

4035

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 1, 2011

---

Introduced by M. of A. GABRYSZAK -- 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The section heading and subdivision 1 of section 837-o of  
2     the executive law, as added by chapter 423 of the laws of 1999, are  
3     amended to read as follows:  
4     Search for arson AND SEX OFFENSE conviction records of volunteer fire-  
5     fighter applicants. 1. Any person who applies for membership in a fire  
6     company, as such term is defined in section three of the volunteer fire-  
7     fighters' benefit law, or who seeks to transfer as a member to another  
8     fire company, shall be required to authorize the submission of his or  
9     her name and other authorized identifying information to the division  
10    which shall search its files for records indicating whether the person  
11    stands convicted of the crime of arson OR OF ANY SEX OFFENSE OR  
12    ATTEMPTED SEX OFFENSE AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS TWO AND  
13    THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW. The  
14    chief of the fire company to which application is made shall provide  
15    written notice to the applicant that a search will be conducted, and if  
16    the applicant desires to proceed, he or she shall complete a search  
17    request on the form provided for this purpose by the division of crimi-  
18    nal justice services.  
19    S 2. Paragraphs (a), (b) and (c) of subdivision 3 of section 837-o of  
20    the executive law, paragraphs (a) and (c) as added by chapter 423 of the  
21    laws of 1999 and paragraph (b) as amended by section 41 of part B of  
22    chapter 56 of the laws of 2010, are amended to read as follows:  
23    (a) All searches concerning the application for membership in a fire  
24    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.

LBD07722-01-1

1 section eight hundred thirty-seven of this article without the assess-  
2 ment of any fee to the applicant or fire company and shall pertain sole-  
3 ly to ascertaining whether the applicant stands convicted of arson OR OF  
4 A SEX OFFENSE OR ATTEMPTED SEX OFFENSE.

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

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

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

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

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

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

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

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

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

55 (6) UPON APPLICATION BY ANY PERSON FOR MEMBERSHIP IN A FIRE CORPO-  
56 RATION OPERATING PURSUANT TO THIS SECTION, THE FIRE CHIEF SHALL CAUSE

1 THE APPLICANT'S BACKGROUND TO BE CHECKED PURSUANT TO SECTION EIGHT  
2 HUNDRED THIRTY-SEVEN-0 OF THE EXECUTIVE LAW FOR A CRIMINAL HISTORY  
3 INVOLVING A CONVICTION OF ANY SEX OFFENSE OR ATTEMPTED SEX OFFENSE.  
4 S 7. This act shall take effect on the one hundred eightieth day after  
5 it shall have become a law and shall apply to convictions entered into  
6 on or after such effective date; provided, however, that effective imme-  
7 diately, the addition, amendment and/or repeal of any rule or regulation  
8 necessary for the implementation of this act on its effective date are  
9 authorized and directed to be made and completed by the division of  
10 criminal justice services and the department of state on or before such  
11 effective date.