

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. KAVANAGH, SCHIMEL, AUBRY, PAULIN, BROOK-KRASNY,
O'DONNELL, RODRIGUEZ, PERRY -- Multi-Sponsored by -- M. of A. GLICK,
GOTTFRIED, WEISENBERG -- read once and referred to the Committee on
Codes

AN ACT to amend the penal law, in relation to requiring background
checks for employees authorized to possess or transfer firearms in the
course of a licensed firearms business

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

1 Section 1. Section 400.00 of the penal law is amended by adding a new
2 subdivision 12-b to read as follows:
3 12-B. GUNSMITH OR DEALER IN FIREARMS EMPLOYEES. (A) NO PERSON SHALL BE
4 EMPLOYED BY A GUNSMITH OR DEALER IN FIREARMS FOR DUTIES THAT INCLUDE
5 HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS, IF SUCH PERSON IS
6 PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS UNDER FEDERAL LAW OR IF
7 SUCH PERSON WOULD BE INELIGIBLE FOR A LICENSE TO POSSESS FIREARMS UNDER
8 PARAGRAPH (C) OR (E) OF SUBDIVISION ONE OF THIS SECTION.
9 (B) NO GUNSMITH OR DEALER IN FIREARMS SHALL EMPLOY A PERSON WHOSE
10 DUTIES INCLUDE HANDLING, SELLING, OR OTHERWISE DISPOSING OF FIREARMS,
11 ABSENT AN EXEMPTION PURSUANT TO PARAGRAPHS ONE AND TWO OF SUBDIVISION A
12 OF SECTION 265.20 OF THIS CHAPTER, UNLESS:
13 (I) SUCH PERSON IS TWENTY-ONE YEARS OF AGE OR OLDER OR IS A MEMBER OF
14 THE UNITED STATES ARMED FORCES OR HAS BEEN HONORABLY DISCHARGED THERE-
15 FROM, AND SUCH EMPLOYEE HAS BEEN ISSUED A VALID EMPLOYMENT CERTIFICATE
16 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES;
17 (II) SUCH PERSON HAS OBTAINED AND POSSESSES A VALID LICENSE ISSUED
18 UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS ARTICLE;
19 OR

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

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1 (III) SUCH PERSON WAS EMPLOYED BY THE GUNSMITH OR DEALER IN FIREARMS
2 PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION AND NO MORE THAN SIX
3 MONTHS HAVE ELAPSED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION.

4 (C) APPLICATIONS FOR EMPLOYMENT CERTIFICATES SHALL BE SUBMITTED BY THE
5 APPLICANT'S PROSPECTIVE EMPLOYER TO THE DIVISION OF CRIMINAL JUSTICE
6 SERVICES. BLANK APPLICATIONS MUST CONTAIN, AT A MINIMUM, THE INFORMATION
7 REQUIRED TO CONDUCT A BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL
8 BACKGROUND CHECK SYSTEM. ALL APPLICATIONS MUST BE SIGNED AND VERIFIED BY
9 THE APPLICANT.

10 (D) UPON RECEIPT OF AN APPLICATION FOR AN EMPLOYMENT CERTIFICATE, THE
11 DIVISION OF CRIMINAL JUSTICE SERVICES SHALL CONDUCT A BACKGROUND CHECK
12 IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM TO DETERMINE
13 WHETHER THE APPLICANT IS QUALIFIED TO RECEIVE OR POSSESS A FIREARM UNDER
14 STATE AND FEDERAL LAW. IF THE RESULTS OF THE BACKGROUND CHECK INDICATE
15 THAT THERE IS NO INFORMATION THAT WOULD DISQUALIFY THE APPLICANT FROM
16 RECEIVING OR POSSESSING A FIREARM UNDER STATE OR UNDER FEDERAL LAW, THE
17 DIVISION OF CRIMINAL JUSTICE SERVICES SHALL DOCUMENT SUCH RESULT ON AN
18 EMPLOYMENT CERTIFICATE. IF THE BACKGROUND CHECK RESULTS IN A "DELAYED"
19 RESPONSE AS DESCRIBED IN 28 C.F.R. S 25.6, THE DIVISION OF CRIMINAL
20 JUSTICE SERVICES SHALL NOT CERTIFY THE APPLICANT FOR EMPLOYMENT PENDING
21 RECEIPT OF A FOLLOW-UP "PROCEED" RESPONSE FROM THE NATIONAL INSTANT
22 CRIMINAL BACKGROUND CHECK SYSTEM.

23 (E) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ISSUE TO QUALIFY-
24 ING EMPLOYEES AN EMPLOYMENT CERTIFICATE, WHICH SHALL CERTIFY THAT THE
25 HOLDER OF SUCH CERTIFICATE IS ELIGIBLE TO HANDLE, SELL, OR OTHERWISE
26 DISPOSE OF FIREARMS OR WEAPONS ON BEHALF OF THE GUNSMITH OR DEALER IN
27 FIREARMS. SUCH CERTIFICATE SHALL BECOME INVALID UPON THE TERMINATION OF
28 THE EMPLOYEE'S EMPLOYMENT. SUCH CERTIFICATE SHALL HAVE THE EFFECT OF
29 AUTHORIZING SUCH EMPLOYEE TO HANDLE, SELL, OR OTHERWISE DISPOSE OF THOSE
30 FIREARMS THAT ARE LAWFULLY POSSESSED, SOLD OR DISPOSED OF BY THE
31 GUNSMITH OR DEALER IN FIREARMS ONLY WHILE SUCH EMPLOYEE IS ACTUALLY
32 CONDUCTING BUSINESS ON BEHALF OF THE GUNSMITH OR DEALER IN FIREARMS
33 NOTWITHSTANDING THE FACT THAT SUCH WEAPONS MAY NOT BE THE TYPE THE
34 EMPLOYEE WOULD OTHERWISE BE LICENSED OR AUTHORIZED TO POSSESS UNDER NEW
35 YORK LAW. WHEN AN EMPLOYEE IS CONDUCTING BUSINESS ON BEHALF OF A
36 GUNSMITH OR DEALER IN FIREARMS AT ANY LOCATION OTHER THAN THE PREMISES
37 WHERE SUCH EMPLOYEE WORKS, THE EMPLOYEE SHALL HAVE IN HIS OR HER
38 POSSESSION A COPY OF HIS OR HER EMPLOYMENT CERTIFICATE OR VALID LICENSE
39 ISSUED UNDER THE PROVISIONS OF THIS SECTION OR SECTION 400.01 OF THIS
40 ARTICLE OR DOCUMENTATION OF THE EMPLOYEE'S EXEMPTION BASED ON PRIOR
41 EMPLOYMENT. COPIES OF SUCH CERTIFICATES OR LICENSES OR DOCUMENTATION OF
42 EXEMPTION SHALL BE MAINTAINED BY THE GUNSMITH OR DEALER IN FIREARMS ON
43 THE PREMISES WHERE SUCH EMPLOYEE WORKS. ALL CERTIFICATES, LICENSES,
44 DOCUMENTATION AND COPIES REFERRED TO IN THIS PARAGRAPH SHALL BE PRODUCED
45 UPON REQUEST BY ANY POLICE OFFICER OR PEACE OFFICER ACTING PURSUANT TO
46 HIS OR HER SPECIAL DUTIES.

47 (F) FOR THE PURPOSE OF THIS SUBDIVISION, THE TERM HANDLING SHALL NOT
48 INCLUDE MOVING OR CARRYING, IN THE NORMAL COURSE OF BUSINESS, A SECURED
49 CRATE OR CONTAINER THAT CONTAINS A FIREARM OR FIREARMS, FROM ONE
50 LOCATION TO ANOTHER WITHIN THE PREMISES OF A GUNSMITH OR DEALER IN
51 FIREARMS.

52 (G) ANY EMPLOYMENT IN VIOLATION OF THIS SUBDIVISION SHALL CONSTITUTE A
53 VIOLATION ON THE PART OF BOTH THE EMPLOYEE AND THE GUNSMITH OR DEALER IN
54 FIREARMS.

55 S 2. This act shall take effect on the ninetieth day after it shall
56 have become a law.