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I N A S S E M B L Y

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Introduced by M. of A. KAVANAGH, SCHIMEL, AUBRY, PAULIN, BROOK-KRASNY, PHEFFER, O'DONNELL -- Multi-Sponsored by -- M. of A. GLICK, GOTTFRIED, MENG, WEISENBERG -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the penal law, in relation to requiring background checks for employees authorized to possess or transfer firearms in the course of a licensed firearms business

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

1 Section 1. Section 400.00 of the penal law is amended by adding a new
2 subdivision 12-b to read as follows:
3 12-B. GUNSMITH OR DEALER IN FIREARMS EMPLOYEES. (A) NO PERSON SHALL BE
4 EMPLOYED BY A GUNSMITH OR DEALER IN FIREARMS FOR DUTIES THAT INCLUDE
5 HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS, IF SUCH PERSON IS
6 PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS UNDER FEDERAL LAW OR IF
7 SUCH PERSON WOULD BE INELIGIBLE FOR A LICENSE TO POSSESS FIREARMS UNDER
8 PARAGRAPH (C) OR (E) OF SUBDIVISION ONE OF THIS SECTION.
9 (B) NO GUNSMITH OR DEALER IN FIREARMS SHALL EMPLOY A PERSON WHOSE
10 DUTIES INCLUDE HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS,
11 ABSENT AN EXEMPTION PURSUANT TO PARAGRAPHS ONE AND TWO OF SUBDIVISION A
12 OF SECTION 265.20 OF THIS CHAPTER, UNLESS:
13 (I) SUCH PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER OR IS A MEMBER OF
14 THE UNITED STATES ARMED FORCES OR HAS BEEN HONORABLY DISCHARGED THERE-
15 FROM, AND SUCH EMPLOYEE HAS BEEN ISSUED A VALID EMPLOYMENT CERTIFICATE
16 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES;

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

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1 (II) SUCH PERSON HAS OBTAINED AND POSSESSES A VALID LICENSE ISSUED
2 UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE;
3 OR

4 (III) SUCH PERSON WAS EMPLOYED BY THE GUNSMITH OR DEALER IN FIREARMS
5 PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION AND NO MORE THAN SIX
6 MONTHS HAVE ELAPSED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION.

7 (C) APPLICATIONS FOR EMPLOYMENT CERTIFICATES SHALL BE SUBMITTED BY THE
8 APPLICANT'S PROSPECTIVE EMPLOYER TO THE DIVISION OF CRIMINAL JUSTICE
9 SERVICES. BLANK APPLICATIONS MUST CONTAIN, AT A MINIMUM, THE INFORMATION
10 REQUIRED TO CONDUCT A BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL
11 BACKGROUND CHECK SYSTEM. ALL APPLICATIONS MUST BE SIGNED AND VERIFIED BY
12 THE APPLICANT.

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

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

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

1 (G) ANY EMPLOYMENT IN VIOLATION OF THIS SUBDIVISION SHALL CONSTITUTE A
2 VIOLATION ON THE PART OF BOTH THE EMPLOYEE AND THE GUNSMITH OR DEALER IN
3 FIREARMS.
4 S 2. This act shall take effect on the ninetieth day after it shall
5 have become a law.