

651

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. KAVANAGH, PEOPLES, BENJAMIN, JAFFEE, EDDINGTON, ROBINSON, MAYERSOHN, CAMARA, ESPAILLAT -- Multi-Sponsored by -- M. of A. ARROYO, BROOK-KRASNY, DIAZ, GOTTFRIED, LIFTON, McENENY, PHEFFER, WEISENBERG, WRIGHT -- read once and referred to the Committee on Governmental Operations

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

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

LBD00993-01-9

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

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

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

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

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

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

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

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

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

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

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

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

(4) PROVIDES FULL ACCESS OF AFOREMENTIONED RECORDS TO LAW ENFORCEMENT 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

1 SHALL TAKE EVERY REASONABLE MEASURE TO CONTRACT WITH A MANUFACTURER OR
2 DEALER WHO BEST SATISFIES THE REQUIREMENTS OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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