

5917

2009-2010 Regular Sessions

I N S E N A T E

June 18, 2009

Introduced by Sen. SCHNEIDERMAN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, the penal law and the judiciary law, in relation to licensing of gun dealer employees, recertification of gun licensees and reporting of misdemeanor crimes of domestic violence

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

1 Section 1. Article 40 and sections 900 and 901 of the general business
2 law, as renumbered by chapter 407 of the laws of 1973, are renumbered
3 article 50 and sections 1001 and 1002 and a new article 40 is added to
4 read as follows:

5 ARTICLE 40

6 EMPLOYEES OF GUNSMITHS AND DEALERS IN
7 FIREARMS, RIFLES AND SHOTGUNS

8 SECTION 900. DEFINITIONS.

9 901. EMPLOYEE CERTIFICATION.

10 902. CERTIFICATE OF EMPLOYMENT.

11 903. RULES AND REGULATIONS.

12 904. VIOLATIONS.

13 S 900. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

14 1. "DEALER" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION OR COMPA-
15 NY LICENSED AS A DEALER IN FIREARMS PURSUANT TO SECTION 400.00 OF THE
16 PENAL LAW OR PURSUANT TO 18 U.S.C. 923.

17 2. "GUNSMITH" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION OR
18 COMPANY LICENSED AS A GUNSMITH PURSUANT TO SECTION 400.00 OF THE PENAL
19 LAW.

20 3. "EMPLOYEE" MEANS A PERSON EMPLOYED BY A DEALER OR GUNSMITH AND
21 WHOSE DUTIES INCLUDE THE HANDLING, SELLING OR OTHERWISE DISPOSING OF
22 FIREARMS, RIFLES OR SHOTGUNS.

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

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

3 5. "RIFLE" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION
4 ELEVEN OF SECTION 265.00 OF THE PENAL LAW.

5 6. "SHOTGUN" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVI-
6 SION TWELVE OF SECTION 265.00 OF THE PENAL LAW.

7 7. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF STATE POLICE.

8 S 901. EMPLOYEE CERTIFICATION. NO DEALER SHALL EMPLOY ANY EMPLOYEE
9 UNLESS:

10 1. SUCH EMPLOYEE IS TWENTY-ONE YEARS OR OLDER OR IS A MEMBER OF THE
11 UNITED STATES ARMED FORCES OR HAS BEEN HONORABLY DISCHARGED THEREFROM;
12 AND

13 2. THE DEALER EMPLOYING SUCH EMPLOYEE HAS CONDUCTED A NATIONAL INSTANT
14 CRIMINAL BACKGROUND CHECK OF SUCH EMPLOYEE AND IS NOTIFIED THAT THE
15 INFORMATION AVAILABLE IN THE SYSTEM DOES NOT DEMONSTRATE THAT THE
16 POSSESSION OF A FIREARM, RIFLE OR SHOTGUN BY SUCH PERSON WOULD VIOLATE
17 18 U.S.C. 922(G) OR ANY OTHER APPLICABLE LAW.

18 S 902. CERTIFICATE OF EMPLOYMENT. A DEALER EMPLOYING AN EMPLOYEE
19 SHALL, SUBSEQUENT TO CONDUCTING A NATIONAL INSTANT CRIMINAL BACKGROUND
20 CHECK, COMPLETE A CERTIFICATE OF EMPLOYMENT IN DUPLICATE ON A FORM
21 APPROVED BY THE SUPERINTENDENT. ONE COPY OF THE FORM SHALL BE FILED WITH
22 THE SUPERINTENDENT IMMEDIATELY UPON EMPLOYMENT OF THE EMPLOYEE AND ONE
23 COPY OF SUCH CERTIFICATE SHALL BE RETAINED BY THE DEALER AND AVAILABLE
24 ON PREMISES FOR INSPECTION BY ANY POLICE OFFICER. SUCH CERTIFICATE SHALL
25 REMAIN VALID FOR A PERIOD NOT TO EXCEED THREE YEARS FROM THE DATE FILED
26 WITH THE SUPERINTENDENT PROVIDED THAT DURING THAT PERIOD POSSESSION OF A
27 FIREARM, RIFLE OR SHOTGUN BY THE EMPLOYEE WOULD NOT VIOLATE 18 U.S.C.
28 922(G) OR ANY OTHER APPLICABLE LAW. SUCH CERTIFICATE SHALL BE RENEWABLE
29 BY THE DEALER.

30 S 903. RULES AND REGULATIONS. THE SUPERINTENDENT MAY PROMULGATE RULES
31 AND REGULATIONS TO EFFECTUATE THE PROVISIONS OF THIS ARTICLE.

32 S 904. VIOLATIONS. ANY DEALER WHO:

33 1. EMPLOYS AN EMPLOYEE WITHOUT CONDUCTING A NATIONAL INSTANT CRIMINAL
34 BACKGROUND CHECK OF THE EMPLOYEE IN WHICH THE RESULTS INDICATE THAT
35 POSSESSION OF A FIREARM, RIFLE OR SHOTGUN BY THE EMPLOYEE WOULD NOT
36 VIOLATE 18 U.S.C. 922(G) OR ANY OTHER APPLICABLE LAW, OR

37 2. EMPLOYS AN EMPLOYEE WITHOUT COMPLETING, FILING OR DISPLAYING A
38 CERTIFICATE OF EMPLOYMENT, OR

39 3. CONTINUES TO EMPLOY AN EMPLOYEE WHEN THE DEALER HAS RECEIVED ACTUAL
40 NOTICE THAT POSSESSION OF A FIREARM, RIFLE OR SHOTGUN BY THE EMPLOYEE
41 WOULD VIOLATE 18 U.S.C. 922(G) OR ANY OTHER APPLICABLE LAW SHALL BE
42 GUILTY OF A MISDEMEANOR.

43 S 2. Section 400.00 of the penal law is amended by adding a new subdi-
44 vision 10-a to read as follows:

45 10-A. LICENSE: NATIONAL INSTANT CRIMINAL BACKGROUND CHECK RECERTIF-
46 ICATION. ANY LICENSEE APPLYING FOR A LICENSE PURSUANT TO THIS ARTICLE,
47 AND IN THE CITY OF NEW YORK OR IN THE COUNTIES OF WESTCHESTER, NASSAU OR
48 SUFFOLK, UPON RENEWAL OR RECERTIFICATION OF THE LICENSE, SHALL BE THE
49 SUBJECT OF A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK PERFORMED BY THE
50 LICENSING OFFICIAL. NO LICENSE SHALL BE ISSUED, RENEWED OR RECERTIFIED
51 BY THE LICENSING OFFICIAL UNLESS THE RESULTS OF THE NATIONAL INSTANT
52 CRIMINAL BACKGROUND CHECK DEMONSTRATES THAT POSSESSION OF A FIREARM BY
53 THE LICENSEE WOULD NOT VIOLATE 18 U.S.C. 922(G) OR ANY OTHER APPLICABLE
54 LAW. ELSEWHERE THAN IN THE CITY OF NEW YORK OR THE COUNTIES OF WESTCHES-
55 TER, NASSAU OR SUFFOLK, A LICENSEE WHO HAS BEEN ISSUED ANY LICENSE
56 PURSUANT TO THIS ARTICLE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVI-

1 SION, SHALL HAVE A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK PERFORMED
2 BY THE LICENSING OFFICIAL PRIOR TO THE FIRST DAY OF DECEMBER, TWO THOU-
3 SAND FOURTEEN, IN ACCORDANCE WITH A SCHEDULE TO BE CONTAINED IN RULES
4 PROMULGATED BY THE SUPERINTENDENT OF STATE POLICE AND EVERY FIVE YEARS
5 THEREAFTER. NO SUCH LICENSE SHALL REMAIN VALID UNLESS THE RESULTS OF THE
6 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK DEMONSTRATES THAT POSSESSION
7 OF A FIREARM BY THE LICENSEE WOULD NOT VIOLATE 18 U.S.C. 922(G) OR ANY
8 OTHER APPLICABLE LAW. A COUNTY OR THE CITY OF NEW YORK MAY, UPON
9 ACTION OF ITS LEGISLATIVE BODY, AUTHORIZE A FEE, NOT TO EXCEED TWENTY
10 DOLLARS, TO BE COLLECTED AND PAID INTO THE COUNTY OR CITY TREASURY, TO
11 PAY FOR ADMINISTRATIVE COSTS INCURRED FOR RECERTIFICATION OF A GUN
12 LICENSE PURSUANT TO THIS SUBDIVISION. THE SUPERINTENDENT OF STATE
13 POLICE MAY PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THE PROVISIONS
14 OF THIS SUBDIVISION.

15 S 3. Subdivision 5 of section 400.00 of the penal law, as amended by
16 chapter 332 of the laws of 1994, is amended to read as follows:

17 5. Filing of approved applications. The application for any license,
18 if granted, shall be filed by the licensing officer with the clerk of
19 the county of issuance, except that in the city of New York and, in the
20 counties of Nassau and Suffolk, the licensing officer shall designate
21 the place of filing in the appropriate division, bureau or unit of the
22 police department thereof, and in the county of Suffolk the county clerk
23 is hereby authorized to transfer all records or applications relating to
24 firearms to the licensing authority of that county. The name [and
25 address] of any person to whom an application for any license has been
26 granted shall be a public record. Upon application by a licensee who has
27 changed his place of residence such records or applications shall be
28 transferred to the appropriate officer at the licensee's new place of
29 residence. A duplicate copy of such application shall be filed by the
30 licensing officer in the executive department, division of state police,
31 Albany, within ten days after issuance of the license. Nothing in this
32 subdivision shall be construed to change the expiration date or term of
33 such licenses if otherwise provided for in law.

34 S 4. Subdivision 2 of section 212 of the judiciary law is amended by
35 adding a new paragraph (s) to read as follows:

36 (S) ADOPT RULES TO REQUIRE TRANSMISSION TO THE CRIMINAL JUSTICE INFOR-
37 MATION SERVICES DIVISION OF THE FEDERAL BUREAU OF INVESTIGATION OR TO
38 THE DIVISION OF CRIMINAL JUSTICE SERVICES, OF THE NAME AND OTHER IDENTI-
39 FIFYING INFORMATION OF EACH PERSON CONVICTED OF A MISDEMEANOR IN THE STATE
40 WHICH CONSTITUTES A "MISDEMEANOR CRIME OF DOMESTIC VIOLENCE" AS DEFINED
41 IN 18 USC 921(A)(33)(A).

42 S 5. This act shall take effect November 1, 2009; provided, however,
43 that section one of this act shall not become effective until the sixti-
44 eth day after the superintendent of state police approves the certif-
45 icate required by section 902 of the general business law as added by
46 section one of this act; provided that the superintendent of state
47 police shall notify the legislative bill drafting commission upon the
48 occurrence of the enactment of the legislation provided for in section
49 one of this act in order that the commission may maintain an accurate
50 and timely effective data base of the official text of the laws of the
51 state of New York in furtherance of effectuating the provisions of
52 section 44 of the legislative law and section 70-b of the public offi-
53 cers law.