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

1002

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to requiring background checks for employees authorized to possess or transfer firearms in the course of a licensed firearms business

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

Section 1. Section 400.00 of the penal law is amended by adding a new subdivision 12-b to read as follows:

12-B. GUNSMITH OR DEALER IN FIREARMS EMPLOYEES. (A) NO PERSON SHALL BE EMPLOYED BY A GUNSMITH OR DEALER IN FIREARMS FOR DUTIES THAT INCLUDE HANDLING, SELLING OR OTHERWISE DISPOSING OF FIREARMS, IF SUCH PERSON IS PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS UNDER FEDERAL LAW OR IF SUCH PERSON WOULD BE INELIGIBLE FOR A LICENSE TO POSSESS FIREARMS UNDER PARAGRAPH (C) OR (E) OF SUBDIVISION ONE OF THIS SECTION.

(B) NO GUNSMITH OR DEALER IN FIREARMS SHALL EMPLOY A PERSON WHOSE DUTIES INCLUDE HANDLING, SELLING OR OTHERWISE DISPOSING OF FIREARMS, ABSENT AN EXEMPTION PURSUANT TO PARAGRAPHS ONE AND TWO OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER, UNLESS:

(I) SUCH PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER OR IS A MEMBER OF THE UNITED STATES ARMED FORCES OR HAS BEEN HONORABLY DISCHARGED THEREFROM, AND SUCH EMPLOYEE HAS BEEN ISSUED A VALID EMPLOYMENT CERTIFICATE BY THE DIVISION OF CRIMINAL JUSTICE SERVICES;

(II) SUCH PERSON HAS OBTAINED AND POSSESSES A VALID LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE; OR

(III) SUCH PERSON WAS EMPLOYED BY THE GUNSMITH OR DEALER IN FIREARMS PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION AND NO MORE THAN SIX MONTHS HAVE ELAPSED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION.

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

LBD05042-01-1

(C) APPLICATIONS FOR EMPLOYMENT CERTIFICATES SHALL BE SUBMITTED BY THE APPLICANT'S PROSPECTIVE EMPLOYER TO THE DIVISION OF CRIMINAL JUSTICE SERVICES. BLANK APPLICATIONS SHALL CONTAIN, AT A MINIMUM, THE INFORMATION REQUIRED TO CONDUCT A BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. ALL APPLICATIONS MUST BE SIGNED AND VERIFIED BY THE APPLICANT.

(D) UPON RECEIPT OF AN APPLICATION FOR AN EMPLOYMENT CERTIFICATE, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL CONDUCT A BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM TO DETERMINE WHETHER THE APPLICANT IS QUALIFIED TO RECEIVE OR POSSESS A FIREARM UNDER STATE AND FEDERAL LAW. IF THE RESULTS OF THE BACKGROUND CHECK INDICATE THAT THERE IS NO INFORMATION THAT WOULD DISQUALIFY THE APPLICANT FROM RECEIVING OR POSSESSING A FIREARM UNDER STATE OR UNDER FEDERAL LAW, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL DOCUMENT SUCH RESULT ON AN EMPLOYMENT CERTIFICATE. IF THE BACKGROUND CHECK RESULTS IN A "DELAYED" RESPONSE AS DESCRIBED IN 28 C.F.R. S 25.6, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOT CERTIFY THE APPLICANT FOR EMPLOYMENT PENDING RECEIPT OF A FOLLOW-UP "PROCEED" RESPONSE FROM THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM OR THE EXPIRATION OF THREE BUSINESS DAYS (EXCLUSIVE OF THE DAY ON WHICH THE QUERY IS MADE), WHICHEVER OCCURS FIRST.

(E) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ISSUE TO QUALIFYING EMPLOYEES AN EMPLOYMENT CERTIFICATE, WHICH SHALL CERTIFY THAT THE HOLDER OF SUCH CERTIFICATE IS ELIGIBLE TO HANDLE, SELL OR OTHERWISE DISPOSE OF FIREARMS OR WEAPONS ON BEHALF OF THE GUNSMITH OR DEALER IN FIREARMS. SUCH CERTIFICATE SHALL BECOME INVALID UPON THE TERMINATION OF THE EMPLOYEE'S EMPLOYMENT. SUCH CERTIFICATE SHALL HAVE THE EFFECT OF AUTHORIZING SUCH EMPLOYEE TO HANDLE, SELL OR OTHERWISE DISPOSE OF THOSE FIREARMS THAT ARE LAWFULLY POSSESSED, SOLD OR DISPOSED OF BY THE GUNSMITH OR DEALER IN FIREARMS ONLY WHILE SUCH EMPLOYEE IS ACTUALLY CONDUCTING BUSINESS ON BEHALF OF THE GUNSMITH OR DEALER IN FIREARMS NOTWITHSTANDING THE FACT THAT SUCH WEAPONS MAY NOT BE THE TYPE THE EMPLOYEE WOULD OTHERWISE BE LICENSED OR AUTHORIZED TO POSSESS UNDER THE LAWS OF THIS STATE. WHEN AN EMPLOYEE IS CONDUCTING BUSINESS ON BEHALF OF A GUNSMITH OR DEALER IN FIREARMS AT ANY LOCATION OTHER THAN THE PREMISES WHERE SUCH EMPLOYEE WORKS, THE EMPLOYEE SHALL HAVE IN HIS OR HER POSSESSION A COPY OF HIS OR HER EMPLOYMENT CERTIFICATE OR VALID LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE OR DOCUMENTATION OF THE EMPLOYEE'S EXEMPTION BASED ON PRIOR EMPLOYMENT. COPIES OF SUCH CERTIFICATES OR LICENSES OR DOCUMENTATION OF EXEMPTION SHALL BE MAINTAINED BY THE GUNSMITH OR DEALER IN FIREARMS ON THE PREMISES WHERE SUCH EMPLOYEE WORKS. ALL CERTIFICATES, LICENSES, DOCUMENTATION AND COPIES REFERRED TO IN THIS PARAGRAPH SHALL BE PRODUCED UPON REQUEST BY ANY POLICE OFFICER OR PEACE OFFICER ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES.

(F) ANY EMPLOYMENT IN VIOLATION OF THIS SUBDIVISION SHALL CONSTITUTE A VIOLATION ON THE PART OF BOTH THE EMPLOYEE AND THE GUNSMITH OR DEALER IN FIREARMS.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.