

2318--D

2013-2014 Regular Sessions

I N A S S E M B L Y

January 14, 2013

Introduced by M. of A. GUNTHER, SCHIMMINGER, WALTER, TEDISCO, BRINDISI, COOK, RIVERA, COLTON, GALEF, SCHIMEL, JAFFEE, SKOUFIS, FAHY, MORELLE, STIRPE, HENNESSEY, ZEBROWSKI, MAGEE, ROBERTS, MOSLEY, P. LOPEZ, McDONOUGH, TENNEY, SANTABARBARA, CLARK, BUTLER, RUSSELL -- Multi-Sponsored by -- M. of A. ABINANTI, BARCLAY, BARRETT, BLANKENBUSH, BROOK-KRASNY, BUCHWALD, CAMARA, CROUCH, DUPREY, FRIEND, GIGLIO, GJONAJ, GOODELL, GRAF, HAWLEY, McDONALD, McKEVITT, McLAUGHLIN, PAULIN, RAMOS, SEPULVEDA, SIMANOWITZ, SKARTADOS, STEC, SWEENEY, THIELE, WEISENBERG -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the executive law, the town law, the village law and the not-for-profit corporation law, in relation to qualifications to serve as a volunteer firefighter

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

1 Section 1. Section 837-o of the executive law, as added by chapter 423
2 of the laws of 1999, subdivision 2 and paragraph (b) of subdivision 3 as
3 amended by section 41 of part B of chapter 56 of the laws of 2010, is
4 amended to read as follows:

5 S 837-o. Search for arson AND SEX OFFENSE conviction records of volun-
6 teer firefighter applicants. 1. Any person who applies for membership in
7 a fire company, as such term is defined in section three of the volun-

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

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1 teer firefighters' benefit law, or who seeks to transfer as a member to
2 another fire company, shall be required to authorize the submission of
3 his or her name and other authorized identifying information to the
4 division which shall search its files for records indicating whether the
5 person stands convicted of the crime of arson OR A CRIME WHICH REQUIRES
6 THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE
7 CORRECTION LAW. The chief of the fire company to which application is
8 made shall provide written notice to the applicant that a search will be
9 conducted, and if the applicant desires to proceed, he or she shall
10 complete a search request on the form provided for this purpose by the
11 division of criminal justice services.

12 2. Within ten business days of receipt from the applicant, the chief
13 of the fire company shall send the completed search request form to
14 either (i) the sheriff's department of the county in which the fire
15 company is located, or (ii) the office of fire prevention and control,
16 as follows:

17 (a) the sheriff's department of the county in which the fire company
18 is located shall be responsible for receiving the search requests and
19 processing the search requests with the division within ten business
20 days of receipt from the chief of the fire company, unless the county
21 legislative body adopts and files with the office of fire prevention and
22 control pursuant to the municipal home rule law a local law providing
23 that the sheriff's department shall not have such responsibility;

24 (b) in all other instances where a county legislative body has adopted
25 a local law pursuant to paragraph (a) of this subdivision, the office of
26 fire prevention and control shall be responsible for receiving search
27 requests and forwarding the search requests to the division.
28 The office of fire prevention and control is hereby authorized to estab-
29 lish a communication network with the division for the purpose of
30 forwarding search requests and receiving search results pursuant to
31 paragraph (b) of this subdivision.

32 3. (a) All searches concerning the application for membership in a
33 fire company shall be conducted under the provisions of subdivision six
34 of section eight hundred thirty-seven of this article without the
35 assessment of any fee to the applicant or fire company and shall pertain
36 solely to ascertaining whether the applicant stands convicted of arson
37 OR A CRIME WHICH REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER
38 ARTICLE SIX-C OF THE CORRECTION LAW.

39 (b) The results of the search shall be communicated in writing, within
40 ten business days of receipt from the division, to the chief of the fire
41 company from which the search request originated by either the sheriff's
42 department or the office of fire prevention and control, and shall be
43 kept confidential by the chief, except as provided in paragraph (c) of
44 this subdivision. The results of the search shall only state either
45 that: (i) the applicant stands convicted of arson AND/OR A CRIME WHICH
46 REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF
47 THE CORRECTION LAW, or (ii) the applicant has no record of conviction
48 for arson OR A CRIME WHICH REQUIRES THE PERSON TO REGISTER AS A SEX
49 OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW. The results of the
50 search shall not divulge any other information relating to the criminal
51 history of the applicant.

52 (c) At the time an applicant is advised that he or she is ineligible
53 for membership due to a record of conviction for arson, he or she shall
54 also be advised of the rights to challenge and appeal the information
55 contained in the record of conviction as provided in the rules and regu-
56 lations of the division. The applicant shall continue to be barred from

1 membership until all administrative and judicial challenges to the accu-
2 racy of such information or appeals therefrom, are ultimately resolved
3 in his or her favor, or if such a determination is unchallenged.

4 (D) IF A PERSON IS DENIED ELECTION OR APPOINTMENT AS A VOLUNTEER
5 MEMBER OF A FIRE COMPANY BASED IN WHOLE OR IN PART ON THE FACT THAT HE
6 OR SHE STANDS CONVICTED OF A CRIME WHICH REQUIRES THE PERSON TO REGISTER
7 AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW, HE OR SHE
8 SHALL BE ADVISED BY THE FIRE COMPANY OF THE RIGHTS TO CHALLENGE AND
9 APPEAL THE INFORMATION CONTAINED IN THE RECORD OF CONVICTION AS PROVIDED
10 IN THE RULES AND REGULATIONS OF THE DIVISION, AND PROVIDED BY THE FIRE
11 COMPANY WITH A COPY OF THE CRIMINAL HISTORY RECORD RECEIVED BY THE FIRE
12 COMPANY AND WITH A COPY OF SECTIONS SEVEN HUNDRED FIFTY-TWO AND SEVEN
13 HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

14 S 2. Subdivision 17 of section 176-b of the town law, as added by
15 chapter 423 of the laws of 1999, is amended to read as follows:

16 17. Upon application by any person for membership in a fire company
17 operating pursuant to this section, the fire chief shall cause the
18 applicant's background to be checked pursuant to section eight hundred
19 thirty-seven-o of the executive law for a criminal history involving a
20 conviction for arson AND CONVICTION OF A CRIME WHICH REQUIRES THE PERSON
21 TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW.
22 WHERE SUCH CRIMINAL HISTORY INFORMATION INCLUDES CONVICTION OF A CRIME
23 WHICH REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE
24 SIX-C OF THE CORRECTION LAW, A FIRE COMPANY SHALL DETERMINE WHETHER OR
25 NOT SUCH PERSON SHALL BE ELIGIBLE TO BE ELECTED OR APPOINTED AS A VOLUN-
26 TEER MEMBER OF SUCH FIRE COMPANY. SUCH DETERMINATION SHALL BE MADE IN
27 ACCORDANCE WITH THE CRITERIA ESTABLISHED IN SECTIONS SEVEN HUNDRED
28 FIFTY-TWO AND SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

29 S 3. Subdivision 19 of section 10-1006 of the village law, as added by
30 chapter 423 of the laws of 1999, is amended to read as follows:

31 19. Upon application by any person for membership in a fire company
32 operating pursuant to this section, the fire chief shall cause the
33 applicant's background to be checked pursuant to section eight hundred
34 thirty-seven-o of the executive law for a criminal history involving a
35 conviction for arson AND CONVICTION OF A CRIME WHICH REQUIRES THE PERSON
36 TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW.
37 WHERE SUCH CRIMINAL HISTORY INFORMATION INCLUDES CONVICTION OF A CRIME
38 WHICH REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE
39 SIX-C OF THE CORRECTION LAW, A FIRE COMPANY SHALL DETERMINE WHETHER OR
40 NOT SUCH PERSON SHALL BE ELIGIBLE TO BE ELECTED OR APPOINTED AS A VOLUN-
41 TEER MEMBER OF SUCH FIRE COMPANY. SUCH DETERMINATION SHALL BE MADE IN
42 ACCORDANCE WITH THE CRITERIA ESTABLISHED IN SECTIONS SEVEN HUNDRED
43 FIFTY-TWO AND SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW.

44 S 4. Subparagraph 5 of paragraph (c) of section 1402 of the not-for-
45 profit corporation law, as added by chapter 423 of the laws of 1999, is
46 amended to read as follows:

47 (5) Upon application by any person for membership in a fire corpo-
48 ration operating pursuant to this section, the fire chief shall cause
49 the applicant's background to be checked pursuant to section eight
50 hundred thirty-seven-o of the executive law for a criminal history
51 involving a conviction for arson AND CONVICTION OF A CRIME WHICH
52 REQUIRES THE PERSON TO REGISTER AS A SEX OFFENDER UNDER ARTICLE SIX-C OF
53 THE CORRECTION LAW. WHERE SUCH CRIMINAL HISTORY INFORMATION INCLUDES
54 CONVICTION OF A CRIME WHICH REQUIRES THE PERSON TO REGISTER AS A SEX
55 OFFENDER UNDER ARTICLE SIX-C OF THE CORRECTION LAW, A FIRE COMPANY SHALL
56 DETERMINE WHETHER OR NOT SUCH PERSON SHALL BE ELIGIBLE TO BE ELECTED OR

1 APPOINTED AS A VOLUNTEER MEMBER OF SUCH FIRE COMPANY. SUCH DETERMINATION
2 SHALL BE MADE IN ACCORDANCE WITH THE CRITERIA ESTABLISHED IN SECTIONS
3 SEVEN HUNDRED FIFTY-TWO AND SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION
4 LAW.

5 S 5. This act shall take effect on the one hundred twentieth day after
6 it shall have become a law.