

5925

2013-2014 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. PAULIN, TITONE, GOTTFRIED, GALEF -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, COOK, DINOWITZ, FARRELL, HIKIND, HOOPER, ORTIZ, RAIA, ROBINSON, SWEENEY, WRIGHT -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to wholesalers and manufacturers of prescription drugs

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

1     Section 1. Subparagraph 2 of paragraph a of subdivision 4 of section  
2     6808 of the education law, as amended by chapter 62 of the laws of 1989,  
3     is amended to read as follows:  
4     (2) The application shall be accompanied by a fee of [eight hundred  
5     twenty-five] TWELVE HUNDRED dollars.  
6     S 2. Paragraphs b and d of subdivision 4 of section 6808 of the educa-  
7     tion law, paragraph b as amended by chapter 538 of the laws of 2001 and  
8     paragraph d as amended by chapter 62 of the laws of 1989, are amended to  
9     read as follows:  
10    b. Renewal of registration. All wholesalers' and manufacturers' regis-  
11    trations shall be renewed on dates set by the department. The triennial  
12    registration fee shall be [five hundred twenty] EIGHT HUNDRED dollars or  
13    a pro rated portion thereof as determined by the department.  
14    d. Change of location. In the event that the location of such place of  
15    business shall be changed, the owner shall apply to the department for  
16    inspection of the new location and endorsement of the registration for  
17    the new location. The fee for inspection and endorsement shall be [one  
18    hundred seventy] THREE HUNDRED dollars, unless it appears to the satis-  
19    faction of the department that the change in location is of a temporary  
20    nature due to fire, flood or other disaster.  
21    S 3. Subdivision 4 of section 6808 of the education law is amended by  
22    adding six new paragraphs e, f, g, h, i and j to read as follows:

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

LBD05506-03-3

1 E. APPLICANT REGISTRATION. ANY APPLICANT FOR REGISTRATION AS A WHOLE-  
2 SALER OR MANUFACTURER SHALL BE OF GOOD MORAL CHARACTER, AS DETERMINED BY  
3 THE DEPARTMENT. SUBJECT TO THE PROVISIONS OF PARAGRAPHS F AND G OF THIS  
4 SUBDIVISION, THE DEPARTMENT SHALL REQUIRE A CRIMINAL HISTORY RECORDS  
5 SEARCH FOR OFFICERS, DIRECTORS AND OWNERS OF SUCH WHOLESALE OR MANUFAC-  
6 Turer. FOR THE PURPOSES OF THIS PARAGRAPH, "OWNER" SHALL MEAN A PERSON  
7 WHO HAS A TEN PERCENT OR GREATER OWNERSHIP INTEREST IN SUCH WHOLESALE  
8 OR MANUFACTURER.

9 F. CRIMINAL HISTORY RECORDS SEARCH. (1) UPON RECEIPT OF AN APPLICATION  
10 FOR REGISTRATION PURSUANT TO THIS SUBDIVISION, THE COMMISSIONER SHALL,  
11 SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE  
12 SERVICES, INITIATE A CRIMINAL HISTORY RECORDS SEARCH OF THE PERSONS  
13 IDENTIFIED IN PARAGRAPH E OF THIS SUBDIVISION. PRIOR TO INITIATING THE  
14 BACKGROUND CHECKS AND FINGERPRINTING PROCESS, THE COMMISSIONER SHALL  
15 FURNISH THE APPLICANT WITH THE FORM DESCRIBED IN PARAGRAPH G OF THIS  
16 SUBDIVISION AND SHALL OBTAIN THE APPLICANT'S CONSENT TO THE CRIMINAL  
17 HISTORY RECORDS SEARCH. THE COMMISSIONER SHALL OBTAIN FROM EACH APPLI-  
18 CANT TWO SETS OF FINGERPRINTS AND THE DIVISION OF CRIMINAL JUSTICE  
19 SERVICES PROCESSING FEE IMPOSED PURSUANT TO SUBDIVISION EIGHT-A OF  
20 SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW AND ANY FEE  
21 IMPOSED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL  
22 HISTORY RECORD CHECK. THE COMMISSIONER SHALL PROMPTLY TRANSMIT SUCH  
23 FINGERPRINTS AND FEES TO THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR  
24 ITS FULL SEARCH AND RETAIN PROCESSING. THE DIVISION OF CRIMINAL JUSTICE  
25 SERVICES IS AUTHORIZED TO SUBMIT THE FINGERPRINTS AND THE APPROPRIATE  
26 FEE TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL  
27 HISTORY RECORD CHECK. THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE  
28 FEDERAL BUREAU OF INVESTIGATION SHALL FORWARD SUCH CRIMINAL HISTORY  
29 RECORD, IF ANY, TO THE COMMISSIONER IN A TIMELY MANNER. CRIMINAL HISTO-  
30 RY INFORMATION PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES  
31 PURSUANT TO THIS SUBDIVISION SHALL BE FURNISHED ONLY BY MAIL OR OTHER  
32 METHOD OF SECURE AND CONFIDENTIAL DELIVERY, ADDRESSED TO THE COMMISSION-  
33 ER. SUCH INFORMATION AND THE ENVELOPE IN WHICH IT IS ENCLOSED, IF ANY,  
34 SHALL BE PROMINENTLY MARKED "CONFIDENTIAL," AND SHALL AT ALL TIMES BE  
35 MAINTAINED BY THE OFFICE IN A SECURE PLACE. THE COMMISSIONER SHALL  
36 CONSIDER SUCH CRIMINAL HISTORY RECORD IN ACCORDANCE WITH THE REQUIRE-  
37 MENTS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND SUBDIVISIONS  
38 FIFTEEN AND SIXTEEN OF SECTION TWO-HUNDRED NINETY-SIX OF THE EXECUTIVE  
39 LAW.

40 (2) FOR THE PURPOSES OF THIS SECTION THE TERM "CRIMINAL HISTORY  
41 RECORD" SHALL MEAN A RECORD OF ALL CONVICTIONS OF CRIMES THAT HAVE NOT  
42 BEEN VACATED, REVERSED OR SEALED, AND ANY PENDING CRIMINAL CHARGES MAIN-  
43 TAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE FEDERAL  
44 BUREAU OF INVESTIGATION.

45 FURTHERMORE, UPON NOTIFICATION THAT SUCH APPLICANT HAS BEEN REGIS-  
46 TERED, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL HAVE THE AUTHORI-  
47 TY TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS DIRECTLY TO THE  
48 COMMISSIONER. ALL SUCH CRIMINAL HISTORY RECORDS PROCESSED AND SENT  
49 PURSUANT TO THIS SUBDIVISION SHALL BE CONFIDENTIAL PURSUANT TO THE  
50 APPLICABLE FEDERAL AND STATE LAWS, RULES AND REGULATIONS, AND SHALL NOT  
51 BE PUBLISHED OR IN ANY WAY DISCLOSED TO PERSONS OTHER THAN THE COMMIS-  
52 SIONER, UNLESS OTHERWISE AUTHORIZED BY LAW. ANY PERSON WHO WILLFULLY  
53 PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION  
54 CONTAINED IN THE REPORT TO PERSONS NOT PERMITTED BY THIS SECTION TO  
55 RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR.

1 G. ADDITIONAL DUTIES OF THE COMMISSIONER AND DEPARTMENT. (1) THE  
2 COMMISSIONER, IN COOPERATION WITH THE DIVISION OF CRIMINAL JUSTICE  
3 SERVICES AND IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS OF LAW, SHALL  
4 PROMULGATE RULES AND REGULATIONS TO REQUIRE THE PERFORMANCE OF A CRIMI-  
5 NAL HISTORY RECORDS CHECK OF THE INDIVIDUALS IDENTIFIED IN PARAGRAPH E  
6 OF THIS SUBDIVISION.

7 (2) THE COMMISSIONER, IN COOPERATION WITH THE DIVISION OF CRIMINAL  
8 JUSTICE SERVICES, SHALL PROMULGATE A FORM TO BE PROVIDED TO ALL APPLI-  
9 CANTS FOR REGISTRATION PURSUANT TO THIS SUBDIVISION THAT SHALL:

10 (I) INFORM THE PROSPECTIVE APPLICANT THAT THE COMMISSIONER IS REQUIRED  
11 TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION FROM THE DIVISION OF  
12 CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTIGATION AND  
13 REVIEW SUCH INFORMATION PURSUANT TO THIS SECTION, AND PROVIDE A  
14 DESCRIPTION OF THE MANNER IN WHICH HIS OR HER FINGERPRINT CARDS WILL BE  
15 USED UPON SUBMISSION TO THE DIVISION OF CRIMINAL JUSTICE SERVICES; AND

16 (II) INFORM THE PROSPECTIVE APPLICANT THAT HE OR SHE HAS THE RIGHT TO  
17 OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFOR-  
18 MATION PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVI-  
19 SION OF CRIMINAL JUSTICE SERVICES.

20 (3) THE DEPARTMENT SHALL OBTAIN THE SIGNED, INFORMED CONSENT OF EACH  
21 INDIVIDUAL IDENTIFIED IN PARAGRAPH E OF THIS SUBDIVISION, ON SUCH FORM  
22 SUPPLIED BY THE COMMISSIONER, WHICH INDICATES THAT SUCH PERSON HAS:

23 (I) BEEN INFORMED OF THE RIGHTS AND PROCEDURES NECESSARY TO OBTAIN,  
24 REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

25 (II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMI-  
26 NAL HISTORY INFORMATION;

27 (III) CONSENTED TO SUCH REQUEST FOR A REPORT;

28 (IV) SUPPLIED ON THE FORM A CURRENT MAILING OR HOME ADDRESS FOR SUCH  
29 INDIVIDUAL;

30 (V) BEEN INFORMED THAT HE OR SHE MAY WITHDRAW HIS OR HER CONSENT,  
31 REGARDLESS OF WHETHER THE DEPARTMENT HAS REVIEWED SUCH INDIVIDUAL'S  
32 CRIMINAL HISTORY INFORMATION;

33 (VI) BEEN INFORMED THAT IN THE EVENT THE WHOLESALER'S OR MANUFACTUR-  
34 ER'S REGISTRATION PURSUANT TO THIS SUBDIVISION HAS EXPIRED OR OTHERWISE  
35 TERMINATED, THE COMMISSIONER SHALL NOTIFY THE DIVISION OF CRIMINAL  
36 JUSTICE SERVICES OF SUCH EXPIRATION OR TERMINATION, AND THE DIVISION OF  
37 CRIMINAL JUSTICE SERVICES SHALL DESTROY THE FINGERPRINTS OF THE INDIVID-  
38 UAL OR INDIVIDUALS ASSOCIATED WITH SUCH WHOLESALER'S OR MANUFACTURER'S  
39 REGISTRATION; AND

40 (VII) BEEN INFORMED OF THE MANNER IN WHICH HE OR SHE MAY SUBMIT TO THE  
41 COMMISSIONER ANY INFORMATION THAT MAY BE RELEVANT TO THE CONSIDERATION  
42 OF THE APPLICANT'S REGISTRATION INCLUDING, WHERE APPLICABLE, INFORMATION  
43 IN SUPPORT OF HIS OR HER GOOD MORAL CHARACTER OR REHABILITATION THEREOF.

44 (4) UPON RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO THIS  
45 SECTION AND BEFORE MAKING ANY DETERMINATION THEREON, THE COMMISSIONER  
46 SHALL PROVIDE THE INDIVIDUAL WITH A COPY OF SUCH CRIMINAL HISTORY INFOR-  
47 MATION AND A COPY OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND  
48 INFORM SUCH INDIVIDUAL OF HIS OR HER RIGHT TO SEEK CORRECTION OF ANY  
49 INCORRECT INFORMATION CONTAINED IN SUCH CRIMINAL HISTORY INFORMATION  
50 PURSUANT TO THE REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION  
51 OF CRIMINAL JUSTICE SERVICES.

52 H. PERFORMANCE OR SURETY BOND. EVERY WHOLESALER SHALL SUBMIT A  
53 PERFORMANCE OR SURETY BOND OF NOT LESS THAN ONE HUNDRED THOUSAND DOLLARS  
54 TO THE DEPARTMENT TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS ARTI-  
55 CLE, EXCEPT THAT THE DEPARTMENT MAY WAIVE SUCH BOND FOR CERTAIN  
56 NOT-FOR-PROFIT ENTITIES SUCH AS HOSPITALS AND CORRECTIONAL FACILITIES

1 THAT LIMIT DISTRIBUTION TO THEIR OWN FACILITIES AND DO NOT RETURN SUCH  
2 MEDICATIONS TO OTHER ENTITIES. THE DEPARTMENT MAY ALSO EXEMPT A WHOLE-  
3 SALER FROM THE SURETY BOND REQUIREMENT WHEN SUCH WHOLESALER IS OWNED AND  
4 OPERATED BY A FACILITY, SUBJECT TO THE PROVISIONS OF ARTICLE  
5 TWENTY-EIGHT OF THE PUBLIC HEALTH LAW AND OTHER FACILITIES GOVERNED BY A  
6 STATE AGENCY THAT LIMITS ITS DISTRIBUTION OF PRESCRIPTION DRUGS TO  
7 FACILITIES AND PRACTITIONERS WITHIN THE INSTITUTION'S NETWORK AND OPER-  
8 ATIONS AND DOES NOT SELL OR RETURN SUCH MEDICATIONS TO MANUFACTURERS OR  
9 TO OTHER WHOLESALERS.

10 I. WHOLESALER REGISTRATION. THE DEPARTMENT MAY PROMULGATE RULES AND  
11 REGULATIONS TO EXEMPT FROM THE REQUIREMENTS OF PARAGRAPHS E, F, G AND H  
12 OF THIS SUBDIVISION A WHOLESALER THAT HAS RECEIVED ACCREDITATION FROM A  
13 NATIONALLY RECOGNIZED ACCREDITATION BODY APPROVED BY THE COMMISSIONER  
14 AND THAT MEETS THE LICENSING STANDARDS UNDER THIS SUBDIVISION. THE STAN-  
15 DARDS SHALL BE DEFINED BY THE COMMISSIONER PURSUANT TO REGULATIONS.

16 J. MANUFACTURER REGISTRATION. NOTWITHSTANDING THE REQUIREMENTS FOR  
17 REGISTRATION UNDER THIS SUBDIVISION, THE COMMISSIONER SHALL EXEMPT A  
18 MANUFACTURER LICENSED OR APPROVED BY THE FEDERAL FOOD AND DRUG ADMINIS-  
19 TRATION (FDA) OR ITS SUCCESSOR AGENCY TO MANUFACTURE DRUGS OR DEVICES  
20 WITH REGARD TO SUCH DRUGS OR DEVICES FROM THE REQUIREMENTS OF PARAGRAPHS  
21 E, F, G AND H OF THIS SUBDIVISION IN THE EVENT THAT SUCH REQUIREMENTS  
22 ARE NOT REQUIRED BY FEDERAL LAW OR REGULATION UNLESS THE COMMISSIONER  
23 DETERMINES THAT SUCH REQUIREMENTS ARE NECESSARY TO PREVENT A RISK TO  
24 PRESCRIPTION DRUG DISTRIBUTION IN THE STATE.

25 S 4. This act shall take effect on the one hundred eightieth day after  
26 it shall have become a law.