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

3391

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. EDDINGTON -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, the village law, the town law and the not-for-profit corporation law, in relation to searches for sex offense convictions for firefighters

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

Section 1. The section heading and subdivision 1 of section 837-o of the executive law, as added by chapter 423 of the laws of 1999, are amended to read as follows:

Search for arson AND SEX OFFENSE conviction records of volunteer firefighter applicants. 1. Any person who applies for membership in a fire company, as such term is defined in section three of the volunteer firefighters' benefit law, or who seeks to transfer as a member to another fire company, shall be required to authorize the submission of his or her name and other authorized identifying information to the division which shall search its files for records indicating whether the person stands convicted of the crime of arson OR OF ANY SEX OFFENSE OR ATTEMPTED SEX OFFENSE AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS TWO AND THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW. The chief of the fire company to which application is made shall provide written notice to the applicant that a search will be conducted, and if the applicant desires to proceed, he or she shall complete a search request on the form provided for this purpose by the division of criminal justice services.

S 2. Paragraphs (a), (b) and (c) of subdivision 3 of section 837-o of the executive law, paragraphs (a) and (c) as added by chapter 423 of the laws of 1999 and paragraph (b) as amended by chapter 689 of the laws of 2002, are amended to read as follows:

(a) All searches concerning the application for membership in a fire company shall be conducted under the provisions of subdivision six of

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

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section eight hundred thirty-seven of this article without the assessment of any fee to the applicant or fire company and shall pertain solely to ascertaining whether the applicant stands convicted of arson OR OF A SEX OFFENSE OR ATTEMPTED SEX OFFENSE.

(b) The results of the search shall be communicated in writing, within ten business days of receipt from the division, to the chief of the fire company from which the search request originated by either the sheriff's department or the department of state, office of fire prevention and control, and shall be kept confidential by the chief, except as provided in paragraph (c) of this subdivision. The results of the search shall only state either that: (i) the applicant stands convicted of arson OR A SEX OFFENSE OR AN ATTEMPTED SEX OFFENSE, or (ii) the applicant has no record of conviction for arson OR FOR A SEX OFFENSE OR FOR AN ATTEMPTED SEX OFFENSE. The results of the search shall not divulge any other information relating to the criminal history of the applicant.

(c) At the time an applicant is advised that he or she is ineligible for membership due to a record of conviction for arson OR FOR A SEX OFFENSE OR FOR AN ATTEMPTED SEX OFFENSE, he or she shall also be advised of the rights to challenge and appeal the information contained in the record of conviction as provided in the rules and regulations of the division. The applicant shall continue to be barred from membership until all administrative and judicial challenges to the accuracy of such information or appeals therefrom, are ultimately resolved in his or her favor, or if such a determination is unchallenged.

S 3. Subdivision 18 of section 10-1006 of the village law, as added by chapter 719 of the laws of 1985, is amended to read as follows:

18. A person who has been convicted of arson in any degree OR OF A SEX OFFENSE OR ATTEMPTED SEX OFFENSE AS THAT TERM IS DEFINED IN SUBDIVISIONS TWO AND THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW shall not be eligible to be elected or appointed as a volunteer member of a fire company. The membership of any volunteer member of a fire company shall immediately terminate if he is OR HAS BEEN convicted of arson in any degree [while a member of a fire company] OR A SEX OFFENSE OR AN ATTEMPTED SEX OFFENSE AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS TWO AND THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW.

S 4. Subdivision 19 of section 10-1006 of the village law, as added by chapter 423 of the laws of 1999, is amended to read as follows:

19. Upon application by any person for membership in a fire company operating pursuant to this section, the fire chief shall cause the applicant's background to be checked pursuant to section eight hundred thirty-seven-o of the executive law for a criminal history involving a conviction for arson AND FOR ANY SEX OFFENSE OR ATTEMPTED SEX OFFENSE AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS TWO AND THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW.

S 5. Section 176-b of the town law is amended by adding a new subdivision 18 to read as follows:

18. UPON APPLICATION BY ANY PERSON FOR MEMBERSHIP IN A FIRE COMPANY OPERATING PURSUANT TO THIS SECTION, THE FIRE CHIEF SHALL CAUSE THE APPLICANT'S BACKGROUND TO BE CHECKED PURSUANT TO SECTION EIGHT HUNDRED THIRTY-SEVEN-O OF THE EXECUTIVE LAW FOR A CRIMINAL HISTORY INVOLVING A CONVICTION OF ANY SEX OFFENSE OR ATTEMPTED SEX OFFENSE.

S 6. Paragraph (c) of section 1402 of the not-for-profit corporation law is amended by adding a new subparagraph 6 to read as follows:

(6) UPON APPLICATION BY ANY PERSON FOR MEMBERSHIP IN A FIRE CORPORATION OPERATING PURSUANT TO THIS SECTION, THE FIRE CHIEF SHALL CAUSE

THE APPLICANT'S BACKGROUND TO BE CHECKED PURSUANT TO SECTION EIGHT HUNDRED THIRTY-SEVEN-O OF THE EXECUTIVE LAW FOR A CRIMINAL HISTORY INVOLVING A CONVICTION OF ANY SEX OFFENSE OR ATTEMPTED SEX OFFENSE.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to convictions entered into on or after such effective date; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the division of criminal justice services and the department of state on or before such effective date.