

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:

1 Section 1. The penal law is amended by adding a new section 265.50 to
2 read as follows:
3 S 265.50 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 f to read as follows:
13 F. SECTION 265.50 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;

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

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

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

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

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

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

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

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

23 S 400.15 DUTIES OF DEALERS IN FIREARMS.

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

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

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

33 ARTICLE 38-B
34 WAITING PERIOD FOR PURCHASE OF
35 FIREARMS

36 SECTION 825. DEFINITIONS.

37 826. WAITING PERIOD.

38 827. EXEMPTIONS.

39 828. PENALTY.

40 S 825. DEFINITIONS. AS USED IN THIS SECTION:

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

43 2. "FIREARM" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVI-
44 SION THREE OF SECTION 265.00 OF THE PENAL LAW.

45 S 826. WAITING PERIOD. NO DEALER IN FIREARMS SHALL DELIVER ANY
46 FIREARM, AND NO PERSON SHALL TAKE POSSESSION OF ANY FIREARM FROM A DEAL-
47 ER IN FIREARMS UNLESS:

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

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

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

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

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

7 3. ANY MANUFACTURER, DISTRIBUTOR OR DEALER OF FIREARMS WHEN TRANS-
8 FERRING WEAPONS TO A MANUFACTURER, DISTRIBUTOR OR DEALER;

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

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

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

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

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

19 S 265.17 Criminal purchase or disposal of a weapon.

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

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

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

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

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

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

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

52 12-B. EMPLOYEES OF A GUNSMITH OR DEALER IN FIREARMS. (A) NO PERSON
53 SHALL BE EMPLOYED BY A GUNSMITH OR DEALER IN FIREARMS FOR DUTIES THAT
54 INCLUDE HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS, IF SUCH
55 PERSON IS PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS UNDER FEDERAL

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

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

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

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

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

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

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

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