

573--A

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sens. GIANARIS, AVELLA, BRESLIN, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, PERKINS, RIVERA, SERRANO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to requiring persons possessing a firearm to hold a firearms safety certificate

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

1     Section 1. Subdivisions 6, 7 and 8 of section 265.01 of the penal law,  
2     as amended by chapter 1 of the laws of 2013, are amended and a new  
3     subdivision 9 is added to read as follows:  
4     (6) He OR SHE is a person who has been certified not suitable to  
5     possess a rifle or shotgun, as defined in subdivision sixteen of section  
6     265.00 OF THIS ARTICLE, and refuses to yield possession of such rifle or  
7     shotgun upon the demand of a police officer. Whenever a person is certi-  
8     fied not suitable to possess a rifle or shotgun, a member of the police  
9     department to which such certification is made, or of the state police,  
10    shall forthwith seize any rifle or shotgun possessed by such person. A  
11    rifle or shotgun seized as [herein] provided IN THIS SUBDIVISION shall  
12    not be destroyed, but shall be delivered to the headquarters of such  
13    police department, or state police, and there retained until the afore-  
14    said certificate has been rescinded by the director or physician in  
15    charge, or other disposition of such rifle or shotgun has been ordered  
16    or authorized by a court of competent jurisdiction[.]; OR  
17    (7) He OR SHE knowingly possesses a bullet containing an explosive  
18    substance designed to detonate upon impact[.]; OR  
19    (8) He OR SHE possesses any armor piercing ammunition with intent to  
20    use the same unlawfully against another[.]; OR  
21    (9) HE OR SHE POSSESSES A FIREARM, NOT BEING THE HOLDER OF A VALID  
22    FIREARMS SAFETY CERTIFICATE ISSUED PURSUANT TO SECTION 400.15 OF THIS  
23    CHAPTER.

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

LBD01831-02-4

1 S 2. The penal law is amended by adding a new section 400.15 to read  
2 as follows:

3 S 400.15 FIREARMS SAFETY CERTIFICATE.

4 1. FOR THE PURPOSES OF THIS SECTION:

5 (A) "COMMISSIONER" MEANS THE COMMISSIONER OF THE POLICE DEPARTMENT OF  
6 A CITY HAVING A POPULATION OF ONE MILLION OR MORE.

7 (B) "SHERIFF" MEANS THE SHERIFF OF THE COUNTY IN WHICH AN APPLICANT  
8 RESIDES, EXCEPT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE.

9 2. NO PERSON SHALL POSSESS A FIREARM UNLESS SUCH PERSON HOLDS A  
10 FIREARMS SAFETY CERTIFICATE ISSUED PURSUANT TO THIS SECTION.

11 3. EVERY PERSON APPLYING FOR A FIREARMS SAFETY CERTIFICATE SHALL  
12 SUBMIT AN APPLICATION TO THE SHERIFF OR THE COMMISSIONER IF SUCH PERSON  
13 RESIDES IN A CITY WITH A POPULATION OF ONE MILLION OR MORE. SUCH APPLI-  
14 CATION SHALL BE IN SUCH FORM AND CONTENT AS SHALL BE ESTABLISHED BY THE  
15 SHERIFF OR THE COMMISSIONER, AND SHALL INCLUDE:

16 (A) THE APPLICANT'S NAME, ADDRESS, RESIDENCE TELEPHONE NUMBER, GENDER,  
17 RACE, HEIGHT, WEIGHT, DATE OF BIRTH, CITIZENSHIP, THUMBPRINT AND DRIV-  
18 ER'S LICENSE OR NON-DRIVER IDENTIFICATION CARD NUMBER;

19 (B) THE APPLICANT'S SIGNATURE; AND

20 (C) AN OATH THAT ALL INFORMATION IN THE APPLICATION IS TRUE, SUBJECT  
21 TO THE PENALTIES OF PERJURY.

22 4. THE COURSE OF INSTRUCTION FOR THE ISSUANCE OF A FIREARMS SAFETY  
23 CERTIFICATE SHALL INCLUDE THE SUCCESSFUL COMPLETION BY THE APPLICANT OF:

24 (A) NOT LESS THAN FIVE HOURS OF CLASSROOM INSTRUCTION ON:

25 (I) THE SAFE USE AND HANDLING OF FIREARMS;

26 (II) THE METHODS FOR SAFELY STORING AND SECURING FIREARMS, AND KEEPING  
27 CHILDREN SAFE WHEN SUCH WEAPONS ARE PRESENT; AND

28 (III) THE APPLICABLE FEDERAL, STATE AND LOCAL LAWS RELATING TO THE  
29 PURCHASE, SALE, POSSESSION, TRANSPORTATION AND STORAGE OF FIREARMS;

30 (B) NOT LESS THAN TWO HOURS OF LIVE FIRING INSTRUCTION AT A SHOOTING  
31 RANGE USING THE TYPE OF FIREARM THE APPLICANT ANTICIPATES PURCHASING,  
32 POSSESSING OR ACQUIRING; AND

33 (C) A SAFE-HANDLING OF A FIREARM DEMONSTRATION AS ATTESTED TO BY A  
34 DULY AUTHORIZED INSTRUCTOR.

35 5. EVERY FIREARMS SAFETY COURSE, FOR THE COMPLETION OF WHICH AN APPLI-  
36 CANT IS GRANTED A FIREARMS SAFETY CERTIFICATE, SHALL BE APPROVED BY THE  
37 SHERIFF OR THE COMMISSIONER AND SHALL BE CONDUCTED BY A DULY AUTHORIZED  
38 INSTRUCTOR. THE SHERIFF OR THE COMMISSIONER MAY, FOR THE PURPOSES OF  
39 FIREARMS SAFETY COURSES REQUIRED BY THIS SECTION, PROVIDE FOR THE  
40 APPROVAL OF FIREARM SAFETY COURSES REQUIRED OR PROVIDED FOR PURSUANT TO  
41 ANY FEDERAL OR STATE LAW.

42 6. UPON THE SUCCESSFUL COMPLETION OF A FIREARMS SAFETY COURSE BY AN  
43 APPLICANT, THE DULY AUTHORIZED INSTRUCTOR OF SUCH COURSE SHALL PROVIDE  
44 THE APPLICANT WITH A SIGNED AFFIDAVIT ATTESTING TO THE APPLICANT'S  
45 SUCCESSFUL COMPLETION OF THE COURSE. SUCH AFFIDAVIT SHALL INCLUDE THE  
46 NAME, ADDRESS AND TELEPHONE NUMBER OF THE DULY AUTHORIZED INSTRUCTOR;  
47 THE NAME OF THE APPLICANT; AND THE DATES AND PLACES THAT THE COURSE WAS  
48 CONDUCTED.

49 7. UPON RECEIPT OF THE AFFIDAVIT REQUIRED BY SUBDIVISION SIX OF THIS  
50 SECTION, THE APPLICANT SHALL SUBMIT A COPY OF SUCH AFFIDAVIT TO THE  
51 SHERIFF OR THE COMMISSIONER AND HE OR SHE SHALL ADMINISTER A WRITTEN  
52 EXAMINATION, ESTABLISHED BY HIM OR HER, DEMONSTRATING KNOWLEDGE OF  
53 FIREARMS SAFETY AND LAWS APPLICABLE TO FIREARMS.

54 (A) A FIREARMS SAFETY CERTIFICATE SHALL BE ISSUED TO AN APPLICANT WHO  
55 SCORES SEVENTY-FIVE PERCENT OR HIGHER ON SUCH EXAMINATION.

(B) IF AN APPLICANT FAILS SUCH WRITTEN EXAMINATION, HE OR SHE MAY RETAKE SUCH EXAMINATION AT LEAST TWENTY-FOUR HOURS AFTER A PRIOR ATTEMPT. THE SAME VERSION OF SUCH WRITTEN EXAMINATION SHALL NOT BE GIVEN TO AN APPLICANT UPON ANY TWO CONSECUTIVE TAKINGS THEREOF. NO APPLICANT SHALL BE OFFERED THE WRITTEN EXAMINATION MORE THAN THREE TIMES. AFTER THE THIRD FAILURE BY AN APPLICANT, HE OR SHE SHALL BE REQUIRED TO AGAIN SUCCESSFULLY COMPLETE THE REQUIREMENTS OF SUBDIVISIONS FOUR AND SIX OF THIS SECTION.

(C) APPLICANTS MAY BE CHARGED A FEE TO COVER THE COSTS OF ADMINISTERING THE WRITTEN EXAMINATION.

8. UPON SUCCESSFUL COMPLETION OF THE REQUIREMENTS OF SUBDIVISION SEVEN OF THIS SECTION BY AN APPLICANT, THE SHERIFF OR THE COMMISSIONER SHALL ISSUE SUCH APPLICANT A FIREARMS SAFETY CERTIFICATE. FIREARMS SAFETY CERTIFICATES SHALL NOT BE TRANSFERABLE. THE HOLDER THEREOF SHALL STORE SUCH CERTIFICATE IN THE PLACE WHERE HIS OR HER FIREARMS ARE STORED, EXCEPT THAT SUCH CERTIFICATE SHALL BE CARRIED ON THE PERSON OF THE HOLDER IF A FIREARM IS POSSESSED OUTSIDE OF THE HOLDER'S RESIDENCE OR PLACE OF BUSINESS. UPON REQUEST OF A POLICE OFFICER, A FIREARMS SAFETY CERTIFICATE SHALL BE DISPLAYED BY THE HOLDER TO SUCH OFFICER.

9. EVERY FIREARMS SAFETY CERTIFICATE ISSUED PURSUANT TO THIS SECTION SHALL BE VALID FOR A PERIOD OF TWO YEARS, AND MAY BE RENEWED UPON COMPLETION OF THE REQUIREMENTS OF THIS SECTION.

10. NO PERSON SHALL SELL OR TRANSFER POSSESSION OF A FIREARM TO ANY PERSON WHO DOES NOT HOLD A FIREARMS SAFETY CERTIFICATE.

11. A FIREARMS SAFETY CERTIFICATE SHALL BE REVOKED:

(A) FOR THE VIOLATION OF ANY PROVISION OF LAW RELATING TO FIREARMS;

(B) FOR FRAUD, MISREPRESENTATION OR BRIBERY IN THE APPLICATION FOR AND ISSUANCE OF THE FIREARMS SAFETY CERTIFICATE;

(C) IF THE HOLDER IS DISQUALIFIED FROM POSSESSING A FIREARM; OR

(D) THE OCCURRENCE OF ANY CIRCUMSTANCE WHICH WOULD HAVE DISQUALIFIED THE HOLDER FROM BEING ISSUED A FIREARMS SAFETY CERTIFICATE.

12. THIS SECTION SHALL NOT APPLY TO:

(A) POLICE OFFICERS AS DEFINED IN SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, OR RETIRED POLICE OFFICER, WHO UPON SEPARATION FROM A LAW ENFORCEMENT AGENCY WAS IMMEDIATELY ENTITLED TO RECEIVE RETIREMENT BENEFITS PURSUANT TO THE RETIREMENT AND SOCIAL SECURITY LAW OR THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK;

(B) PEACE OFFICERS AS DEFINED IN SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW;

(C) LICENSED MANUFACTURERS, TRANSPORTERS AND SELLERS OF FIREARMS WHO POSSESS SUCH WEAPONS FOR PURPOSES OF WHOLESALE OR RETAIL SALES, WHILE ENGAGED IN THE SCOPE OF THEIR LICENSED ACTIVITIES;

(D) NONRESIDENTS OF THE STATE PARTICIPATING IN ANY LAWFUL RECREATIONAL FIREARMS RELATED ACTIVITY, AND WHILE IN THE COURSE OF TRAVELING TO AND FROM SUCH RECREATION ACTIVITY; OR

(E) ANY PERSON WHO TEMPORARILY POSSESSES A FIREARM IN THE RESIDENCE OR PLACE OF BUSINESS OF THE HOLDER OF A FIREARMS SAFETY CERTIFICATE, AND SUCH POSSESSION OCCURS IN THE COURSE OF USING DEADLY PHYSICAL FORCE AUTHORIZED BY ARTICLE THIRTY-FIVE OF THIS CHAPTER.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that the provisions of subdivision 9 of section 265.01 of the penal law, as added by section one of this act, and subdivision 2 of section 400.15 of the penal law, as added by section two of this act, shall not apply to any person who possesses a firearm on the effective date of this act, until the ninetieth day after such date.