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

7389

2013-2014 Regular Sessions

I N A S S E M B L Y

May 14, 2013

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

AN ACT to amend the penal law, in relation to prohibiting the release of personal medical records or information without a warrant or express written authorization of the individual

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

Section 1. Subdivision 4 of section 400.00 of the penal law, as amended by chapter 331 of the laws of 2005, is amended to read as follows:

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of

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

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criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a permit pursuant to the provisions of this section. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY NEITHER THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, NOR ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF SHALL BE PERMITTED TO ACCESS PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION OTHER THAN RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE WITHOUT A PROPERLY ISSUED WARRANT, OR THE EXPRESS WRITTEN, NOTARIZED PERMISSION OF THE INDIVIDUAL WHOSE INFORMATION IS SOUGHT.

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

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made, including but not limited to such records as may be accessible to the division of state police or division of criminal justice services pursuant to section 400.02 of this article. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one

standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY NEITHER THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, NOR ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF SHALL BE PERMITTED TO ACCESS PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION OTHER THAN RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE WITHOUT A PROPERLY ISSUED WARRANT, OR THE EXPRESS WRITTEN, NOTARIZED PERMISSION OF THE INDIVIDUAL WHOSE INFORMATION IS SOUGHT.

S 3. Section 400.02 of the penal law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

S 400.02 Statewide license and record database.

1. There shall be a statewide license and record database which shall be created and maintained by the division of state police the cost of which shall not be borne by any municipality. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. Records containing granted license applications shall be periodically checked by the division of criminal justice services against criminal conviction, mental health, and all other records as are necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database, as otherwise authorized by law, in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY NEITHER THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, NOR ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF SHALL BE PERMITTED TO ACCESS PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION OTHER THAN RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE WITHOUT A PROPERLY ISSUED WARRANT, OR THE EXPRESS WRITTEN, NOTARIZED PERMISSION OF THE INDIVIDUAL WHOSE INFORMATION IS SOUGHT.

S 4. Subdivision 3 of section 400.00 of the penal law is amended by adding a new paragraph (c) to read as follows:

(C) (I) THE APPLICATION FOR A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF FIREARMS, OR THE RENEWAL THEREOF, PURSUANT TO THIS SECTION SHALL NOT REQUIRE THE APPLICANT TO CONSENT TO THE RELEASE OF THEIR PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION, OTHER THAN RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE, AS A CONDITION OF RECEIVING OR RETAINING SUCH LICENSE UNLESS THE INVESTIGATING AGENCY HAS A REASONABLE BELIEF THAT A MEDICAL ISSUE EXISTS WHICH WOULD JUSTIFY THE DENIAL OF A LICENSE PURSUANT TO THIS SECTION.

(II) THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, AND ANY OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF MAY REQUEST A CONSENT FROM INDIVIDUALS FOR THE RELEASE OF THEIR PERSONAL MEDICAL RECORDS OR OTHER MEDICAL INFORMATION WHERE SUCH LAW ENFORCEMENT AGENCY HAS A REASONABLE BELIEF THAT A MEDICAL ISSUE EXISTS WHICH WOULD JUSTIFY THE SUSPENSION OR REVOCATION OF A LICENSE ISSUED PURSUANT TO THIS SECTION.

S 5. This act shall take effect immediately; provided, however that sections two and three of this act shall take effect on the same date and in the same manner as sections 48 and 49, respectively, of chapter 1 of the laws of 2013, take effect.