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I N   A S S E M B L Y

May 25, 2016

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Introduced by M. of A. DiPIETRO -- 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:

1     Section 1. Subdivision 4 of section 400.00 of the penal law, as  
2 amended by chapter 1 of the laws of 2013, is amended to read as follows:  
3     4. Investigation. Before a license is issued or renewed, there shall  
4 be an investigation of all statements required in the application by the  
5 duly constituted police authorities of the locality where such applica-  
6 tion is made, including but not limited to such records as may be acces-  
7 sible to the division of state police or division of criminal justice  
8 services pursuant to section 400.02 of this article. For that purpose,  
9 the records of the appropriate office of the department of mental  
10 hygiene concerning previous or present mental illness of the applicant  
11 shall be available for inspection by the investigating officer of the  
12 police authority. In order to ascertain any previous criminal record,  
13 the investigating officer shall take the fingerprints and physical  
14 descriptive data in quadruplicate of each individual by whom the appli-  
15 cation is signed and verified. Two copies of such fingerprints shall be  
16 taken on standard fingerprint cards eight inches square, and one copy  
17 may be taken on a card supplied for that purpose by the federal bureau  
18 of investigation; provided, however, that in the case of a corporate  
19 applicant that has already been issued a dealer in firearms license and  
20 seeks to operate a firearm dealership at a second or subsequent  
21 location, the original fingerprints on file may be used to ascertain any  
22 criminal record in the second or subsequent application unless any of  
23 the corporate officers have changed since the prior application, in  
24 which case the new corporate officer shall comply with procedures  
25 governing an initial application for such license. When completed, one  
26 standard card shall be forwarded to and retained by the division of  
27 criminal justice services in the executive department, at Albany. A

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

LBD02102-01-5

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

27 S 2. Section 400.02 of the penal law, as added by chapter 1 of the  
28 laws of 2013, is amended to read as follows:

29 S 400.02 Statewide license and record database.

30 1. There shall be a statewide license and record database which shall  
31 be created and maintained by the division of state police the cost of  
32 which shall not be borne by any municipality. Records assembled or  
33 collected for purposes of inclusion in such database shall not be  
34 subject to disclosure pursuant to article six of the public officers  
35 law. Records containing granted license applications shall be period-  
36 ically checked by the division of criminal justice services against  
37 criminal conviction, mental health, and all other records as are neces-  
38 sary to determine their continued accuracy as well as whether an indi-  
39 vidual is no longer a valid license holder. The division of criminal  
40 justice services shall also check pending applications made pursuant to  
41 this article against such records to determine whether a license may be  
42 granted. All state agencies shall cooperate with the division of crimi-  
43 nal justice services, as otherwise authorized by law, in making their  
44 records available for such checks. The division of criminal justice  
45 services, upon determining that an individual is ineligible to possess a  
46 license, or is no longer a valid license holder, shall notify the appli-  
47 cable licensing official of such determination and such licensing offi-  
48 cial shall not issue a license or revoke such license and any weapons  
49 owned or possessed by such individual shall be removed consistent with  
50 the provisions of subdivision eleven of section 400.00 of this article.  
51 Local and state law enforcement shall have access to such database, as  
52 otherwise authorized by law, in the performance of their duties. Records  
53 assembled or collected for purposes of inclusion in the database estab-  
54 lished by this section shall be released pursuant to a court order.

55 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY NEITHER  
56 THE STATE POLICE, THE DIVISION OF CRIMINAL JUSTICE SERVICES, NOR ANY

1 OTHER LAW ENFORCEMENT AGENCY OR EMPLOYEE THEREOF SHALL BE PERMITTED TO  
2 ACCESS PERSONAL MEDICAL RECORDS AND OTHER MEDICAL INFORMATION OTHER THAN  
3 RECORDS REQUIRED TO BE PROVIDED BY THE DEPARTMENT OF MENTAL HYGIENE  
4 WITHOUT A PROPERLY ISSUED WARRANT, OR THE EXPRESS WRITTEN, NOTARIZED  
5 PERMISSION OF THE INDIVIDUAL WHOSE INFORMATION IS SOUGHT.

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

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

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

23 S 4. This act shall take effect immediately.