

4081

2009-2010 Regular Sessions

I N   S E N A T E

April 9, 2009

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Introduced by Sens. SCHNEIDERMAN, ADAMS, BRESLIN, DIAZ, DILAN, DUANE, KRUEGER, KRUGER, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, PERKINS, SAMPSON, STAVISKY, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to the procurement of handguns by state agencies

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

1     Section 1. Declaration of legislative findings and intent. The legis-  
2     lature finds that it is in the state's best interest to procure handguns  
3     for use by state employees in the performance of their duties from  
4     responsible suppliers that are committed to a standard of conduct which  
5     makes every effort to eliminate sales of guns that might lead to illegal  
6     possession and/or misuse by criminals, unauthorized juveniles, and other  
7     prohibited persons.  
8     Over 30,000 people in the United States die each year from gunfire,  
9     including 4,200 children. On average, firearms kill approximately nine  
10    American children every day. In New York City, firearms, predominantly  
11    handguns, are used in approximately sixty-six percent of the murders  
12    committed each year. More than twice the number of individuals murdered  
13    with a firearm suffered injuries inflicted by firearms. Handguns are  
14    also used in a high percentage of other crimes, including robbery, felo-  
15    ny reckless endangerment and menacing.  
16    Government agencies purchase approximately twenty-five percent of all  
17    guns sold in the United States, including guns for police forces,  
18    correctional services, and public safety agencies. The state is a major  
19    purchaser of handguns for use by the state's various law enforcement  
20    agencies. The legislature finds that the state, acting with the  
21    discretion allowed any private participant in the market, should choose  
22    to allocate its purchasing dollars in a manner that promotes the respon-  
23    sible manufacture, shipment, and distribution of handguns. In further-

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

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1   ance of this goal, this legislation requires that state agencies  
2   purchase handguns from suppliers that refrain from marketing or manufac-  
3   turing handguns in a manner that is attractive to criminals and juve-  
4   niles, as well as adhere to other provisions designed to minimize the  
5   risk to innocent third parties and to prevent handguns from leaving the  
6   legal stream of commerce. Nevertheless, the legislature recognizes that  
7   handguns which satisfy the standards required by this legislation may  
8   not be suitable for law enforcement needs, thus, the legislation  
9   provides an exception if necessary for handguns procured for law  
10  enforcement or military uses.

11   The legislature finds that it is imperative that the state spend its  
12  citizens' money in a manner that promotes the safety and well-being of  
13  all residents. Accordingly, the legislature finds that when procuring  
14  handguns, the state should do so from responsible manufacturers whenever  
15  possible.

16   S 2. The state finance law is amended by adding a new section 169 to  
17  read as follows:

18   S 169. PURCHASE OF HANDGUNS. 1. FOR THE PURPOSES OF THIS SECTION  
19  ONLY, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

20   (A) "CONTRACT" MEANS ANY WRITTEN AGREEMENT, PURCHASE ORDER, OR INSTRU-  
21  MENT WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND  
22  FUNDS IN RETURN FOR WORK, LABOR, SERVICES, SUPPLIES, EQUIPMENT, MATERI-  
23  ALS, OR ANY COMBINATION OF THE FOREGOING.

24   (B) "RESPONSIBLE SUPPLIER" MEANS THAT THE SUPPLIER OF HANDGUNS,  
25  INCLUDING A MANUFACTURER, RETAIL DEALER, AND/OR WHOLESALE DEALER, IS  
26  ABLE TO DEMONSTRATE THAT IT IS COMMITTED TO A STANDARD OF CONDUCT WHICH  
27  MAKES EVERY REASONABLE EFFORT TO ELIMINATE SALES OF WEAPONS THAT MIGHT  
28  LEAD TO ILLEGAL POSSESSION AND/OR MISUSE BY CRIMINALS, UNAUTHORIZED  
29  JUVENILES, AND OTHER PROHIBITED PERSONS. THIS STANDARD INCLUDES DEMON-  
30  STRATED COMPLIANCE WITH THE FOLLOWING PROVISIONS:

31   (1) DOES NOT SELL WEAPONS TO DEALERS WHO HAVE SOLD MORE THAN TWENTY  
32  WEAPONS WITHIN ANY CONTINUOUS TWELVE MONTH PERIOD IN THE PRECEDING FIVE  
33  YEARS TRACED TO USE IN A CRIME OR ILLEGAL POSSESSION, AS DETERMINED BY  
34  THE UNITED STATES BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES OR  
35  WHO HAVE NOT, ON THEIR OWN, SOLD WEAPONS, TWENTY OR MORE OF WHICH WITHIN  
36  ANY CONTINUOUS TWELVE MONTH PERIOD IN THE PRECEDING FIVE YEARS ARE  
37  TRACED TO USE IN A CRIME OR ILLEGAL POSSESSION, AS DETERMINED BY THE  
38  UNITED STATES BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES;

39   (2) MAKES NO SALES AT GUN SHOWS OR ALTERNATIVE VENUES UNLESS SUCH  
40  SALES AT THE GUN SHOW OR ALTERNATIVE VENUE ARE CONDUCTED ONLY UPON  
41  COMPLETION OF A BACKGROUND CHECK AND ALL SELLERS AT THE GUN SHOW OR  
42  ALTERNATIVE VENUE AGREE TO CONDUCT SALES ONLY UPON COMPLETION OF A BACK-  
43  GROUND CHECK AS DICTATED BY STATE AND FEDERAL LAW FOR SALE AT A RETAIL  
44  GUN STORE;

45   (3) (I) IN THE CASE OF A MANUFACTURER SELLING WEAPONS TO DEALERS, ONLY  
46  SELLS TO DEALERS WHO OPERATE A RETAIL SHOP LOCATED AT A FIXED ADDRESS,  
47  OR (II) IN THE CASE OF RETAIL OR WHOLESALE DEALERS WHERE:

48   A. THE DEALER MAINTAINS AN ELECTRONIC DATABASE OF MAKE, MODEL, CALIBER  
49  OR GAUGE, AND SERIAL NUMBER OF ALL WEAPONS HELD IN INVENTORY OR OFFERED  
50  FOR SALE;

51   B. THE DEALER MAINTAINS AN ELECTRONIC DATABASE OF MAKE, MODEL, CALIBER  
52  OR GAUGE, AND SERIAL NUMBER OF ALL WEAPONS SOLD AND THE NAME AND LICENSE  
53  NUMBER OF ALL PURCHASERS; AND

54   C. THE DEALER MAKES VISIBLE ALL PERMITS AND LEGALLY REQUIRED SIGNAGE;

55   (4) PROVIDES FULL ACCESS OF AFOREMENTIONED RECORDS TO LAW ENFORCEMENT  
56  AND GOVERNMENT REGULATORS CONDUCTING COMPLIANCE INSPECTIONS;

(5) LIMITS PURCHASES BY ANY INDIVIDUAL IN ANY GIVEN THIRTY DAY PERIOD TO ONE WEAPON; AND

(6) IMPLEMENTS A SECURITY PLAN FOR SECURING WEAPONS IN TRANSIT.

(C) "CONTRACTING AGENCY" MEANS A STATE AGENCY OR COVERED AUTHORITY.

(D) "CONTRACTOR" MEANS ANY SUPPLIER, BY SALE OR LEASE, OF HANDGUNS TO A CONTRACTING AGENCY.

(E) "HANDGUN" MEANS A REVOLVER OR SEMI-AUTOMATIC PISTOL DESIGNED TO EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE.

(F) "STATE AGENT" MEANS ANY INDIVIDUAL WHO, AS PART OF HIS OR HER OFFICIAL DUTIES, PURCHASES OR LEASES A HANDGUN FINANCED IN WHOLE OR IN PART BY A CONTRACTING AGENCY FOR PERFORMANCE OF OFFICIAL DUTIES.

2. A CONTRACTING AGENCY SHALL ONLY ENTER INTO A CONTRACT TO PURCHASE OR OBTAIN FOR ANY PURPOSE HANDGUNS FROM A RESPONSIBLE SUPPLIER, AND A STATE AGENT SHALL ONLY PURCHASE OR LEASE A HANDGUN FOR USE IN PERFORMANCE OF OFFICIAL DUTIES FROM A RESPONSIBLE SUPPLIER.

3. THE SUPERINTENDENT OF STATE POLICE SHALL PROMULGATE RULES SPECIFYING THE DOCUMENTS AND INFORMATION THAT CONTRACTORS MUST PROVIDE TO THE CONTRACTING AGENCY FOR PURPOSES OF SUBPARAGRAPH THREE OF PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION.

4. UPON A DETERMINATION THAT A CONTRACTOR IS IN VIOLATION OF THIS SECTION, THE CONTRACTING AGENCY SHALL REVIEW SUCH INFORMATION AND OFFER THE CONTRACTOR AN OPPORTUNITY TO RESPOND. IF THE CONTRACTING AGENCY FINDS THAT A VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES, DECLARING THE CONTRACTOR IN DEFAULT, SEEKING DEBARMENT OR SUSPENSION OF THE CONTRACTOR AND/OR DEEMING IT AS NON-RESPONSIBLE.

5. EVERY CONTRACT FOR OR ON BEHALF OF ALL CONTRACTING AGENCIES FOR THE SUPPLY OF HANDGUNS SHALL CONTAIN A PROVISION OR PROVISIONS DETAILING THE REQUIREMENTS OF THIS SECTION.

6. WITH REGARD TO A "CONTRACTING AGENCY", THE REQUIREMENTS OF THIS SECTION SHALL BE WAIVED IN WRITING UNDER THE FOLLOWING CIRCUMSTANCES:

(A) THERE IS ONLY ONE PROSPECTIVE CONTRACTOR WILLING TO ENTER INTO A CONTRACT; OR

(B) WHERE IT IS DETERMINED THAT ALL BIDDERS TO A CONTRACT ARE DEEMED INELIGIBLE FOR PURPOSES OF THIS SECTION; OR

(C) WHERE IT IS AVAILABLE FROM A SOLE SOURCE AND THE PROSPECTIVE CONTRACTOR IS NOT CURRENTLY DISQUALIFIED FROM DOING BUSINESS WITH THE CONTRACTING AGENCY; OR

(D) THE CONTRACT IS NECESSARY IN ORDER TO RESPOND TO AN EMERGENCY WHICH ENDANGERS THE PUBLIC HEALTH AND SAFETY AND NO ENTITY WHICH COMPLIES WITH THE REQUIREMENTS OF THIS SECTION CAPABLE OF RESPONDING TO THE EMERGENCY IS IMMEDIATELY AVAILABLE; OR

(E) WHERE A CONTRACTING AGENCY WHOSE PRIMARY RESPONSIBILITY IS LAW ENFORCEMENT DEEMS IT NECESSARY TO PURCHASE HANDGUNS FROM OTHER THAN A RESPONSIBLE SUPPLIER; OR

(F) WHERE INCLUSION OR APPLICATION OF SUCH PROVISIONS WILL VIOLATE OR BE INCONSISTENT WITH THE TERMS AND CONDITIONS OF A GRANT, SUBVENTION, OR CONTRACT OF THE UNITED STATES OR NEW YORK STATE GOVERNMENT OR THE INSTRUCTIONS OF AN AUTHORIZED REPRESENTATIVE OF ANY SUCH AGENCY WITH RESPECT TO ANY SUCH GRANT, SUBVENTION, OR CONTRACT.

ALL WRITTEN WAIVERS SHALL BECOME PART OF THE CONTRACT FILE OF THE CONTRACTING AGENCY. NOTWITHSTANDING ANY WAIVER, THE CONTRACTING AGENCY SHALL TAKE EVERY REASONABLE MEASURE TO CONTRACT WITH A MANUFACTURER OR DEALER WHO BEST SATISFIES THE REQUIREMENTS OF THIS SECTION.

1 7. WITH REGARD TO "STATE AGENTS", THE REQUIREMENTS OF THIS SECTION  
2 SHALL BE WAIVED IN WRITING UNDER THE FOLLOWING CIRCUMSTANCES:

3 (A) THE EMPLOYER OF THE STATE AGENT DETERMINES THAT THERE IS ONLY ONE  
4 PROSPECTIVE SUPPLIER WILLING OR ABLE TO SUPPLY SUCH HANDGUN; OR

5 (B) WHERE THE EMPLOYER OF THE STATE AGENT DETERMINES THAT ALL PROSPEC-  
6 TIVE SUPPLIERS ARE DEEMED INELIGIBLE FOR PURPOSES OF THIS SECTION; OR

7 (C) WHERE THE EMPLOYER OF THE STATE AGENT DETERMINES THAT THE HANDGUN  
8 IS AVAILABLE ONLY FROM A SOLE SOURCE AND THE PROSPECTIVE SUPPLIER IS NOT  
9 CURRENTLY DISQUALIFIED FROM DOING BUSINESS WITH THE CONTRACTING AGENCY;  
10 OR

11 (D) THE EMPLOYER OF THE STATE AGENT DETERMINES THAT IT IS NECESSARY IN  
12 ORDER TO RESPOND TO AN EMERGENCY WHICH ENDANGERS THE PUBLIC HEALTH AND  
13 SAFETY AND NO ENTITY WHICH COMPLIES WITH THE REQUIREMENTS OF THIS  
14 SECTION CAPABLE OF RESPONDING TO THE EMERGENCY IS IMMEDIATELY AVAILABLE;  
15 OR

16 (E) WHERE THE EMPLOYER OF THE STATE AGENT WHOSE PRIMARY RESPONSIBILITY  
17 IS LAW ENFORCEMENT DEEMS IT NECESSARY TO PURCHASE HANDGUNS FROM OTHER  
18 THAN A RESPONSIBLE SUPPLIER; OR

19 (F) WHERE THE EMPLOYER OF THE STATE AGENT DEEMS THAT THE INCLUSION OR  
20 APPLICATION OF SUCH PROVISIONS WILL VIOLATE OR BE INCONSISTENT WITH THE  
21 TERMS AND CONDITIONS OF A GRANT, SUBVENTION, OR CONTRACT OF THE UNITED  
22 STATES OR NEW YORK STATE GOVERNMENT OR THE INSTRUCTIONS OF AN AUTHORIZED  
23 REPRESENTATIVE OF ANY SUCH AGENCY WITH RESPECT TO ANY SUCH GRANT,  
24 SUBVENTION OR CONTRACT.

25 8. THIS SECTION SHALL NOT APPLY TO ANY CONTRACT WITH A CONTRACTING  
26 AGENCY ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

27 9. IF ANY SUBDIVISION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE,  
28 PHRASE, OR OTHER PORTION OF THIS SECTION IS, FOR ANY REASON, DECLARED  
29 UNCONSTITUTIONAL OR INVALID, IN WHOLE OR IN PART, BY ANY COURT OF COMPE-  
30 TENT JURISDICTION, SUCH PORTION SHALL BE DEEMED SEVERABLE, AND SUCH  
31 UNCONSTITUTIONALITY OR INVALIDITY SHALL NOT AFFECT THE VALIDITY OF THE  
32 REMAINING PORTIONS OF THIS SECTION, WHICH REMAINING PORTIONS SHALL  
33 CONTINUE IN FULL FORCE AND EFFECT.

34 S 3. This act shall take effect on the one hundred eightieth day after  
35 it shall have become a law.