

6806

2013-2014 Regular Sessions

I N   A S S E M B L Y

April 19, 2013

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Introduced by M. of A. CERETTO -- read once and referred to the Committee on Codes

AN ACT amending the penal law, in relation to allowing a member of the Niagara county clerk's office to access mental health records for firearm license applications

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

1     Section 1. Subdivision 4 of section 400.00 of the penal law, as  
2     amended by chapter 331 of the laws of 2005, is amended to read as  
3     follows:  
4     4. Investigation. Before a license is issued or renewed, there shall  
5     be an investigation of all statements required in the application by the  
6     duly constituted police authorities of the locality where such applica-  
7     tion is made. For that purpose, the records of the appropriate office of  
8     the department of mental hygiene concerning previous or present mental  
9     illness of the applicant shall be available for inspection by the inves-  
10    tigating officer of the police authority OR IN NIAGARA COUNTY RECORDS  
11    MAY BE ACCESSED BY A CERTIFIED EMPLOYEE OF THE COUNTY CLERK'S OFFICE WHO  
12    IS AUTHORIZED TO ACCESS CLINICAL RECORDS IN ACCORDANCE WITH SECTION  
13    33.12 OF THE MENTAL HYGIENE LAW. In order to ascertain any previous  
14    criminal record, the investigating officer shall take the fingerprints  
15    and physical descriptive data in quadruplicate of each individual by  
16    whom the application is signed and verified. Two copies of such finger-  
17    prints shall be taken on standard fingerprint cards eight inches square,  
18    and one copy may be taken on a card supplied for that purpose by the  
19    federal bureau of investigation; provided, however, that in the case of  
20    a corporate applicant that has already been issued a dealer in firearms  
21    license and seeks to operate a firearm dealership at a second or subse-  
22    quent location, the original fingerprints on file may be used to ascer-  
23    tain any criminal record in the second or subsequent application unless  
24    any of the corporate officers have changed since the prior application,

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

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1 in which case the new corporate officer shall comply with procedures  
2 governing an initial application for such license. When completed, one  
3 standard card shall be forwarded to and retained by the division of  
4 criminal justice services in the executive department, at Albany. A  
5 search of the files of such division and written notification of the  
6 results of the search to the investigating officer shall be made without  
7 unnecessary delay. Thereafter, such division shall notify the licensing  
8 officer and the executive department, division of state police, Albany,  
9 of any criminal record of the applicant filed therein subsequent to the  
10 search of its files. A second standard card, or the one supplied by the  
11 federal bureau of investigation, as the case may be, shall be forwarded  
12 to that bureau at Washington with a request that the files of the bureau  
13 be searched and notification of the results of the search be made to the  
14 investigating police authority. The failure or refusal of the federal  
15 bureau of investigation to make the fingerprint check provided for in  
16 this section shall not constitute the sole basis for refusal to issue a  
17 permit pursuant to the provisions of this section. Of the remaining two  
18 fingerprint cards, one shall be filed with the executive department,  
19 division of state police, Albany, within ten days after issuance of the  
20 license, and the other remain on file with the investigating police  
21 authority. No such fingerprints may be inspected by any person other  
22 than a peace officer, who is acting pursuant to his special duties, or a  
23 police officer, except on order of a judge or justice of a court of  
24 record either upon notice to the licensee or without notice, as the  
25 judge or justice may deem appropriate. Upon completion of the investi-  
26 gation, the police authority shall report the results to the licensing  
27 officer without unnecessary delay.

28 S 2. Subdivision 4 of section 400.00 of the penal law, as amended by  
29 chapter 1 of the laws of 2013, is amended to read as follows:

30 4. Investigation. Before a license is issued or renewed, there shall  
31 be an investigation of all statements required in the application by the  
32 duly constituted police authorities of the locality where such applica-  
33 tion is made, including but not limited to such records as may be acces-  
34 sible to the division of state police or division of criminal justice  
35 services pursuant to section 400.02 of this article. For that purpose,  
36 the records of the appropriate office of the department of mental  
37 hygiene concerning previous or present mental illness of the applicant  
38 shall be available for inspection by the investigating officer of the  
39 police authority OR IN NIAGARA COUNTY RECORDS MAY BE ACCESSED BY A  
40 CERTIFIED EMPLOYEE OF THE COUNTY CLERK'S OFFICE WHO IS AUTHORIZED TO  
41 ACCESS CLINICAL RECORDS IN ACCORDANCE WITH SECTION 33.12 OF THE MENTAL  
42 HYGIENE LAW. In order to ascertain any previous criminal record, the  
43 investigating officer shall take the fingerprints and physical descrip-  
44 tive data in quadruplicate of each individual by whom the application is  
45 signed and verified. Two copies of such fingerprints shall be taken on  
46 standard fingerprint cards eight inches square, and one copy may be  
47 taken on a card supplied for that purpose by the federal bureau of  
48 investigation; provided, however, that in the case of a corporate appli-  
49 cant that has already been issued a dealer in firearms license and seeks  
50 to operate a firearm dealership at a second or subsequent location, the  
51 original fingerprints on file may be used to ascertain any criminal  
52 record in the second or subsequent application unless any of the corpo-  
53 rate officers have changed since the prior application, in which case  
54 the new corporate officer shall comply with procedures governing an  
55 initial application for such license. When completed, one standard card  
56 shall be forwarded to and retained by the division of criminal justice

1 services in the executive department, at Albany. A search of the files  
2 of such division and written notification of the results of the search  
3 to the investigating officer shall be made without unnecessary delay.  
4 Thereafter, such division shall notify the licensing officer and the  
5 executive department, division of state police, Albany, of any criminal  
6 record of the applicant filed therein subsequent to the search of its  
7 files. A second standard card, or the one supplied by the federal bureau  
8 of investigation, as the case may be, shall be forwarded to that bureau  
9 at Washington with a request that the files of the bureau be searched  
10 and notification of the results of the search be made to the investigat-  
11 ing police authority. Of the remaining two fingerprint cards, one shall  
12 be filed with the executive department, division of state police, Alba-  
13 ny, within ten days after issuance of the license, and the other remain  
14 on file with the investigating police authority. No such fingerprints  
15 may be inspected by any person other than a peace officer, who is acting  
16 pursuant to his special duties, or a police officer, except on order of  
17 a judge or justice of a court of record either upon notice to the licen-  
18 see or without notice, as the judge or justice may deem appropriate.  
19 Upon completion of the investigation, the police authority shall report  
20 the results to the licensing officer without unnecessary delay.

21 S 3. This act shall take effect immediately, provided, however, that  
22 the amendments to subdivision 4 of section 400.00 of the penal law made  
23 by section two of this act shall take effect on the same date and in the  
24 same manner as section 48 of chapter 1 of the laws of 2013, takes  
25 effect.