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

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2013-2014 Regular Sessions

I N A S S E M B L Y

April 4, 2013

Introduced by M. of A. KOLB, PALMESANO, CORWIN, JORDAN, HAWLEY -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to possession of a pistol or revolver

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

Section 1. Paragraph 3 of subdivision a of section 265.20 of the penal law, as amended by chapter 210 of the laws of 1999, is amended to read as follows:

3. Possession of a pistol or revolver by a person to whom a license OR A TEMPORARY LICENSE therefor has been issued as provided under section 400.00 [or], 400.01 OR 400.04 of this chapter; provided, that such a license shall not preclude a conviction for the offense defined in subdivision three of section 265.01 of this article.

S 2. Paragraph 3 of subdivision a of section 265.20 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

3. Possession of a pistol or revolver by a person to whom a license OR TEMPORARY LICENSE therefor has been issued as provided under section 400.00 [or], 400.01 OR 400.04 of this chapter or possession of a weapon as defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this article which is registered pursuant to paragraph (a) of subdivision sixteen-a of section 400.00 of this chapter or is included on an amended license issued pursuant to section 400.00 of this chapter. In the event such license is revoked, other than because such licensee is no longer permitted to possess a firearm, rifle or shotgun under federal or state law, information sufficient to satisfy the requirements of subdivision sixteen-a of section 400.00 of this chapter, shall be transmitted by the licensing officer to the state police, in a form as determined by the superintendent of state police. Such transmission shall constitute a valid registration under such section. Further

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

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provided, notwithstanding any other section of this title, a failure to register such weapon by an individual who possesses such weapon before the enactment of the chapter of the laws of two thousand thirteen which amended this paragraph and may so lawfully possess it thereafter upon registration, shall only be subject to punishment pursuant to paragraph (c) of subdivision sixteen-a of section 400.00 of this chapter; provided, that such a license or registration shall not preclude a conviction for the offense defined in subdivision three of section 265.01 of this article or section 265.01-a of this article.

S 3. Section 265.20 of the penal law is amended by adding a new subdivision e to read as follows:

E. 1. A NONRESIDENT OF NEW YORK STATE WHO IS NOT PROHIBITED BY FEDERAL LAW FROM POSSESSING A FIREARM MAY POSSESS AND CARRY A CONCEALED FIREARM, AS DEFINED IN SUBDIVISION THREE OF SECTION 265.00 OF THIS ARTICLE, ANYWHERE WITHIN NEW YORK STATE IF SUCH PERSON:

(A) IS IN POSSESSION OF A VALID PERMIT TO CARRY A CONCEALED FIREARM ISSUED TO SUCH NONRESIDENT OF NEW YORK STATE PURSUANT TO THE LAWS OF SUCH PERSON'S STATE OF RESIDENCE; AND

(B) IS IN COMPLIANCE WITH THE TERMS OF ITS ISSUANCE IN THE STATE OF ITS ISSUE, BUT ONLY TO THE EXTENT THAT THE TERMS OF ISSUANCE COMPLY WITH ANY APPROPRIATE NEW YORK STATE STATUTE; AND

(C) IS CARRYING A VALID IDENTIFICATION DOCUMENT CONTAINING A PHOTOGRAPH OF THE PERSON; AND

(D) DOES NOT HAVE ANY INTENT TO USE SUCH FIREARM FOR AN ILLEGAL PURPOSE; AND

(E) IS SUBJECT TO THE SAME CONDITIONS AND LIMITATIONS, EXCEPT AS TO ELIGIBILITY TO POSSESS OR CARRY, IMPOSED BY OR UNDER FEDERAL OR STATE LAW OR THE LAW OF A POLITICAL SUBDIVISION OF NEW YORK STATE, THAT APPLY TO THE POSSESSION OR CARRYING OF A CONCEALED FIREARM BY RESIDENTS OF THE STATE OR POLITICAL SUBDIVISION WHO ARE LICENSED BY THE STATE OR POLITICAL SUBDIVISION TO DO SO, OR NOT PROHIBITED BY THE STATE FROM DOING SO.

2. IF A NONRESIDENT, WHO IS AUTHORIZED TO POSSESS OR CARRY A CONCEALED FIREARM PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION, BECOMES A LEGAL RESIDENT OF NEW YORK STATE, THEN THE PROVISIONS OF THIS SUBDIVISION SHALL CONTINUE TO APPLY TO SUCH PERSON UNTIL SUCH TIME AS A NEW YORK STATE LICENSE IS ISSUED OR DENIED UNDER ARTICLE FOUR HUNDRED OF THIS CHAPTER; PROVIDED THAT SUCH PERSON SHALL HAVE SIXTY DAYS TO FILE AN APPLICATION THEREFOR AFTER BECOMING A RESIDENT OF THIS STATE.

3. THE POSSESSION OF A VALID LICENSE FROM ANOTHER JURISDICTION SHALL BE A REBUTTABLE PRESUMPTION THAT THE HOLDER IS NOT PROHIBITED BY FEDERAL LAW FROM POSSESSING A FIREARM AND IS IN COMPLIANCE WITH THE TERMS OF ISSUANCE IN THE STATE OF ISSUANCE.

4. AS USED IN THIS SUBDIVISION THE TERM "IDENTIFICATION DOCUMENT" MEANS A DOCUMENT MADE OR ISSUED BY OR UNDER THE AUTHORITY OF THE UNITED STATES GOVERNMENT, A STATE OR A POLITICAL SUBDIVISION OF A STATE WHICH, WHEN COMPLETED WITH INFORMATION CONCERNING A PARTICULAR INDIVIDUAL, IS OF A TYPE INTENDED OR COMMONLY ACCEPTED FOR THE PURPOSE OF IDENTIFICATION OF INDIVIDUALS.

S 4. Section 400.00 of the penal law is amended by adding a new subdivision 2-a to read as follows:

2-A. TEMPORARY LICENSE. A TEMPORARY LICENSE FOR A PISTOL OR REVOLVER, OTHER THAN AN ASSAULT WEAPON OR A DISGUISED GUN SHALL BE ISSUED TO:

(A) A HOUSEHOLDER TO HAVE AND POSSESS IN HIS DWELLING WHERE SUCH HOUSEHOLDER IS ELIGIBLE PURSUANT TO SECTION 400.04 OF THIS ARTICLE; OR

(B) HAVE AND CARRY, WITHOUT REGARD TO PLACE OF POSSESSION, BY ANY PERSON WHERE SUCH PERSON IS ELIGIBLE PURSUANT TO SUBDIVISION ONE OF SECTION 400.04 OF THIS ARTICLE.

S 5. The penal law is amended by adding a new section 400.04 to read as follows:

S 400.04 TEMPORARY LICENSE TO CARRY OR POSSESS FIREARMS.

1. ELIGIBILITY. A PERSON IS ELIGIBLE FOR A TEMPORARY LICENSE TO CARRY OR POSSESS A FIREARM IN NEW YORK STATE WHERE:

(A) SUCH PERSON IS DOMICILED IN A STATE OF THE UNITED STATES WHICH DOES NOT REQUIRE A LICENSE OR PERMIT TO POSSESS OR CARRY A FIREARM, AS DEFINED IN SUBDIVISION THREE OF SECTION 265.00 OF THIS CHAPTER, PROVIDED THAT SUCH PERSON SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN PARAGRAPHS (A) THROUGH (E) OF SUBDIVISION ONE OF SECTION 400.00 OF THIS ARTICLE AND THAT THERE IS NO GOOD CAUSE FOR THE DENIAL OF THE LICENSE; OR

(B) SUCH PERSON HAS A PISTOL LICENSE OR PERMIT ISSUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ISSUANCE, WHERE THAT STATE IS A STATE OF THE UNITED STATES WHICH IS A JURISDICTION THAT DOES NOT AUTHORIZE SUCH LICENSE OR REGISTRATION BY A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF A FELONY; PROVIDED THAT SUCH PERSON SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN PARAGRAPHS (A) THROUGH (E) OF SUBDIVISION ONE OF SECTION 400.00 OF THIS ARTICLE AND WHERE THERE IS NO GOOD CAUSE FOR THE DENIAL OF THE LICENSE; OR

(C) SUCH PERSON IS LICENSED IN A STATE OF THE UNITED STATES WHICH IS A JURISDICTION THAT ALLOWS LICENSING BY A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF A FELONY, PROVIDED THAT SUCH PERSON MUST COMPLY WITH THE REQUIREMENTS SET FORTH IN PARAGRAPHS (A) THROUGH (E) OF SUBDIVISION ONE OF SECTION 400.00 OF THIS ARTICLE AND THERE IS NO GOOD CAUSE FOR THE DENIAL OF THE LICENSE.

NOTHING IN THIS SECTION REQUIRES THE GRANTING OF A TEMPORARY PISTOL LICENSE TO ANY PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A FELONY OR OF A CRIME WHICH, IF COMMITTED IN THIS STATE, WOULD BE A FELONY, NOTWITHSTANDING THAT THE JURISDICTION IN WHICH SUCH PERSON IS DOMICILED ALLOWS LICENSING BY SUCH PERSON.

2. APPLICATIONS. (A) APPLICATIONS FOR A TEMPORARY LICENSE TO CARRY OR POSSESS A PISTOL OR REVOLVER SHALL BE MADE TO THE DIVISION OF STATE POLICE AND THE LICENSING OFFICER SHALL BE THE SUPERINTENDENT OF STATE POLICE.

(B) THE APPLICATION FOR SUCH TEMPORARY LICENSE SHALL BE APPROVED AS TO FORM BY THE SUPERINTENDENT OF THE DIVISION OF STATE POLICE AND SHALL STATE:

(I) THE NUMBER OF DAYS FOR WHICH THE TEMPORARY LICENSE WILL BE IN EFFECT, INCLUDING THE EXACT RANGE OF DATES IT WILL BE IN EFFECT, EXCEPT THAT SUCH TIME PERIOD SHALL NOT EXCEED NINETY DAYS.

(II) THE FULL NAME, DATE OF BIRTH, ADDRESS OF PERMANENT RESIDENCE, PLACE OF TEMPORARY RESIDENCE WHILE IN NEW YORK STATE, AND PRESENT OCCUPATION OF THE APPLICANT.

(III) WHETHER OR NOT THE APPLICANT IS A CITIZEN OF THE UNITED STATES.

(IV) WHETHER OR NOT THE APPLICANT COMPLIES WITH EACH REQUIREMENT FOR ELIGIBILITY SPECIFIED IN SUBDIVISION ONE OF THIS SECTION INCLUDING DOCUMENTATION REGARDING OTHER STATE LICENSES; AND

(V) SUCH OTHER FACTS AS MAY BE REQUIRED TO SHOW THE GOOD CHARACTER, COMPETENCY AND INTEGRITY OF EACH APPLICANT.

(C) THE BLANK APPLICATION FORM SHALL BE MADE AVAILABLE ON THE NEW YORK STATE DIVISION OF POLICE WEBSITE.

(D) THE APPLICATION SHALL BE SIGNED AND VERIFIED BY THE APPLICANT. EACH INDIVIDUAL SIGNING AN APPLICATION SHALL SUBMIT ONE PHOTOGRAPH OF HIMSELF AND A DUPLICATE FOR EACH REQUIRED COPY OF THE APPLICATION. SUCH PHOTOGRAPHS SHALL BE TWO INCHES SQUARE AND SHALL HAVE BEEN TAKEN WITHIN THIRTY DAYS PRIOR TO SUBMITTING THE APPLICATION.

(E) THE LICENSING OFFICER SHALL, NO LATER THAN TEN BUSINESS DAYS AFTER SUCH SUBMISSION, CONDUCT AN INVESTIGATION AND ASCERTAIN ANY PREVIOUS CRIMINAL RECORD OF THE APPLICANT PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(F) NO LATER THAN TEN BUSINESS DAYS AFTER COMPLETION OF THIS INVESTIGATION, THE DIVISION OF STATE POLICE LICENSING OFFICER SHALL DETERMINE IF THE APPLICANT HAS BEEN PREVIOUSLY DENIED A LICENSE, BEEN CONVICTED OF A FELONY, OR BEEN CONVICTED OF A SERIOUS OFFENSE, AND EITHER APPROVE OR DISAPPROVE THE APPLICATION FOR A TEMPORARY PISTOL LICENSE BASED UPON SUCH DETERMINATIONS AND SHALL ISSUE THE LICENSE TO THE APPLICANT WITHIN TEN DAYS OF SUCH DETERMINATION.

(G) APPLICATIONS SHALL BE PROCESSED IN ACCORDANCE WITH THE REQUIREMENTS OF SUBDIVISIONS FOUR-A AND FOUR-B OF SECTION 400.00 OF THIS ARTICLE, EXCEPT THAT WHERE THE APPLICANT'S ELIGIBILITY IS BASED ON PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION SUCH APPLICATION MUST BE PROCESSED AND THE INVESTIGATION COMPLETED WITHIN SIXTY DAYS OF SUBMISSION OF THE APPLICATION TO THE LICENSING OFFICER.

(H) APPROVED APPLICATIONS SHALL BE MAINTAINED ON FILE BY THE DIVISION OF STATE POLICE AFTER ISSUANCE OF THE LICENSE.

3. INVESTIGATIONS. THE INVESTIGATION REQUIRED FOR ISSUANCE OF A TEMPORARY LICENSE TO CARRY OR POSSESS A FIREARM SHALL BE CONDUCTED IN THE SAME MANNER AND UPON THE SAME TERMS AND CONDITIONS AS INVESTIGATIONS REQUIRED FOR LICENSES ISSUED PURSUANT TO SECTION 400.00 OF THIS ARTICLE PROVIDED, HOWEVER, THE RESULTS SHALL BE PROVIDED TO THE SUPERINTENDENT OF STATE POLICE IN HIS OR HER CAPACITY AS LICENSING OFFICER.

4. LICENSE FORM, DURATION AND VALIDITY. (A) ANY LICENSE ISSUED PURSUANT TO THIS SECTION SHALL BE IN ACCORDANCE WITH THE FORM SET FORTH IN SUBDIVISION SEVEN OF SECTION 400.00 OF THIS ARTICLE.

(B) ANY LICENSE ISSUED PURSUANT TO THIS SECTION SHALL BE VALID THROUGHOUT THE STATE EXCEPT WHERE IT WOULD BE LIMITED BY THE PROVISIONS OF SUBDIVISION SIX OF SECTION 400.00 OF THIS ARTICLE.

(C) IN NO INSTANCE SHALL THE DURATION OF A TEMPORARY LICENSE EXCEED NINETY DAYS.

(D) THE TEMPORARY LICENSE SHALL, IN AT LEAST 16 POINT FONT, INDICATE THAT IT IS A TEMPORARY LICENSE AND INDICATE THE EXPIRATION DATE OF SUCH TEMPORARY LICENSE.

(E) A TEMPORARY LICENSE ISSUED PURSUANT TO THIS SECTION MAY BE REVOKED OR SUSPENDED ON THE SAME TERMS AND UNDER THE SAME CIRCUMSTANCES AS SET FORTH IN SUBDIVISION ELEVEN OF SECTION 400.00 OF THIS ARTICLE.

5. FEES. THE SUPERINTENDENT OF THE DIVISION OF STATE POLICE SHALL FIX A LICENSING FEE TO BE CHARGED FOR A TEMPORARY LICENSE TO CARRY OR POSSESS A PISTOL OR REVOLVER BASED ON THE EXPENSE OF CARRYING OUT THE PROVISIONS OF THIS SECTION. SUCH FEE MAY BE ADJUSTED BY THE SUPERINTENDENT OF THE DIVISION OF STATE POLICE, ON AN ANNUAL BASIS, WHERE NECESSARY TO ENSURE THAT THE LICENSING FEES ADEQUATELY COVER THE EXPENSE OF CARRYING OUT THE PROVISIONS OF THIS SECTION WITHOUT SIGNIFICANTLY EXCEEDING SUCH COSTS.

6. APPLICABILITY OF SECTION. THE PROVISIONS OF ARTICLE TWO HUNDRED SIXTY-FIVE OF THIS CHAPTER RELATING TO ILLEGAL POSSESSION OF A FIREARM, SHALL NOT APPLY TO AN OFFENSE WHICH ALSO CONSTITUTES A VIOLATION OF THIS SECTION BY A PERSON HOLDING AN OTHERWISE VALID LICENSE UNDER THE

PROVISIONS OF THIS SECTION AND SUCH OFFENSE SHALL ONLY BE PUNISHABLE AS A CLASS A MISDEMEANOR.

S 6. Section 265.10 of the penal law is amended by adding a new subdivision 2-a to read as follows:

2-A. NOTWITHSTANDING ANY OTHER PROVISION OF ANY LAW OR ANY RULE OR REGULATION OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, ANY PERSON WHO IS NOT OTHERWISE PROHIBITED BY FEDERAL LAW FROM TRANSPORTING, SHIPPING, OR RECEIVING A FIREARM SHALL BE ENTITLED TO TRANSPORT A FIREARM FOR ANY LAWFUL PURPOSE THROUGH NEW YORK STATE FROM ANY PLACE WHERE HE MAY LAWFULLY POSSESS AND CARRY SUCH FIREARM TO ANY OTHER PLACE WHERE HE MAY LAWFULLY POSSESS AND CARRY SUCH FIREARM IF, DURING SUCH TRANSPORTATION THE FIREARM IS UNLOADED, AND NEITHER THE FIREARM NOR ANY AMMUNITION BEING TRANSPORTED IS READILY ACCESSIBLE OR IS DIRECTLY ACCESSIBLE FROM THE PASSENGER COMPARTMENT OF SUCH TRANSPORTING VEHICLE; PROVIDED, THAT, IN THE CASE OF A VEHICLE WITHOUT A COMPARTMENT SEPARATE FROM THE DRIVER'S COMPARTMENT THE FIREARM OR AMMUNITION SHALL BE CONTAINED IN A LOCKED CONTAINER OTHER THAN THE GLOVE COMPARTMENT OR CONSOLE.

S 7. Subdivision 3 of section 265.03 of the penal law, as amended by chapter 745 of the laws of 2006, is amended to read as follows:

(3) such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CHARGE UNDER THIS SUBDIVISION THAT SUCH PERSON IS A NONRESIDENT OF NEW YORK STATE WHO IS DULY AUTHORIZED TO CARRY SUCH FIREARM IN SUCH PERSON'S STATE OF RESIDENCE OR IF SUCH PERSON IS A RESIDENT OF NEW YORK STATE WHO IS DULY LICENSED TO CARRY A FIREARM, AND IF SUCH PERSON HAS NOT PREVIOUSLY BEEN CHARGED WITH ANY VIOLATION OF THIS SECTION.

S 8. Section 265.01 of the penal law is amended by adding a new undesignated paragraph to read as follows:

IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CHARGE OF POSSESSION OF A FIREARM UNDER SUBDIVISION ONE OF THIS SECTION IF SUCH POSSESSION OF A FIREARM IS BY A NONRESIDENT OF NEW YORK STATE WHO IS AUTHORIZED TO CARRY SUCH FIREARM IN SUCH PERSON'S STATE OF RESIDENCE OR IF SUCH PERSON IS A RESIDENT OF NEW YORK STATE WHO IS DULY LICENSED TO CARRY A FIREARM IN NEW YORK STATE, AND IF SUCH PERSON HAS NOT PREVIOUSLY BEEN CHARGED WITH POSSESSION OF A FIREARM UNDER THIS SECTION.

S 9. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that section two of this act shall take effect on the same date and in the same manner as section 46 of chapter 1 of the laws of 2013, takes effect.