 of the village law, as added by
22 chapter 423 of the laws of 1999, is amended to read as follows:

23 19. Upon application by any person for membership in a fire company
24 operating pursuant to this section, the fire chief shall cause the
25 applicant's background to be checked pursuant to section eight hundred
26 thirty-seven-o of the executive law for a criminal history involving a
27 conviction for arson AND CONVICTION OF A CRIME WHICH REQUIRES THE PERSON
28 TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW.
29 WHERE SUCH CRIMINAL HISTORY INFORMATION INCLUDES CONVICTION OF A CRIME
30 WHICH REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE
31 SIX-C OF THE CORRECTION LAW, A FIRE COMPANY SHALL DETERMINE WHETHER OR
32 NOT SUCH PERSON SHALL BE ELIGIBLE TO BE ELECTED OR APPOINTED AS A VOLUN-
33 TEER MEMBER OF SUCH FIRE COMPANY. SUCH DETERMINATION SHALL BE MADE IN
34 ACCORDANCE WITH THE CRITERIA ESTABLISHED IN SECTIONS SEVEN HUNDRED
35 FIFTY-TWO AND SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

36 S 4. Subparagraph 5 of paragraph (c) of section 1402 of the not-for-
37 profit corporation law, as added by chapter 423 of the laws of 1999, is
38 amended to read as follows:

39 (5) Upon application by any person for membership in a fire corpo-
40 ration operating pursuant to this section, the fire chief shall cause
41 the applicant's background to be checked pursuant to section eight
42 hundred thirty-seven-o of the executive law for a criminal history
43 involving a conviction for arson AND CONVICTION OF A CRIME WHICH
44 REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF
45 THE CORRECTION LAW. WHERE SUCH CRIMINAL HISTORY INFORMATION INCLUDES
46 CONVICTION OF A CRIME WHICH REQUIRES THE PERSON TO REGISTER AS A SEX
47 OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW, A FIRE COMPANY SHALL
48 DETERMINE WHETHER OR NOT SUCH PERSON SHALL BE ELIGIBLE TO BE ELECTED OR
49 APPOINTED AS A VOLUNTEER MEMBER OF SUCH FIRE COMPANY. SUCH DETERMINATION
50 SHALL BE MADE IN ACCORDANCE WITH THE CRITERIA ESTABLISHED IN SECTIONS
51 SEVEN HUNDRED FIFTY-TWO AND SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION
52 LAW.

53 S 5. This act shall take effect on the one hundred twentieth day after
54 it shall have become a law.