

5704

2015-2016 Regular Sessions

I N S E N A T E

May 29, 2015

Introduced by Sens. MARCHIONE, GALLIVAN, NOZZOLIO, O'MARA, SEWARD, YOUNG
-- 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 licenses to carry,
possess, repair and dispose of firearms

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

1 Section 1. Paragraph (a) of subdivision 3, subdivision 4, paragraph
2 (a) of subdivision 5 and subdivisions 7, 9, 10, 16-a and 16-b of section
3 400.00 of the penal law, paragraph (a) of subdivision 3, subdivision 4,
4 paragraph (a) of subdivision 5 and subdivisions 9 and 10 as amended and
5 subdivisions 16-a and 16-b as added by chapter 1 of the laws of 2013,
6 paragraph (a-1) of subdivision 16-a as added by chapter 98 of the laws
7 of 2013, are amended to read as follows:
8 (a) Applications shall be made and renewed, in the case of a license
9 to carry or possess a pistol or revolver, to the licensing officer in
10 the city or county, as the case may be, where the applicant resides, is
11 principally employed or has his or her principal place of business as
12 merchant or storekeeper; and, in the case of a license as gunsmith or
13 dealer in firearms, to the licensing officer where such place of busi-
14 ness is located. Blank applications shall, except in the city of New
15 York, be approved as to form by the [superintendent of state police]
16 DIVISION OF CRIMINAL JUSTICE SERVICES. An application shall state the
17 full name, date of birth, residence, present occupation of each person
18 or individual signing the same, whether or not he or she is a citizen of
19 the United States, whether or not he or she complies with each require-
20 ment for eligibility specified in subdivision one of this section and
21 such other facts as may be required to show the good character, compe-
22 tency and integrity of each person or individual signing the applica-
23 tion. An application shall be signed and verified by the applicant. Each
24 individual signing an application shall submit one photograph of himself

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

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1 or herself and a duplicate for each required copy of the application.
2 Such photographs shall have been taken within thirty days prior to
3 filing the application. In case of a license as gunsmith or dealer in
4 firearms, the photographs submitted shall be two inches square, and the
5 application shall also state the previous occupation of each individual
6 signing the same and the location of the place of such business, or of
7 the bureau, agency, subagency, office or branch office for which the
8 license is sought, specifying the name of the city, town or village,
9 indicating the street and number and otherwise giving such apt
10 description as to point out reasonably the location thereof. In such
11 case, if the applicant is a firm, partnership or corporation, its name,
12 date and place of formation, and principal place of business shall be
13 stated. For such firm or partnership, the application shall be signed
14 and verified by each individual composing or intending to compose the
15 same, and for such corporation, by each officer thereof.

16 4. Investigation. Before a license is issued or renewed, there shall
17 be an investigation of all statements required in the application by the
18 duly constituted police authorities of the locality where such applica-
19 tion is made, including but not limited to such records as may be acces-
20 sible to the [division of state police or] division of criminal justice
21 services pursuant to section 400.02 of this article. For that purpose,
22 the records of the appropriate office of the department of mental
23 hygiene concerning previous or present mental illness of the applicant
24 shall be available for inspection by the investigating officer of the
25 police authority. In order to ascertain any previous criminal record,
26 the investigating officer shall take the fingerprints and physical
27 descriptive data in quadruplicate of each individual by whom the appli-
28 cation is signed and verified. Two copies of such fingerprints shall be
29 taken on standard fingerprint cards eight inches square, and one copy
30 may be taken on a card supplied for that purpose by the federal bureau
31 of investigation; provided, however, that in the case of a corporate
32 applicant that has already been issued a dealer in firearms license and
33 seeks to operate a firearm dealership at a second or subsequent
34 location, the original fingerprints on file may be used to ascertain any
35 criminal record in the second or subsequent application unless any of
36 the corporate officers have changed since the prior application, in
37 which case the new corporate officer shall comply with procedures
38 governing an initial application for such license. When completed, one
39 standard card shall be forwarded to and retained by the division of
40 criminal justice services in the executive department, at Albany. A
41 search of the files of such division and written notification of the
42 results of the search to the investigating officer shall be made without
43 unnecessary delay. Thereafter, such division shall notify the licensing
44 officer and the executive department, division of state police, Albany,
45 of any criminal record of the applicant filed therein subsequent to the
46 search of its files. A second standard card, or the one supplied by the
47 federal bureau of investigation, as the case may be, shall be forwarded
48 to that bureau at Washington with a request that the files of the bureau
49 be searched and notification of the results of the search be made to the
50 investigating police authority. Of the remaining two fingerprint cards,
51 one shall be filed with the executive department, division of [state
52 police] CRIMINAL JUSTICE SERVICES, Albany, within ten days after issu-
53 ance of the license, and the other remain on file with the investigating
54 police authority. No such fingerprints may be inspected by any person
55 other than a peace officer, who is acting pursuant to his special
56 duties, or a police officer, except on order of a judge or justice of a

1 court of record either upon notice to the licensee or without notice, as
2 the judge or justice may deem appropriate. Upon completion of the inves-
3 tigation, the police authority shall report the results to the licensing
4 officer without unnecessary delay.

5 (a) The application for any license, if granted, shall be filed by the
6 licensing officer with the clerk of the county of issuance, except that
7 in the city of New York and, in the counties of Nassau and Suffolk, the
8 licensing officer shall designate the place of filing in the appropriate
9 division, bureau or unit of the police department thereof, and in the
10 county of Suffolk the county clerk is hereby authorized to transfer all
11 records or applications relating to firearms to the licensing authority
12 of that county. Except as provided in paragraphs (b) through (f) of this
13 subdivision, the name and address of any person to whom an application
14 for any license has been granted shall be a public record. Upon applica-
15 tion by a licensee who has changed his place of residence such records
16 or applications shall be transferred to the appropriate officer at the
17 licensee's new place of residence. A duplicate copy of such application
18 shall be filed by the licensing officer in the executive department,
19 division of [state police] CRIMINAL JUSTICE SERVICES, Albany, within ten
20 days after issuance of the license. The [superintendent of state police]
21 DIVISION OF CRIMINAL JUSTICE SERVICES may designate that such applica-
22 tion shall be transmitted to the division of [state police] CRIMINAL
23 JUSTICE SERVICES electronically. In the event the [superintendent of the
24 division of state police] DIVISION OF CRIMINAL JUSTICE SERVICES deter-
25 mines that it lacks any of the records required to be filed with the
26 division, it may request that such records be provided to it by the
27 appropriate clerk, department or authority and such clerk, department or
28 authority shall provide the division with such records. In the event
29 such clerk, department or authority lacks such records, the division OF
30 CRIMINAL JUSTICE SERVICES may request the license holder provide infor-
31 mation sufficient to constitute such record and such license holder
32 shall provide the division with such information. Such information shall
33 be limited to the license holder's name, date of birth, gender, race,
34 residential address, social security number and firearms possessed by
35 said license holder. Nothing in this subdivision shall be construed to
36 change the expiration date or term of such licenses if otherwise
37 provided for in law. Records assembled or collected for purposes of
38 inclusion in the database established by this section shall be released
39 pursuant to a court order. Records assembled or collected for purposes
40 of inclusion in the database created pursuant to section 400.02 of this
41 chapter shall not be subject to disclosure pursuant to article six of
42 the public officers law.

43 7. License: form. Any license issued pursuant to this section shall,
44 except in the city of New York, be approved as to form by the [super-
45 intendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES. A
46 license to carry or possess a pistol or revolver shall have attached the
47 licensee's photograph, and a coupon which shall be removed and retained
48 by any person disposing of a firearm to the licensee. Such license shall
49 specify the weapon covered by calibre, make, model, manufacturer's name
50 and serial number, or if none, by any other distinguishing number or
51 identification mark, and shall indicate whether issued to carry on the
52 person or possess on the premises, and if on the premises shall also
53 specify the place where the licensee shall possess the same. If such
54 license is issued to an alien, or to a person not a citizen of and
55 usually a resident in the state, the licensing officer shall state in
56 the license the particular reason for the issuance and the names of the

persons certifying to the good character of the applicant. Any license as gunsmith or dealer in firearms shall mention and describe the premises for which it is issued and shall be valid only for such premises.

9. License: amendment. Elsewhere than in the city of New York, a person licensed to carry or possess a pistol or revolver may apply at any time to his or her licensing officer for amendment of his or her license to include one or more such weapons or to cancel weapons held under license. If granted, a record of the amendment describing the weapons involved shall be filed by the licensing officer in the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, Albany. The [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES may authorize that such amendment be completed and transmitted to the [state police] DIVISION in electronic form. Notification of any change of residence shall be made in writing by any licensee within ten days after such change occurs, and a record of such change shall be inscribed by such licensee on the reverse side of his or her license. Elsewhere than in the city of New York, and in the counties of Nassau and Suffolk, such notification shall be made to the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, Albany, and in the city of New York to the police commissioner of that city, and in the county of Nassau to the police commissioner of that county, and in the county of Suffolk to the licensing officer of that county, who shall, within ten days after such notification shall be received by him or her, give notice in writing of such change to the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, at Albany.

10. License: expiration, certification and renewal. (a) Any license for gunsmith or dealer in firearms and, in the city of New York, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than three years after the date of issuance. In the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than five years after the date of issuance; however, in the county of Westchester, any such license shall be certified prior to the first day of April, two thousand, in accordance with a schedule to be contained in regulations promulgated by the commissioner of the division of criminal justice services, and every such license shall be recertified every five years thereafter. For purposes of this section certification shall mean that the licensee shall provide to the licensing officer the following information only: current name, date of birth, current address, and the make, model, caliber and serial number of all firearms currently possessed. Such certification information shall be filed by the licensing officer in the same manner as an amendment. Elsewhere than in the city of New York and the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall

1 thereby extend the term of the license until disposition of the applica-
2 tion by the licensing officer. In the case of a license for gunsmith or
3 dealer in firearms, in counties having a population of less than two
4 hundred thousand inhabitants, photographs and fingerprints shall be
5 submitted on original applications and upon renewal thereafter only at
6 six year intervals. Upon satisfactory proof that a currently valid
7 original license has been despoiled, lost or otherwise removed from the
8 possession of the licensee and upon application containing an additional
9 photograph of the licensee, the licensing officer shall issue a dupli-
10 cate license.

11 (b) All licensees shall be recertified to the [division of state
12 police] LICENSING OFFICER every five years thereafter. Any license
13 issued before the effective date of [the] chapter ONE of the laws of two
14 thousand thirteen [which added this paragraph] shall be recertified by
15 the licensee on or before January thirty-first, two thousand eighteen,
16 and not less than one year prior to such date, the [state police] DIVI-
17 SION OF CRIMINAL JUSTICE SERVICES shall send a notice to all license
18 holders who have not recertified by such time. [Such recertification
19 shall be in a form as approved by the superintendent of state police,
20 which shall request the license holder's name, date of birth, gender,
21 race, residential address, social security number, firearms possessed by
22 such license holder, email address at the option of the license holder
23 and an affirmation that such license holder is not prohibited from
24 possessing firearms.] RECERTIFICATION SHALL CONTAIN THE INFORMATION AND
25 SHALL BE IN THE FORM SET FORTH HEREINBELOW:

26 RECERTIFICATION

- 27 1. NAME _____
- 28 2. DATE OF BIRTH _____
- 29 3. GENDER _____
- 30 4. RACE _____
- 31 5. RESIDENTIAL ADDRESS _____
- 32 _____
- 33 _____
- 34 6. SOCIAL SECURITY NUMBER _____
- 35 7. EMAIL ADDRESS (OPTIONAL) _____
- 36 8. LIST ALL FIREARMS POSSESSED ON LICENSE: _____
- 37 _____
- 38 _____
- 39 _____
- 40 _____

41 UPON RECEIPT OF THE COMPLETED RECERTIFICATION FORM, THE LICENSING OFFI-
42 CER WILL COMPARE THE INFORMATION PROVIDED WITH THE INFORMATION MAIN-
43 TAINED BY THE LICENSING OFFICER FOR SUCH LICENSE HOLDER, AND PROMPTLY
44 NOTIFY THE LICENSE HOLDER OF ANY DISCREPANCIES THAT MAY EXIST, AND
45 PROVIDE INSTRUCTION AS TO APPLYING FOR AN AMENDMENT PURSUANT TO SUBDIVI-
46 SION NINE THIS SECTION. AFTER THE RESOLUTION OF ANY PENDING APPLICATIONS

1 FOR AMENDMENTS, THE LICENSING OFFICER SHALL RETAIN A COPY OF THE RECER-
2 TIFICATION AND A COPY SHALL BE FILED BY THE LICENSING OFFICER IN THE
3 EXECUTIVE DEPARTMENT, DIVISION OF CRIMINAL JUSTICE SERVICES, ALBANY,
4 WITHIN TEN DAYS. The form may be in an electronic form if so designated
5 by the [superintendent of state police] DIVISION OF CRIMINAL JUSTICE
6 SERVICES. Failure to recertify shall act as a revocation of such
7 license. If the [New York state police] DIVISION SHALL discover as a
8 result of the recertification process that a licensee failed to provide
9 a change of address, the [New York state police] DIVISION OF CRIMINAL
10 JUSTICE SERVICES shall not require the licensing officer to revoke such
11 license.

12 16-a. Registration. (a) An owner of a weapon defined in paragraph (e)
13 or (f) of subdivision twenty-two of section 265.00 of this chapter,
14 possessed before the date of the effective date of [the] chapter ONE of
15 the laws of two thousand thirteen [which added this paragraph], must
16 make an application to register such weapon with the [superintendent of
17 state police] DIVISION OF CRIMINAL JUSTICE SERVICES, in the manner
18 provided by the [superintendent] DIVISION OF CRIMINAL JUSTICE SERVICES,
19 or by amending a license issued pursuant to this section within one year
20 of the effective date of this subdivision except any weapon defined
21 under subparagraph (vi) of paragraph (g) of subdivision twenty-two of
22 section 265.00 of this chapter transferred into the state may be regis-
23 tered at any time, provided such weapons are registered within thirty
24 days of their transfer into the state. Registration information shall
25 include the registrant's name, date of birth, gender, race, residential
26 address, social security number and a description of each weapon being
27 registered. A registration of any weapon defined under subparagraph (vi)
28 of paragraph (g) of subdivision twenty-two of section 265.00 or a feed-
29 ing device as defined under subdivision twenty-three of section 265.00
30 of this chapter shall be transferable, provided that the seller notifies
31 the [state police] DIVISION OF CRIMINAL JUSTICE SERVICES within seven-
32 ty-two hours of the transfer and the buyer provides the [state police]
33 DIVISION OF CRIMINAL JUSTICE SERVICES with information sufficient to
34 constitute a registration under this section. Such registration shall
35 not be valid if such registrant is prohibited or becomes prohibited from
36 possessing a firearm pursuant to state or federal law. The [superinten-
37 dent] DIVISION OF CRIMINAL JUSTICE SERVICES shall determine whether such
38 registrant is prohibited from possessing a firearm under state or feder-
39 al law. Such check shall be limited to determining whether the factors
40 in 18 USC 922 (g) apply or whether a registrant has been convicted of a
41 serious offense as defined in subdivision [sixteen-b] SEVENTEEN of
42 section 265.00 of this chapter, so as to prohibit such registrant from
43 possessing a firearm, and whether a report has been issued pursuant to
44 section 9.46 of the mental hygiene law. All registrants shall recertify
45 to the division of [state police] CRIMINAL JUSTICE SERVICES every five
46 years thereafter. Failure to recertify shall result in a revocation of
47 such registration.

48 (a-1) Notwithstanding any inconsistent provisions of paragraph (A)
49 OF this subdivision, an owner of an assault weapon as defined in subdivi-
50 sion twenty-two of section 265.00 of this chapter, who is a qualified
51 retired New York or federal law enforcement officer as defined in subdivi-
52 sion twenty-five of section 265.00 of this chapter, where such weapon
53 was issued to or purchased by such officer prior to retirement and in
54 the course of his or her official duties, and for which such officer was
55 qualified by the agency that employed such officer within twelve months

1 prior to his or her retirement, must register such weapon within sixty
2 days of retirement.

3 (b) The [superintendent of state police] DIVISION OF CRIMINAL JUSTICE
4 SERVICES shall create and maintain an internet website to educate the
5 public as to which semiautomatic rifle, semiautomatic shotgun or semiau-
6 tomatic pistol or weapon that are illegal as a result of the enactment
7 of [the] chapter ONE of the laws of two thousand thirteen [which added
8 this paragraph], as well as such assault weapons which are illegal
9 pursuant to article two hundred sixty-five of this chapter. Such website
10 shall contain information to assist the public in recognizing the rele-
11 vant features proscribed by such article two hundred sixty-five, as well
12 as which make and model of weapons that require registration.

13 (c) A person who knowingly fails to apply to register such weapon, as
14 required by this section, within one year of the effective date of [the]
15 chapter ONE of the laws of two thousand thirteen [which added this para-
16 graph] shall be guilty of a class A misdemeanor and such person who
17 unknowingly fails to validly register such weapon within such one year
18 period shall be given a warning by an appropriate law enforcement
19 authority about such failure and given thirty days in which to apply to
20 register such weapon or to surrender it. A failure to apply or surrender
21 such weapon within such thirty-day period shall result in such weapon
22 being removed by an appropriate law enforcement authority and declared a
23 nuisance.

24 16-b. The cost of the software, programming and interface required to
25 transmit any record that must be electronically transmitted by the deal-
26 er or licensing officer to the division of [state police] CRIMINAL
27 JUSTICE SERVICES, AND ANY COST BORNE BY THE LICENSING OFFICER TO ADMIN-
28 ISTER OR MAINTAIN RECORDS RELATED TO THE RECERTIFICATION PROCESS BY THE
29 LICENSING OFFICER, BOTH pursuant to this chapter shall be borne by the
30 state.

31 S 2. Section 400.02 of the penal law, as added by chapter 1 of the
32 laws of 2013, is amended to read as follows:

33 S 400.02 Statewide license and record database.

34 There shall be a statewide license and record database which shall be
35 created and maintained by the division of [state police] CRIMINAL
36 JUSTICE SERVICES the cost of which shall not be borne by any munici-
37 pality. Records assembled or collected for purposes of inclusion in such
38 database shall not be subject to disclosure pursuant to article six of
39 the public officers law. Records containing granted license applications
40 shall be periodically checked by the division of criminal justice
41 services against criminal conviction, mental health, and all other
42 records as are necessary to determine their continued accuracy as well
43 as whether an individual is no longer a valid license holder. The divi-
44 sion of criminal justice services shall also check pending applications
45 made pursuant to this article against such records to determine whether
46 a license may be granted. All state agencies shall cooperate with the
47 division of criminal justice services, as otherwise authorized by law,
48 in making their records available for such checks. The division of crim-
49 inal justice services, upon determining that an individual is ineligible
50 to possess a license, or is no longer a valid license holder, shall
51 notify the applicable licensing official of such determination and such
52 licensing official shall not issue a license or revoke such license and
53 any weapons owned or possessed by such individual shall be removed
54 consistent with the provisions of subdivision eleven of section 400.00
55 of this article. Local and state law enforcement shall have access to
56 such database, as otherwise authorized by law, in the performance of

1 their duties. Records assembled or collected for purposes of inclusion
2 in the database established by this section shall be released pursuant
3 to a court order.
4 S 3. This act shall take effect immediately.