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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

Introduced by M. of A. KOON, BING, COLTON, EDDINGTON, JOHN, LIFTON -- Multi-Sponsored by -- M. of A. BRENNAN, CARROZZA, ENGLEBRIGHT, HEASTIE, PAULIN, PERALTA, RAMOS -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the general business law, in relation to gun trafficking and the firearm, rifle and shotgun ballistic identification databank; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Subdivisions 2, 4 and 5 of section 230 of the executive law, as added by chapter 189 of the laws of 2000, are amended to read as follows:

2. The superintendent of the division of state police, in cooperation with the United States department of [treasury] JUSTICE, bureau of alcohol, tobacco and firearms and district attorneys in New York state, shall develop and implement a strategy for the interdiction of guns illegally entering New York from supplier states. The strategy shall include identifying and prosecuting gun traffickers and suppliers of such guns who may be violating federal, state or local laws, and cooperating with the United States department of [treasury] JUSTICE, bureau of alcohol, tobacco and firearms and appropriate prosecutorial agencies and law enforcement agencies in supplier states in the investigation and enforcement of such laws. District attorneys are authorized to enter into collaborative agreements with prosecutorial and other governmental agencies and entities in supplier states in an effort to stop the movement of illegal guns into New York.

4. (A) The superintendent of the division of state police shall establish and maintain within the division a criminal gun clearinghouse as a central repository of information regarding all guns seized, forfeited, found or otherwise coming into the possession of any state or local law

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

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enforcement agency which are believed to have been used in the commission of a crime. The superintendent of the division of state police shall adopt and promulgate regulations prescribing reporting procedures for such state or local law enforcement agencies, including the form for reporting such information. In addition to any other information which the superintendent of the division of state police may require, the form shall require [(a)] (I) the serial number [or], BALLISTIC INFORMATION AND other identifying information on the gun, EXPENDED PROJECTILE OR EXPENDED SHELL CASING, if available and [(b)] (II) a brief description of the circumstances under which the gun, EXPENDED PROJECTILE OR EXPENDED SHELL CASING came into the possession of the law enforcement agency, including the crime which was or may have been committed with the gun.

(B) ANY GUN, EXPENDED PROJECTILE OR EXPENDED SHELL CASING SEIZED, FOUND, OR OTHERWISE COMING INTO POSSESSION OF ANY STATE OR LOCAL LAW ENFORCEMENT AGENCY SHALL BE SUBMITTED TO THE DIVISION OF STATE POLICE, WHICH SHALL CAUSE TO BE ENTERED IN THE CRIMINAL GUN CLEARINGHOUSE ESTABLISHED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION (I) THE SERIAL NUMBER, BALLISTIC INFORMATION AND IDENTIFYING INFORMATION ON THE GUN, EXPENDED PROJECTILE, OR EXPENDED SHELL CASING, IF AVAILABLE AND (II) A BRIEF DESCRIPTION OF THE CIRCUMSTANCES UNDER WHICH THE GUN, EXPENDED PROJECTILE OR EXPENDED SHELL CASING CAME INTO THE POSSESSION OF THE LAW ENFORCEMENT AGENCY.

(C) MATERIALS REQUIRED TO BE SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL BE SUBMITTED WITHIN THIRTY DAYS OF COMING INTO THE POSSESSION OF A STATE OR LOCAL LAW ENFORCEMENT AGENCY. SUCH MATERIALS SHALL BE TESTED OR EXAMINED AS REQUIRED BY THIS SUBDIVISION WITHIN THIRTY DAYS OF THEIR RECEIPT BY THE LABORATORY.

5. In any case where a state or local law enforcement agency investigates the commission of a crime in this state and a specific gun is known to have been used in such crime, such agency shall submit a request FOR A TRACE OF SUCH GUN to:

(A) the national tracing center of the United States [Department] DEPARTMENT of [Treasury] JUSTICE, bureau of alcohol, tobacco and firearms to trace the movement of such gun [and such federal agency shall be requested to provide the superintendent of the division of state police and the local law enforcement agency with the results of such a trace], AND

(B) THE FIREARM, RIFLE AND SHOTGUN BALLISTIC IDENTIFICATION DATABANK ESTABLISHED PURSUANT TO SECTION THREE HUNDRED NINETY-SIX-FF OF THE GENERAL BUSINESS LAW.

This subdivision shall not apply where the source of a gun is already known to a local law enforcement agency.

S 2. Section 396-ff of the general business law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

S 396-ff. [Pistol] FIREARM, RIFLE and [revolver] SHOTGUN ballistic identification databank. (1) For the purposes of this section, the following terms shall have the following meanings:

(a) "Manufacturer" means any person, firm or corporation possessing a valid federal license that permits such person, firm or corporation to engage in the business of manufacturing [pistols or revolvers] FIREARMS, RIFLES OR SHOTGUNS or ammunition therefor for the purpose of sale or distribution.

(b) "FIREARM" MEANS A PISTOL, REVOLVER OR OTHER WEAPON AS DEFINED IN SUBDIVISION THREE OF SECTION 265.00 OF THE PENAL LAW.

(C) "RIFLE" MEANS A WEAPON AS DEFINED IN SUBDIVISION ELEVEN OF SECTION 265.00 OF THE PENAL LAW.

(D) "SHOTGUN" MEANS A WEAPON AS DEFINED IN SUBDIVISION TWELVE OF SECTION 265.00 OF THE PENAL LAW.

(E) "Shell casing" means that part of ammunition capable of being used in a pistol or revolver that contains the primer and propellant powder to discharge the bullet or projectile.

(F) "PROJECTILE" MEANS THAT PART OF AMMUNITION THAT IS EXPELLED THROUGH THE BARREL OF A FIREARM, RIFLE OR SHOTGUN BY MEANS OF AN EXPLOSION.

(G) "BALLISTIC IDENTIFIER" MEANS A DIGITIZED OR ELECTRONIC IMAGE OF A PROJECTILE OR SHELL CASING DISCHARGED BY A FIREARM, RIFLE OR SHOTGUN, CLEARLY SHOWING THE DISTINCTIVE FIRING PIN, BREECH, EJECTION, EXTRACTION AND/OR BARREL MARKS FOR THAT PARTICULAR FIREARM OR RIFLE SHOWING THE DISTINCTIVE FIRING PIN AND BREECH MARKS FOR SHOTGUNS WHICH MAY BE USED, THROUGH COMPARATIVE COMPUTER ANALYSIS, FOR INVESTIGATIVE, PROSECUTORIAL AND ADJUDICATIVE PURPOSES.

(2) On and after March first, two thousand one, any manufacturer that ships, transports or delivers a pistol or revolver to any person in this state shall, in accordance with rules and regulations promulgated by the division of state police, include in the container with such pistol or revolver a separate sealed container that encloses:

(a) a shell casing of a bullet or projectile discharged from such pistol or revolver; and

(b) any additional information that identifies such pistol or revolver and shell casing as required by such rules and regulations.

(3) (A) A gunsmith or dealer in firearms licensed in this state shall, within ten days of the receipt of any pistol or revolver from a manufacturer that fails to comply with the provisions of this section, either [(a)] (I) return such pistol or revolver to such manufacturer, or [(b)] (II) notify the division of state police of such noncompliance and thereafter obtain a substitute sealed container through participation in a program operated by the state police as provided in subdivision four of this section.

(B) THE STATE POLICE SHALL MAINTAIN RECORDS REGARDING THE NUMBER OF BALLISTIC IMAGES SCANNED FOR THE MOST RECENT PERIOD, THE TOTAL NUMBER OF BALLISTIC IMAGES COLLECTED TO DATE, THE TYPE OF WEAPONS INCLUDED, THE NUMBER OF LAW ENFORCEMENT INQUIRIES BY COUNTY, THE NUMBER AND GENERAL DESCRIPTION OF INVESTIGATIVE LEADS GENERATED, THE NUMBER OF ARRESTS AND NUMBER OF CONVICTIONS RESULTING, IN WHOLE OR IN PART, FROM SUCH LEADS, THE COMPLIANCE RATE FOR EACH MANUFACTURER, GUN DEALER AND GUNSMITH AND THE NUMBER AND DESCRIPTION OF PROSECUTIONS FOR NONCOMPLIANCE.

(4) The division of state police shall no later than October first, two thousand, promulgate rules and regulations for the operation of a program which provides a gunsmith or a dealer in firearms licensed in this state with a sealed container enclosing the items specified in subdivision two of this section. The program shall at a minimum:

(a) be operational by January first, two thousand one;

(b) operate in at least five regional locations within the state; and

(c) specify procedures by which such gunsmith or dealer is to deliver a pistol or revolver to the regional program location closest to his or her place of business for testing and prompt return of such pistol or revolver.

(5) On and after March first, two thousand one, a gunsmith or dealer in firearms licensed in this state shall, within ten days of delivering to any person a pistol or revolver received by such gunsmith or dealer

in firearms on or after such date, forward to the division of state police, along with the original transaction report required by subdivision twelve of section 400.00 of the penal law, the sealed container enclosing the shell casing from such pistol or revolver either (a) received from the manufacturer, or (b) obtained through participation in the program operated by the division of state police in accordance with subdivision four of this section.

(6) Upon receipt of the sealed container, the division of state police shall cause to be entered in an automated electronic databank pertinent data and other ballistic information relevant to identification of the shell casing AND/OR PROJECTILE and to the [pistol or revolver] WEAPON from which it was discharged. The automated electronic databank will be operated and maintained by the division of state police, in accordance with its rules and regulations adopted after consultation with the Federal Bureau of Investigation and the United States Department of [Treasury] JUSTICE, Bureau of Alcohol, Tobacco and Firearms to ensure compatibility with national ballistic technology. THE DATABANK SHALL BE MODIFIED AS NECESSARY TO ASSURE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

(7) THE SUPERINTENDENT OF THE STATE POLICE SHALL ISSUE A STATUS REPORT ON THE FIREARM, RIFLE AND SHOTGUN BALLISTIC DATABANK TO THE GOVERNOR, THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ANNUALLY. THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE NUMBER OF BALLISTIC IMAGES SCANNED FOR THE MOST RECENT PERIOD, THE TOTAL NUMBER OF BALLISTIC IMAGES COLLECTED TO DATE, THE TYPES OF WEAPONS INCLUDED, THE NUMBER OF LAW ENFORCEMENT INQUIRIES BY COUNTY, THE NUMBER AND GENERAL DESCRIPTION OF INVESTIGATIVE LEADS GENERATED, THE NUMBER OF ARRESTS AND NUMBER OF CONVICTIONS RESULTING IN WHOLE OR IN PART FROM SUCH LEADS, THE COMPLIANCE RATE FOR EACH MANUFACTURER, GUN DEALER AND GUNSMITH AND THE NUMBER AND DESCRIPTION OF PROSECUTIONS FOR NONCOMPLIANCE.

(8) Any person, firm or corporation who knowingly violates any of the provisions of this section shall be guilty of a violation, punishable as provided in the penal law AND, NOTWITHSTANDING SUBDIVISION FOUR OF SECTION 80.05 OF THE PENAL LAW, SHALL BE SUBJECT TO A FINE OF UP TO ONE THOUSAND DOLLARS. Any person, firm or corporation who knowingly violates any of the provisions of this section after having been previously convicted of a violation of this section shall be guilty of a class A misdemeanor, punishable as provided in the penal law, AND SHALL BE SUBJECT TO A FINE OF UP TO ONE THOUSAND DOLLARS.

S 3. Subdivisions 2, 3 and 5 of section 396-ff of the general business law, as amended by section two of this act, are amended to read as follows:

(2) On and after March first, two thousand [one] TEN, any manufacturer that ships, transports or delivers a [pistol or revolver] FIREARM to any person in this state shall, in accordance with rules and regulations promulgated by the division of state police, include in the container with such [pistol or revolver] WEAPON a separate sealed container that encloses:

(a) A DOCUMENT IDENTIFYING THE MAKE, MODEL AND SERIAL NUMBER OF THE WEAPON;

(B) a shell casing of a bullet or projectile discharged from such [pistol or revolver] FIREARM OR, IN THE CASE OF A FIREARM THAT DOES NOT EJECT A SHELL CASING UPON FIRING, A SHELL CASING AND PROJECTILE DISCHARGED FROM SUCH WEAPON; and

[(b) any additional information that identifies such pistol or revolver and shell casing as required by such rules and regulations] (C)

BALLISTIC IDENTIFIERS FOR THE WEAPON WHICH WERE OBTAINED FROM THE SHELL CASING AND/OR PROJECTILE, AS THE CASE MAY BE, SUBMITTED AS REQUIRED BY THIS SUBDIVISION.

(3) (a) [A] ON OR AFTER MARCH FIRST, TWO THOUSAND TEN, A gunsmith or dealer in firearms licensed in this state shall, within ten days of the receipt of any [pistol or revolver] FIREARM from a manufacturer that fails to comply with the provisions of this section, either (i) return such [pistol or revolver] FIREARM to such manufacturer, or (ii) notify the division of state police of such noncompliance and thereafter obtain a substitute sealed container through participation in a program operated by the state police as provided in subdivision four of this section.

(b) The state police shall maintain records regarding the number of ballistic images scanned for the most recent period, the total number of ballistic images collected to date, the type of weapons included, the number of law enforcement inquiries by county, the number and general description of investigative leads generated, the number of arrests and number of convictions resulting, in whole or in part, from such leads, the compliance rate for each manufacturer, gun dealer and gunsmith and the number and description of prosecutions for noncompliance.

(5) On and after March first, two thousand [one] TEN, a gunsmith or dealer in firearms licensed in this state shall, within ten days of delivering to any person a [pistol or revolver] FIREARM received by such gunsmith or dealer in firearms on or after such date, forward to the division of state police, along with the original transaction report required by subdivision twelve of section 400.00 of the penal law, THE BALLISTIC IDENTIFIER FOR THE FIREARM AND the sealed container enclosing the shell casing AND/OR PROJECTILE, AS THE CASE MAY BE, from such [pistol or revolver] FIREARM either (a) received from the manufacturer, or (b) obtained through participation in the program operated by the division of state police in accordance with subdivision four of this section.

S 4. Subdivision 4 of section 396-ff of the general business law, as amended by section two of this act, is amended to read as follows:

(4) The division of state police shall no later than October first, two thousand NINE, promulgate rules and regulations for the operation of a program which provides a gunsmith or a dealer in firearms licensed in this state with a sealed container enclosing the items specified in subdivision two of this section. The program shall at a minimum:

(a) be operational by January first, two thousand [one] NINE;

(b) operate in at least five regional locations within the state; and

(c) specify procedures by which such gunsmith or dealer is to deliver a [pistol or revolver] FIREARM to the regional program location closest to his or her place of business for testing and prompt return of such [pistol or revolver] FIREARM.

S 5. Subdivisions 2, 3 and 5 of section 396-ff of the general business law, as amended by section three of this act, are amended to read as follows:

(2) On and after March first, two thousand [ten] ELEVEN, any manufacturer that ships, transports or delivers a firearm to any person in this state shall, in accordance with rules and regulations promulgated by the division of state police, include in the container with such weapon a separate sealed container that encloses:

(a) a document identifying the make, model and serial number of the weapon;

(b) a shell casing of a bullet or projectile discharged from such firearm or, in the case of a firearm that does not eject a shell casing upon firing, a shell casing and projectile discharged from such weapon; and

(c) ballistic identifiers for the weapon which were obtained from the shell casing and/or projectile, as the case may be, submitted as required by this subdivision.

(3) (a) On or after March first, two thousand [ten] ELEVEN, a gunsmith or dealer in firearms licensed in this state shall, within ten days of the receipt of any firearm from a manufacturer that fails to comply with the provisions of this section, either (i) return such firearm to such manufacturer, or (ii) notify the division of state police of such noncompliance and thereafter obtain a substitute sealed container through participation in a program operated by the state police as provided in subdivision four of this section.

(b) The state police shall maintain records regarding the number of ballistic images scanned for the most recent period, the total number of ballistic images collected to date, the type of weapons included, the number of law enforcement inquiries by county, the number and general description of investigative leads generated, the number of arrests and number of convictions resulting, in whole or in part, from such leads, the compliance rate for each manufacturer, gun dealer and gunsmith and the number and description of prosecutions for noncompliance.

(5) On and after March first, two thousand [ten] ELEVEN, a gunsmith or dealer in firearms licensed in this state shall, within ten days of delivering to any person a firearm received by such gunsmith or dealer in firearms on or after such date, forward to the division of state police, along with the original transaction report required FOR FIREARMS by subdivision twelve of section 400.00 of the penal law, [the ballistic identifier for the firearm and] the sealed container enclosing the shell casing and/or projectile, as the case may be, from such firearm either (a) received from the manufacturer, or (b) obtained through participation in the program operated by the division of state police in accordance with subdivision four of this section.

S 6. Subdivision 4 of section 396-ff of the general business law, as amended by section four of this act, is amended to read as follows:

(4) The division of state police shall no later than October first, two thousand [nine] TEN, promulgate rules and regulations for the operation of a program which provides a gunsmith or a dealer in firearms licensed in this state with a sealed container enclosing the items specified in subdivision two of this section. The program shall at a minimum:

(a) be operational by January first, two thousand [nine] TEN;

(b) operate in at least five regional locations within the state; and

(c) specify procedures by which such gunsmith or dealer is to deliver a firearm to the regional program location closest to his or her place of business for testing and prompt return of such firearm.

S 7. Subdivisions 2, 3 and 5 of section 396-ff of the general business law, as amended by section five of this act, are amended to read as follows:

(2) On and after March first, two thousand [eleven] TWELVE, any manufacturer that ships, transports or delivers a firearm, RIFLE OR SHOTGUN to any person in this state shall, in accordance with rules and regulations promulgated by the division of state police, include in the container with such weapon a separate sealed container that encloses:

(a) a document identifying the make, model and serial number of the weapon;

(b) a shell casing of a bullet or projectile discharged from such firearm, RIFLE OR SHOTGUN or, in the case of a firearm, RIFLE OR SHOTGUN that does not eject a shell casing upon firing, a shell casing and projectile discharged from such weapon; and

(c) ballistic identifiers for the weapon which were obtained from the shell casing and/or projectile, as the case may be, submitted as required by this subdivision.

(3) (a) On or after March first, two thousand [eleven] TWELVE, a gunsmith or dealer in firearms, RIFLES AND SHOTGUNS licensed in this state shall, within ten days of the receipt of any firearm, RIFLE OR SHOTGUN from a manufacturer that fails to comply with the provisions of this section, either (i) return such firearm, RIFLE OR SHOTGUN to such manufacturer, or (ii) notify the division of state police of such noncompliance and thereafter obtain a substitute sealed container through participation in a program operated by the state police as provided in subdivision four of this section.

(b) The state police shall maintain records regarding the number of ballistic images scanned for the most recent period, the total number of ballistic images collected to date, the type of weapons included, the number of law enforcement inquiries by county, the number and general description of investigative leads generated, the number of arrests and number of convictions resulting, in whole or in part, from such leads, the compliance rate for each manufacturer, gun dealer and gunsmith and the number and description of prosecutions for noncompliance.

(5) On and after March first, two thousand [eleven] TWELVE, a gunsmith or dealer in firearms, RIFLES OR SHOTGUNS licensed in this state shall, within ten days of delivering to any person a firearm, RIFLE OR SHOTGUN received by such gunsmith or dealer in firearms, RIFLES OR SHOTGUNS on or after such date, forward to the division of state police, along with the original transaction report required for firearms by subdivision twelve of section 400.00 of the penal law, the sealed container enclosing the shell casing and/or projectile, as the case may be, from such firearm, RIFLE OR SHOTGUN either (a) received from the manufacturer, or (b) obtained through participation in the program operated by the division of state police in accordance with subdivision four of this section.

S 8. Subdivision 4 of section 396-ff of the general business law, as amended by section six of this act, is amended to read as follows:

(4) The division of state police shall no later than October first, two thousand [ten] ELEVEN, promulgate rules and regulations for the operation of a program which provides a gunsmith or a dealer in firearms, RIFLES OR SHOTGUNS licensed in this state with a sealed container enclosing the items specified in subdivision two of this section. The program shall at a minimum:

(a) be operational by January first, two thousand [ten] ELEVEN;

(b) operate in at least five regional locations within the state; and

(c) specify procedures by which such gunsmith or dealer is to deliver a firearm, RIFLE OR SHOTGUN to the regional program location closest to his or her place of business for testing and prompt return of such firearm, RIFLE OR SHOTGUN.

S 9. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that:

1. The amendments to subdivisions 2, 3 and 5 of section 396-ff of the general business law made by section three of this act shall take effect March 1, 2010;

2. The amendments to subdivision 4 of section 396-ff of the general business law made by section four of this act shall take effect October 1, 2009;

3. The amendments to subdivisions 2, 3 and 5 of section 396-ff of the general business law made by section five of this act shall take effect March 1, 2011;

4. The amendments to subdivision 4 of section 396-ff of the general business law made by section six of this act shall take effect October 1, 2010;

5. The amendments to subdivisions 2, 3 and 5 of section 396-ff of the general business law made by section seven of this act shall take effect March 1, 2012; and

6. The amendments to subdivision 4 of section 396-ff of the general business law made by section eight of this act shall take effect October 1, 2011.