S T A T E O F N E W Y O R K

7132

I N S E N A T E

April 30, 2014

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the unlawful procurement of a firearm; to amend the general business law, in relation to establishing a waiting period for the purchase of a firearm; and to amend the penal law, in relation to requiring licensed firearms businesses to report the crime of criminal purchase of a weapon and requiring background checks for employees who would be authorized to possess or transfer firearms

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

Section 1. The penal law is amended by adding a new section 265.50 to read as follows:

S 265.50 UNLAWFUL PROCUREMENT OF A FIREARM.

A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF A FIREARM WHEN:

1. HE OR SHE PURCHASES OR TAKES POSSESSION OF MORE THAN ONE FIREARM FROM ANY DEALER IN FIREARMS DURING ANY THIRTY DAY PERIOD; OR

2. BEING A DEALER IN FIREARMS, HE OR SHE SELLS OR TRANSFERS A FIREARM TO ANY PERSON WHO HAS PURCHASED OR TAKEN POSSESSION OF A FIREARM DURING THE PREVIOUS THIRTY DAYS.

UNLAWFUL PROCUREMENT OF A FIREARM IS A CLASS A MISDEMEANOR.

S 2. Section 265.20 of the penal law is amended by adding a new subdivision f to read as follows:

F. SECTION 265.50 OF THIS ARTICLE SHALL NOT APPLY TO:

1. ANY LAW ENFORCEMENT OR CORRECTIONS AGENCY, OR POLICE OR CORRECTIONS OFFICER ACTING WITHIN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT OR OFFICIAL DUTIES;

2. A UNITED STATES MARSHAL, MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR THE NATIONAL GUARD, OR A FEDERAL OFFICIAL, WHO IS REQUIRED TO POSSESS A FIREARM IN THE OPERATION OF HIS OR HER OFFICIAL DUTIES;

3. LICENSED FIREARMS MANUFACTURERS, IMPORTERS OR DEALERS, WHILE ENGAGED IN THE COURSE AND SCOPE OF THEIR ACTIVITIES AS LICENSEES, PROVIDED THAT THE TRANSFERS ARE BETWEEN LICENSEES AND ALL SUCH LICENSEES ARE PROPERLY LICENSED UNDER FEDERAL, STATE AND LOCAL LAW;

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

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4. A GUNSMITH ACQUIRING FIREARMS SOLELY FOR THE PURPOSES OF SERVICE OR REPAIR, OR THE LAWFUL OWNER OF THE FIREARMS RETRIEVING THE FIREARMS BACK FROM SUCH A GUNSMITH;

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

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

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

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

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

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

S 400.15 DUTIES OF DEALERS IN FIREARMS.

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

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

S 4. The general business law is amended by adding a new article 38-B to read as follows:

ARTICLE 38-B

WAITING PERIOD FOR PURCHASE OF FIREARMS

SECTION 825. DEFINITIONS.
826. WAITING PERIOD.
827. EXEMPTIONS.
828. PENALTY.

S 825. DEFINITIONS. AS USED IN THIS SECTION:

1. "DEALER IN FIREARMS" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION NINE OF SECTION 265.00 OF THE PENAL LAW.

2. "FIREARM" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION THREE OF SECTION 265.00 OF THE PENAL LAW.

S 826. WAITING PERIOD. NO DEALER IN FIREARMS SHALL DELIVER ANY FIREARM, AND NO PERSON SHALL TAKE POSSESSION OF ANY FIREARM FROM A DEALER IN FIREARMS UNLESS:

1. TEN DAYS HAVE ELAPSED FROM THE DATE SUCH DEALER INITIATED THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK OF THE PURCHASER AS REQUIRED BY 18 U.S.C. S 922(T), AFTER RECEIVING A COMPLETED FEDERAL FIREARMS TRANSACTION RECORD, FORM 4473, FROM THE PURCHASER; AND

2. SUCH DEALER HAS RECEIVED NOTICE THAT THE PURCHASER HAS PASSED ALL BACKGROUND CHECKS REQUIRED BY FEDERAL, STATE AND LOCAL LAW.

S 827. EXEMPTIONS. SECTION EIGHT HUNDRED TWENTY-SIX OF THIS ARTICLE SHALL NOT APPLY TO:

1. ANY LAW ENFORCEMENT OR CORRECTIONAL AGENCY, OR POLICE OFFICER OR CORRECTIONS OFFICER ACTING WITHIN THE COURSE OR SCOPE OF HIS OR HER EMPLOYMENT;

2. ANY FEDERAL OFFICER OR EMPLOYEE AUTHORIZED TO POSSESS OR CARRY A FIREARM IN THE COURSE OF HIS OR HER DUTIES, AND ANY MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR THE NATIONAL GUARD;

3. ANY MANUFACTURER, DISTRIBUTOR OR DEALER OF FIREARMS WHEN TRANSFERRING WEAPONS TO A MANUFACTURER, DISTRIBUTOR OR DEALER;

4. ANY GUNSMITH LICENSED PURSUANT TO SECTION 400.00 OF THE PENAL LAW, RECEIVING A FIREARM FOR SERVICE OR REPAIR;

5. ANY COMMON CARRIER OR OTHER PERSON ENGAGED, IN THE COURSE OF ITS BUSINESS, IN THE BUSINESS OF STORING OR TRANSPORTING GOODS; AND

6. ANY PERSON WHO ALREADY POSSESSES A VALID PERMIT PURSUANT TO ARTICLE FOUR HUNDRED OF THE PENAL LAW.

S 828. PENALTY. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

S 5. Section 265.17 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

S 265.17 Criminal purchase or disposal of a weapon.

1. A person is guilty of criminal purchase or disposal of a weapon when:

[1.] (A) Knowing that he or she is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, such person purchases a firearm, rifle or shotgun from another person; or

[2.] (B) Knowing that it would be unlawful for another person to possess a firearm, rifle or shotgun, he or she purchases a firearm, rifle or shotgun for, on behalf of, or for the use of such other person; or

[3.] (C) Knowing that another person is prohibited by law from possessing a firearm, rifle or shotgun because of a prior conviction or because of some other disability which would render him or her ineligible to lawfully possess a firearm, rifle or shotgun in this state, a person disposes of a firearm, rifle or shotgun to such other person.

2. A GUNSMITH OR DEALER IN FIREARMS SHALL REPORT WITHIN TWENTY-FOUR HOURS TO THE DIVISION OF STATE POLICE, OR IN THE CITY OF NEW YORK THE POLICE DEPARTMENT OF SUCH CITY, ANY INSTANCE IN WHICH ANY PERSON ATTEMPTS TO PURCHASE A FIREARM, RIFLE OR SHOTGUN FROM SUCH GUNSMITH OR DEALER IF A BACKGROUND CHECK SUCH GUNSMITH OR DEALER CONDUCTS IN CONNECTION WITH SUCH ATTEMPTED PURCHASE, IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM OR ANY SUCCESSOR SYSTEM, INDICATES A "DENIED" RESPONSE AS DEFINED IN 28 C.F.R. S 25.6. SUCH GUNSMITH OR DEALER SHALL KEEP WITH THE OTHER RECORDS REQUIRED UNDER SUBDIVISION TWELVE OF SECTION 400.00 OF THIS CHAPTER, A RECORD APPROVED AS TO FORM BY THE SUPERINTENDENT OF STATE POLICE, OR IN THE CITY OF NEW YORK BY SUCH CITY'S POLICE COMMISSIONER, OF HAVING MADE EACH REPORT REQUIRED BY THIS SUBDIVISION.

Criminal purchase or disposal of a weapon is a class D felony.

S 6. Section 400.00 of the penal law is amended by adding a new subdivision 12-b to read as follows:

12-B. EMPLOYEES OF A GUNSMITH OR DEALER IN FIREARMS. (A) NO PERSON SHALL BE EMPLOYED BY A GUNSMITH OR DEALER IN FIREARMS FOR DUTIES THAT INCLUDE HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS, IF SUCH PERSON IS PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS UNDER FEDERAL

LAW OR IF SUCH PERSON WOULD BE INELIGIBLE FOR A LICENSE TO POSSESS FIREARMS UNDER PARAGRAPH (C) OR (E) OF SUBDIVISION ONE OF THIS SECTION.

(B) NO GUNSMITH OR DEALER IN FIREARMS SHALL EMPLOY A PERSON WHOSE DUTIES INCLUDE HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS, ABSENT AN EXEMPTION PURSUANT TO PARAGRAPHS ONE AND TWO OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER, UNLESS: (I) SUCH PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER OR IS A MEMBER OF THE UNITED STATES ARMED FORCES OR HAS BEEN HONORABLY DISCHARGED THEREFROM, AND SUCH EMPLOYEE HAS BEEN ISSUED A VALID EMPLOYMENT CERTIFICATE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES; OR (II) SUCH PERSON HAS OBTAINED AND POSSESSES A VALID LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE.

(C) APPLICATIONS FOR EMPLOYMENT CERTIFICATES SHALL BE SUBMITTED BY THE APPLICANT'S PROSPECTIVE EMPLOYER TO THE DIVISION OF CRIMINAL JUSTICE SERVICES IN A FORM APPROVED BY SUCH DIVISION. APPLICATIONS MUST CONTAIN, AT A MINIMUM, THE INFORMATION REQUIRED TO CONDUCT A BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. ALL APPLICATIONS MUST BE SIGNED AND VERIFIED BY THE APPLICANT.

(D) UPON RECEIPT OF AN APPLICATION FOR AN EMPLOYMENT CERTIFICATE, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL CONDUCT A BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM TO DETERMINE WHETHER THE APPLICANT IS QUALIFIED TO RECEIVE OR POSSESS A FIREARM UNDER STATE AND FEDERAL LAW. IF THE RESULTS OF THE BACKGROUND CHECK INDICATE THAT THERE IS NO INFORMATION THAT WOULD DISQUALIFY THE APPLICANT FROM RECEIVING OR POSSESSING A FIREARM UNDER STATE OR UNDER FEDERAL LAW, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL DOCUMENT SUCH RESULT ON AN EMPLOYMENT CERTIFICATE. IF THE BACKGROUND CHECK RESULTS IN A "DELAYED" RESPONSE AS DESCRIBED IN 28 C.F.R. S 25.6, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOT CERTIFY THE APPLICANT FOR EMPLOYMENT PENDING RECEIPT OF A FOLLOW-UP "PROCEED" RESPONSE FROM THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(E) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ISSUE TO QUALIFYING EMPLOYEES AN EMPLOYMENT CERTIFICATE, WHICH SHALL CERTIFY THAT THE HOLDER OF SUCH CERTIFICATE IS ELIGIBLE TO HANDLE, SELL, OR OTHERWISE DISPOSE OF FIREARMS OR WEAPONS ON BEHALF OF THE GUNSMITH OR DEALER IN FIREARMS. SUCH CERTIFICATE SHALL BECOME INVALID UPON THE TERMINATION OF THE EMPLOYEE'S EMPLOYMENT. SUCH CERTIFICATE SHALL HAVE THE EFFECT OF AUTHORIZING SUCH EMPLOYEE TO HANDLE, SELL, OR OTHERWISE DISPOSE OF THOSE FIREARMS THAT ARE LAWFULLY POSSESSED, SOLD OR DISPOSED OF BY THE GUNSMITH OR DEALER IN FIREARMS ONLY WHILE SUCH EMPLOYEE IS ACTUALLY CONDUCTING BUSINESS ON BEHALF OF THE GUNSMITH OR DEALER IN FIREARMS NOTWITHSTANDING THE FACT THAT SUCH WEAPONS MAY NOT BE THE TYPE THE EMPLOYEE WOULD OTHERWISE BE LICENSED OR AUTHORIZED TO POSSESS UNDER NEW YORK LAW. WHEN AN EMPLOYEE IS CONDUCTING BUSINESS ON BEHALF OF A GUNSMITH OR DEALER IN FIREARMS AT ANY LOCATION OTHER THAN THE PREMISES WHERE SUCH EMPLOYEE WORKS, THE EMPLOYEE SHALL HAVE IN HIS OR HER POSSESSION A COPY OF HIS OR HER EMPLOYMENT CERTIFICATE OR VALID LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE OR DOCUMENTATION OF THE EMPLOYEE'S EXEMPTION BASED ON PRIOR EMPLOYMENT. COPIES OF SUCH CERTIFICATES OR LICENSES OR DOCUMENTATION OF EXEMPTION SHALL BE MAINTAINED BY THE GUNSMITH OR DEALER IN FIREARMS ON THE PREMISES WHERE SUCH EMPLOYEE WORKS. ALL CERTIFICATES, LICENSES, DOCUMENTATION AND COPIES REFERRED TO IN THIS PARAGRAPH SHALL BE PRODUCED UPON REQUEST BY ANY POLICE OFFICER OR PEACE OFFICER ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES.

(F) FOR THE PURPOSE OF THIS SUBDIVISION, THE TERM HANDLING SHALL NOT INCLUDE MOVING OR CARRYING, IN THE NORMAL COURSE OF BUSINESS, A SECURED CRATE OR CONTAINER THAT CONTAINS A FIREARM OR FIREARMS, FROM ONE LOCATION TO ANOTHER WITHIN THE PREMISES OF A GUNSMITH OR DEALER IN FIREARMS.

(G) ANY EMPLOYMENT IN VIOLATION OF THIS SUBDIVISION SHALL CONSTITUTE A VIOLATION ON THE PART OF BOTH THE EMPLOYEE AND THE GUNSMITH OR DEALER IN FIREARMS.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law, except that the division of criminal justice services shall promulgate any rules or regulations or approve any forms necessary for applications for employment certificates to be submitted to and approved by such division and for employment certificates to be issued by such division pursuant to subdivision 12-b of section 400.00 of the penal law as added by section six of this act, and shall begin to issue such certificates to qualifying employees before the one hundred eightieth day after this act shall have become a law.