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

6661

2009-2010 Regular Sessions

I N A S S E M B L Y

March 11, 2009

Introduced by M. of A. MILLER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to full criminal background checks for volunteer and paid firefighters

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

Section 1. Section 837-o of the executive law, as added by chapter 423 of the laws of 1999, subdivision 2 and paragraph (b) of subdivision 3 as amended by chapter 689 of the laws of 2002, is amended to read as follows:

S 837-o. Search for [arson conviction] CRIMINAL records of [volunteer] firefighter applicants. 1. Any person, VOLUNTEER, PAID OR BOTH, 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 ANY AND ALL CRIMINAL records [indicating whether the] PERTAINING TO SUCH person [stands convicted of the crime of arson]. 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.

2. Within ten business days of receipt from the applicant, the chief of the fire company shall send the completed search request form to either (i) the sheriff's department of the county in which the fire company is located, or (ii) the department of state, office of fire prevention and control, as follows:

(a) the sheriff's department of the county in which the fire company is located shall be responsible for receiving the search requests and processing the search requests with the division within ten business

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

LBD09692-01-9

days of receipt from the chief of the fire company, unless the county legislative body adopts and files with the secretary of state pursuant to the municipal home rule law a local law providing that the sheriff's department shall not have such responsibility;

(b) in all other instances where a county legislative body has adopted a local law pursuant to paragraph (a) of this subdivision, the department of state, office of fire prevention and control shall be responsible for receiving search requests and forwarding the search requests to the division.

The department of state, office of fire prevention and control is hereby authorized to establish a communication network with the division for the purpose of forwarding search requests and receiving search results pursuant to paragraph (b) of this subdivision.

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

(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 (ii) the applicant has no record of conviction for arson. 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] HIS OR HER CRIMINAL RECORDS, he or she shall also be advised of the rights to challenge and appeal the information contained in [the record of conviction] SUCH CRIMINAL RECORDS 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 2. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.