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

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I N S E N A T E

August 13, 2012

Introduced by Sens. GIANARIS, ADAMS, ADDABBO, AVELLA, BRESLIN, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, OPPENHEIMER, PERKINS, RIVERA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, in relation to the unlawful procurement of a firearm

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

Section 1. The penal law is amended by adding a new section 265.45 to read as follows:

S 265.45 UNLAWFUL PROCUREMENT OF A FIREARM.

A PERSON IS GUILTY OF UNLAWFUL PROCUREMENT OF A FIREARM WHEN:

1. HE OR SHE PURCHASES OR TAKES POSSESSION OF MORE THAN ONE FIREARM FROM ANY DEALER IN FIREARMS DURING ANY THIRTY DAY PERIOD; OR

2. BEING A DEALER IN FIREARMS, HE OR SHE SELLS OR TRANSFERS A FIREARM TO ANY PERSON WHO HAS PURCHASED OR TAKEN POSSESSION OF A FIREARM DURING THE PREVIOUS THIRTY DAYS.

UNLAWFUL PROCUREMENT OF A FIREARM IS A CLASS A MISDEMEANOR.

S 2. Section 265.20 of the penal law is amended by adding a new subdivision e to read as follows:

E. SECTION 265.45 OF THIS ARTICLE SHALL NOT APPLY TO:

1. ANY LAW ENFORCEMENT OR CORRECTIONS AGENCY, OR POLICE OR CORRECTIONS OFFICER ACTING WITHIN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT OR OFFICIAL DUTIES;

2. A UNITED STATES MARSHAL, MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR THE NATIONAL GUARD, OR A FEDERAL OFFICIAL, WHO IS REQUIRED TO POSSESS A FIREARM IN THE OPERATION OF HIS OR HER OFFICIAL DUTIES;

3. LICENSED FIREARMS MANUFACTURERS, IMPORTERS OR DEALERS, WHILE ENGAGED IN THE COURSE AND SCOPE OF THEIR ACTIVITIES AS LICENSEES, PROVIDED THAT THE TRANSFERS ARE BETWEEN LICENSEES AND ALL SUCH LICENSEES ARE PROPERLY LICENSED UNDER FEDERAL, STATE AND LOCAL LAW;

4. A GUNSMITH ACQUIRING FIREARMS SOLELY FOR THE PURPOSES OF SERVICE OR REPAIR, OR THE LAWFUL OWNER OF THE FIREARMS RETRIEVING THE FIREARMS BACK FROM SUCH A GUNSMITH;

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

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5. A COMMON CARRIER, WAREHOUSEMAN, OR OTHER PERSON ENGAGED IN THE BUSINESS OF TRANSPORTING OR STORING GOODS, TO THE EXTENT THAT THE POSSESSION OR RECEIPT OF ANY FIREARM IS IN THE ORDINARY COURSE OF BUSINESS, AND NOT FOR THE PERSONAL USE OF ANY SUCH PERSON;

6. A PERSON ACQUIRING FIREARMS BY OPERATION OF LAW UPON THE DEATH OF THE FORMER OWNER OF THE FIREARMS; OR

7. A PERSON WHOSE FIREARM WAS STOLEN OR IRRETRIEVABLY LOST AND WHO CONSIDERS IT ESSENTIAL THAT THE FIREARM BE REPLACED IMMEDIATELY, IF:

(A) THE PERSON PROVIDES THE SELLER OR TRANSFEROR WITH A COPY OF AN OFFICIAL POLICE REPORT DESCRIBING THE LOSS OR THEFT OF THE FIREARM. THE OFFICIAL POLICE REPORT MUST CONTAIN THE NAME AND ADDRESS OF THE FIREARM OWNER, A DESCRIPTION OF THE FIREARM, THE LOCATION OF THE LOSS OR THEFT, THE DATE OF THE LOSS OR THEFT, AND THE DATE THE LOSS OR THEFT WAS REPORTED TO THE LAW ENFORCEMENT AGENCY; AND

(B) THE LOSS OR THEFT OCCURRED WITHIN THIRTY DAYS OF THE PERSON'S ATTEMPT TO REPLACE THE FIREARM, AS REFLECTED BY THE DATE OF LOSS OR THEFT ON THE OFFICIAL POLICE REPORT.

S 3. The penal law is amended by adding a new section 400.15 to read as follows:

S 400.15 DUTIES OF DEALERS IN FIREARMS.

1. EACH DEALER IN FIREARMS SHALL PRIOR TO THE SALE OF ANY FIREARM TO A PERSON REQUEST APPROVAL OF SUCH SALE TO SUCH PERSON FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES.

2. UPON RECEIPT OF THE APPROVAL OF THE DIVISION OF CRIMINAL JUSTICE SERVICES OF A SALE OF A FIREARM, THE DEALER IN FIREARMS SHALL RECORD AND REPORT SUCH SALE TO THE DIVISION OF CRIMINAL JUSTICE SERVICES WITHIN TWENTY-FOUR HOURS.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.