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

575

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. GIANARIS, ADAMS, ADDABBO, BRESLIN, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, PERKINS, RIVERA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to universal background checks for sales of firearms

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

Section 1. The general business law is amended by adding a new article 38-B to read as follows:

ARTICLE 38-B

UNIVERSAL BACKGROUND CHECKS FOR SALE OF FIREARMS

SECTION 830. SHORT TITLE.
831. DEFINITIONS.
832. ALL SALES THROUGH A DEALER IN FIREARMS.
833. EXEMPTIONS.
834. PENALTIES.

S 830. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "UNIVERSAL BACKGROUND CHECKS FOR SALE OF FIREARMS ACT".

S 831. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. "DEALER IN FIREARMS" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION NINE OF SECTION 265.00 OF THE PENAL LAW.

2. "FIREARM" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION THREE OF SECTION 265.00 OF THE PENAL LAW.

3. "LAW ENFORCEMENT AGENCY" MEANS ANY AGENCY OF THE FEDERAL OR STATE GOVERNMENT, OR OF A MUNICIPALITY OR PUBLIC AUTHORITY WHICH EMPLOYS POLICE OFFICERS.

S 832. ALL SALES THROUGH A DEALER IN FIREARMS. NO PERSON SHALL SELL, LEASE, TRANSFER OR LOAN A FIREARM UNLESS:

1. SUCH PERSON IS A DEALER IN FIREARMS;

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

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2. THE PURCHASER, LESSEE, TRANSFEREE OR PERSON BEING LOANED THE FIREARM IS A DEALER IN FIREARMS; OR

3. WHERE NEITHER SUCH PERSON, NOR THE PURCHASER, LESSEE, TRANSFEREE OR PERSON BEING LOANED THE FIREARM IS A DEALER IN FIREARMS, THE TRANSACTION SHALL BE COMPLETED THROUGH A DEALER IN FIREARMS AS FOLLOWS:

(A) THE SELLER, LESSOR, TRANSFEROR OR THE PERSON LOANING THE FIREARM SHALL DELIVER THE FIREARM TO THE DEALER IN FIREARMS, WHO SHALL RETAIN POSSESSION OF THAT FIREARM UNTIL ALL LEGAL REQUIREMENTS FOR THE SALE, LEASE, TRANSFER OR LOAN HAVE BEEN MET;

(B) THE DEALER IN FIREARMS SHALL PROCESS THE SALE, LEASE, TRANSFER OR LOAN AS IF HE OR SHE WERE THE SELLER, LESSOR, TRANSFEROR OR LENDER OF THE FIREARM. THE DEALER IN FIREARMS SHALL COMPLY WITH ALL REQUIREMENTS OF FEDERAL, STATE AND LOCAL LAW THAT WOULD APPLY IF HE OR SHE WERE THE SELLER, LESSOR, TRANSFEROR OR LENDER OF THE FIREARM;

(C) THE DEALER IN FIREARMS SHALL CONDUCT A BACKGROUND CHECK ON THE PURCHASER, LESSEE, TRANSFEREE OR THE PERSON BEING LOANED THE FIREARM, IN ACCORDANCE WITH SECTION 922(T) OF TITLE 18 OF THE UNITED STATES CODE, AND STATE AND LOCAL LAW, AND, IF THE TRANSACTION IS NOT PROHIBITED, DELIVER THE FIREARM TO THAT PERSON AFTER ALL LEGAL REQUIREMENTS ARE MET;

(D) IF THE DEALER IN FIREARMS CANNOT LEGALLY DELIVER THE FIREARM TO THE PURCHASER, LESSEE, TRANSFEREE OR THE PERSON BEING LOANED THE FIREARM THE DEALER IN FIREARMS SHALL CONDUCT A BACKGROUND CHECK ON THE SELLER, LESSOR, TRANSFEROR OR THE PERSON LOANING THE FIREARM IN ACCORDANCE WITH SECTION 922(T) OF TITLE 18 OF THE UNITED STATES CODE, AND STATE AND LOCAL LAW, AND, IF THE RETURN TRANSACTION IS NOT PROHIBITED, RETURN THE FIREARM TO THAT PERSON;

(E) IF THE DEALER IN FIREARMS CANNOT LEGALLY RETURN THE FIREARM TO THE SELLER, LESSOR, TRANSFEROR OR THE PERSON LOANING THE FIREARM, THEN THE DEALER IN FIREARMS SHALL DELIVER THE FIREARM TO A LAW ENFORCEMENT AGENCY HAVING JURISDICTION OVER SUCH DEALER WITHIN TWENTY-FOUR HOURS; AND

(F) THE PURCHASER, LESSEE, TRANSFEREE OR THE PERSON BEING LOANED THE FIREARM MAY BE REQUIRED BY THE DEALER IN FIREARMS TO PAY A FEE COVERING THE ADMINISTRATIVE COSTS INCURRED BY THE DEALER IN FIREARMS FOR FACILITATING THE TRANSFER OF THE FIREARM, PLUS APPLICABLE FEES PURSUANT TO FEDERAL, STATE AND LOCAL LAW.

S 833. EXEMPTIONS. THE PROVISIONS OF SECTION EIGHT HUNDRED THIRTY-TWO OF THIS ARTICLE SHALL NOT APPLY TO:

1. THE ACTIVITIES OF:

(A) LAW ENFORCEMENT AND CORRECTIONS SERVICES AGENCIES;

(B) THE UNITED STATES MARSHALS, MEMBERS OF THE ARMED FORCES OF UNITED STATES OR THE ORGANIZED MILITIA OF THE STATE, OR FEDERAL OFFICERS OR EMPLOYEES REQUIRED TO POSSESS FIREARMS WHILE ENGAGED IN THEIR OFFICIAL DUTIES; AND

(C) PERSONS WHO ARE SUBJECT TO THE PROVISIONS OF ARTICLE THIRTY-NINE-DD OF THIS CHAPTER; OR

2. THE FOLLOWING ACTIVITIES, UNLESS THE LAWFUL OWNER OF A FIREARM KNOWS OR HAS REASON TO BELIEVE THAT FEDERAL, STATE OR LOCAL LAW PROHIBITS A TRANSFEREE FROM PURCHASING OR POSSESSING A FIREARM, OR THAT THE TRANSFEREE IS LIKELY TO USE THAT FIREARM FOR UNLAWFUL PURPOSES:

(A) THE DELIVERY OF A FIREARM TO A GUNSMITH FOR SERVICE OR REPAIR, OR THE RETURN OF THE FIREARM TO ITS OWNER BY THE GUNSMITH;

(B) THE TRANSFER OF A FIREARM TO A CARRIER, WAREHOUSEMAN AND OTHER PERSON ENGAGED IN THE BUSINESS OF TRANSPORTATION OR STORAGE, TO THE EXTENT THAT THE POSSESSION, RECEIPT OR HAVING ON OR ABOUT THE PERSON OF ANY FIREARM IS IN THE ORDINARY COURSE OF BUSINESS AND IN CONFORMITY WITH

FEDERAL, STATE AND LOCAL LAWS, BUT NOT FOR THE PERSONAL USE OF ANY SUCH PERSON;

(C) THE LOAN OF A FIREARM SOLELY FOR THE PURPOSE OF SHOOTING AT TARGETS, IF THE LOAN OCCURS ON THE PREMISES OF A TARGET FACILITY, IF THE FIREARM IS AT ALL TIMES KEPT WITHIN THE PREMISES OF THE TARGET RANGE;

(D) THE LOAN OF A FIREARM TO A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE FOR LAWFUL HUNTING, SPORTING OR EDUCATIONAL PURPOSES WHILE UNDER THE DIRECT SUPERVISION AND CONTROL OF A RESPONSIBLE ADULT; OR

(E) THE LOAN OF A FIREARM TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER, SO LONG AS THE FIREARM REMAINS IN THE PERSON'S POSSESSION ONLY WHILE THE PERSON IS ACCOMPANYING THE LAWFUL OWNER AND USING THE FIREARM FOR LAWFUL HUNTING, SPORTING OR RECREATIONAL PURPOSES.

S 834. PENALTIES. 1. ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

2. EVERY CONVICTION OF A VIOLATION OF THIS ARTICLE BY A DEALER IN FIREARMS SHALL BE REPORTED BY THE SENTENCING COURT TO THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES.

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