

1002

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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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:

1     Section 1. Section 400.00 of the penal law is amended by adding a new  
2     subdivision 12-b to read as follows:  
3     12-B. GUNSMITH OR DEALER IN FIREARMS EMPLOYEES. (A) NO PERSON SHALL BE  
4     EMPLOYED BY A GUNSMITH OR DEALER IN FIREARMS FOR DUTIES THAT INCLUDE  
5     HANDLING, SELLING OR OTHERWISE DISPOSING OF FIREARMS, IF SUCH PERSON IS  
6     PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS UNDER FEDERAL LAW OR IF  
7     SUCH PERSON WOULD BE INELIGIBLE FOR A LICENSE TO POSSESS FIREARMS UNDER  
8     PARAGRAPH (C) OR (E) OF SUBDIVISION ONE OF THIS SECTION.  
9     (B) NO GUNSMITH OR DEALER IN FIREARMS SHALL EMPLOY A PERSON WHOSE  
10    DUTIES INCLUDE HANDLING, SELLING OR OTHERWISE DISPOSING OF FIREARMS,  
11    ABSENT AN EXEMPTION PURSUANT TO PARAGRAPHS ONE AND TWO OF SUBDIVISION A  
12    OF SECTION 265.20 OF THIS CHAPTER, UNLESS:  
13    (I) SUCH PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER OR IS A MEMBER OF  
14    THE UNITED STATES ARMED FORCES OR HAS BEEN HONORABLY DISCHARGED THERE-  
15    FROM, AND SUCH EMPLOYEE HAS BEEN ISSUED A VALID EMPLOYMENT CERTIFICATE  
16    BY THE DIVISION OF CRIMINAL JUSTICE SERVICES;  
17    (II) SUCH PERSON HAS OBTAINED AND POSSESSES A VALID LICENSE ISSUED  
18    UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE;  
19    OR  
20    (III) SUCH PERSON WAS EMPLOYED BY THE GUNSMITH OR DEALER IN FIREARMS  
21    PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION AND NO MORE THAN SIX  
22    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

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

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

22 (E) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ISSUE TO QUALIFY-  
23 ING EMPLOYEES AN EMPLOYMENT CERTIFICATE, WHICH SHALL CERTIFY THAT THE  
24 HOLDER OF SUCH CERTIFICATE IS ELIGIBLE TO HANDLE, SELL OR OTHERWISE  
25 DISPOSE OF FIREARMS OR WEAPONS ON BEHALF OF THE GUNSMITH OR DEALER IN  
26 FIREARMS. SUCH CERTIFICATE SHALL BECOME INVALID UPON THE TERMINATION OF  
27 THE EMPLOYEE'S EMPLOYMENT. SUCH CERTIFICATE SHALL HAVE THE EFFECT OF  
28 AUTHORIZING SUCH EMPLOYEE TO HANDLE, SELL OR OTHERWISE DISPOSE OF THOSE  
29 FIREARMS THAT ARE LAWFULLY POSSESSED, SOLD OR DISPOSED OF BY THE  
30 GUNSMITH OR DEALER IN FIREARMS ONLY WHILE SUCH EMPLOYEE IS ACTUALLY  
31 CONDUCTING BUSINESS ON BEHALF OF THE GUNSMITH OR DEALER IN FIREARMS  
32 NOTWITHSTANDING THE FACT THAT SUCH WEAPONS MAY NOT BE THE TYPE THE  
33 EMPLOYEE WOULD OTHERWISE BE LICENSED OR AUTHORIZED TO POSSESS UNDER THE  
34 LAWS OF THIS STATE. WHEN AN EMPLOYEE IS CONDUCTING BUSINESS ON BEHALF  
35 OF A GUNSMITH OR DEALER IN FIREARMS AT ANY LOCATION OTHER THAN THE PREM-  
36 ISSES WHERE SUCH EMPLOYEE WORKS, THE EMPLOYEE SHALL HAVE IN HIS OR HER  
37 POSSESSION A COPY OF HIS OR HER EMPLOYMENT CERTIFICATE OR VALID LICENSE  
38 ISSUED UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS  
39 ARTICLE OR DOCUMENTATION OF THE EMPLOYEE'S EXEMPTION BASED ON PRIOR  
40 EMPLOYMENT. COPIES OF SUCH CERTIFICATES OR LICENSES OR DOCUMENTATION OF  
41 EXEMPTION SHALL BE MAINTAINED BY THE GUNSMITH OR DEALER IN FIREARMS ON  
42 THE PREMISES WHERE SUCH EMPLOYEE WORKS. ALL CERTIFICATES, LICENSES,  
43 DOCUMENTATION AND COPIES REFERRED TO IN THIS PARAGRAPH SHALL BE PRODUCED  
44 UPON REQUEST BY ANY POLICE OFFICER OR PEACE OFFICER ACTING PURSUANT TO  
45 HIS OR HER SPECIAL DUTIES.

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

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