

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.

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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.