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

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2015-2016 Regular Sessions

I N A S S E M B L Y

June 4, 2015

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to licenses to carry, possess, repair and dispose of firearms

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

Section 1. Paragraph (a) of subdivision 3, subdivision 4, paragraph (a) of subdivision 5 and subdivisions 7, 9, 10, 16-a and 16-b of section 400.00 of the penal law, paragraph (a) of subdivision 3, subdivision 4, paragraph (a) of subdivision 5 and subdivisions 9 and 10 as amended and subdivisions 16-a and 16-b as added by chapter 1 of the laws of 2013, paragraph (a-1) of subdivision 16-a as added by chapter 98 of the laws of 2013, are amended to read as follows:

(a) Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his or her principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he or she is a citizen of the United States, whether or not he or she complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the

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

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application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual composing or intending to compose the same, and for such corporation, by each officer thereof.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made, including but not limited to such records as may be accessible to the [division of state police or] division of criminal justice services pursuant to section 400.02 of this article. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

(a) The application for any license, if granted, shall be filed by the licensing officer with the clerk of the county of issuance, except that in the city of New York and, in the counties of Nassau and Suffolk, the licensing officer shall designate the place of filing in the appropriate division, bureau or unit of the police department thereof, and in the county of Suffolk the county clerk is hereby authorized to transfer all records or applications relating to firearms to the licensing authority of that county. Except as provided in paragraphs (b) through (f) of this subdivision, the name and address of any person to whom an application for any license has been granted shall be a public record. Upon application by a licensee who has changed his place of residence such records or applications shall be transferred to the appropriate officer at the licensee's new place of residence. A duplicate copy of such application shall be filed by the licensing officer in the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, Albany, within ten days after issuance of the license. The [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES may designate that such application shall be transmitted to the division of [state police] CRIMINAL JUSTICE SERVICES electronically. In the event the [superintendent of the division of state police] DIVISION OF CRIMINAL JUSTICE SERVICES determines that it lacks any of the records required to be filed with the division, it may request that such records be provided to it by the appropriate clerk, department or authority and such clerk, department or authority shall provide the division with such records. In the event such clerk, department or authority lacks such records, the division OF CRIMINAL JUSTICE SERVICES may request the license holder provide information sufficient to constitute such record and such license holder shall provide the division with such information. Such information shall be limited to the license holder's name, date of birth, gender, race, residential address, social security number and firearms possessed by said license holder. Nothing in this subdivision shall be construed to change the expiration date or term of such licenses if otherwise provided for in law. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this chapter shall not be subject to disclosure pursuant to article six of the public officers law.

7. License: form. Any license issued pursuant to this section shall, except in the city of New York, be approved as to form by the [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES. A license to carry or possess a pistol or revolver shall have attached the licensee's photograph, and a coupon which shall be removed and retained by any person disposing of a firearm to the licensee. Such license shall specify the weapon covered by calibre, make, model, manufacturer's name and serial number, or if none, by any other distinguishing number or identification mark, and shall indicate whether issued to carry on the person or possess on the premises, and if on the premises shall also specify the place where the licensee shall possess the same. If such license is issued to an alien, or to a person not a citizen of and usually a resident in the state, the licensing officer shall state in the license the particular reason for the issuance and the names of the persons certifying to the good character of the applicant. Any license as gunsmith or dealer in firearms shall mention and describe the premises for which it is issued and shall be valid only for such premises.

9. License: amendment. Elsewhere than in the city of New York, a person licensed to carry or possess a pistol or revolver may apply at any time to his or her licensing officer for amendment of his or her license to include one or more such weapons or to cancel weapons held under license. If granted, a record of the amendment describing the weapons involved shall be filed by the licensing officer in the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, Albany. The [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES may authorize that such amendment be completed and transmitted to the [state police] DIVISION in electronic form. Notification of any change of residence shall be made in writing by any licensee within ten days after such change occurs, and a record of such change shall be inscribed by such licensee on the reverse side of his or her license. Elsewhere than in the city of New York, and in the counties of Nassau and Suffolk, such notification shall be made to the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, Albany, and in the city of New York to the police commissioner of that city, and in the county of Nassau to the police commissioner of that county, and in the county of Suffolk to the licensing officer of that county, who shall, within ten days after such notification shall be received by him or her, give notice in writing of such change to the executive department, division of [state police] CRIMINAL JUSTICE SERVICES, at Albany.

10. License: expiration, certification and renewal. (a) Any license for gunsmith or dealer in firearms and, in the city of New York, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than three years after the date of issuance. In the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than five years after the date of issuance; however, in the county of Westchester, any such license shall be certified prior to the first day of April, two thousand, in accordance with a schedule to be contained in regulations promulgated by the commissioner of the division of criminal justice services, and every such license shall be recertified every five years thereafter. For purposes of this section certification shall mean that the licensee shall provide to the licensing officer the following information only: current name, date of birth, current address, and the make, model, caliber and serial number of all firearms currently possessed. Such certification information shall be filed by the licensing officer in the same manner as an amendment. Elsewhere than in the city of New York and the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two

hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and upon renewal thereafter only at six year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

(b) All licensees shall be recertified to the [division of state police] LICENSING OFFICER every five years thereafter. Any license issued before the effective date of [the] chapter ONE of the laws of two thousand thirteen [which added this paragraph] shall be recertified by the licensee on or before January thirty-first, two thousand eighteen, and not less than one year prior to such date, the [state police] DIVISION OF CRIMINAL JUSTICE SERVICES shall send a notice to all license holders who have not recertified by such time. [Such recertification shall be in a form as approved by the superintendent of state police, which shall request the license holder's name, date of birth, gender, race, residential address, social security number, firearms possessed by such license holder, email address at the option of the license holder and an affirmation that such license holder is not prohibited from possessing firearms.] RECERTIFICATION SHALL CONTAIN THE INFORMATION AND SHALL BE IN THE FORM SET FORTH HEREINBELOW:

RECERTIFICATION

1. NAME _____

2. DATE OF BIRTH _____

3. GENDER _____

4. RACE _____

5. RESIDENTIAL ADDRESS _____
_____
_____

6. SOCIAL SECURITY NUMBER _____

7. EMAIL ADDRESS (OPTIONAL) _____

8. LIST ALL FIREARMS POSSESSED ON LICENSE: _____
_____
_____
_____
_____

UPON RECEIPT OF THE COMPLETED RECERTIFICATION FORM, THE LICENSING OFFICER WILL COMPARE THE INFORMATION PROVIDED WITH THE INFORMATION MAINTAINED BY THE LICENSING OFFICER FOR SUCH LICENSE HOLDER, AND PROMPTLY NOTIFY THE LICENSE HOLDER OF ANY DISCREPANCIES THAT MAY EXIST, AND PROVIDE INSTRUCTION AS TO APPLYING FOR AN AMENDMENT PURSUANT TO SUBDIVISION NINE THIS SECTION. AFTER THE RESOLUTION OF ANY PENDING APPLICATIONS FOR AMENDMENTS, THE LICENSING OFFICER SHALL RETAIN A COPY OF THE RECERTIFICATION AND A COPY SHALL BE FILED BY THE LICENSING OFFICER IN THE EXECUTIVE DEPARTMENT, DIVISION OF CRIMINAL JUSTICE SERVICES, ALBANY,

WITHIN TEN DAYS. The form may be in an electronic form if so designated by the [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES. Failure to recertify shall act as a revocation of such license. If the [New York state police] DIVISION SHALL discover as a result of the recertification process that a licensee failed to provide a change of address, the [New York state police] DIVISION OF CRIMINAL JUSTICE SERVICES shall not require the licensing officer to revoke such license.

16-a. Registration. (a) An owner of a weapon defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this chapter, possessed before the date of the effective date of [the] chapter ONE of the laws of two thousand thirteen [which added this paragraph], must make an application to register such weapon with the [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES, in the manner provided by the [superintendent] DIVISION OF CRIMINAL JUSTICE SERVICES, or by amending a license issued pursuant to this section within one year of the effective date of this subdivision except any weapon defined under subparagraph (vi) of paragraph (g) of subdivision twenty-two of section 265.00 of this chapter transferred into the state may be registered at any time, provided such weapons are registered within thirty days of their transfer into the state. Registration information shall include the registrant's name, date of birth, gender, race, residential address, social security number and a description of each weapon being registered. A registration of any weapon defined under subparagraph (vi) of paragraph (g) of subdivision twenty-two of section 265.00 or a feeding device as defined under subdivision twenty-three of section 265.00 of this chapter shall be transferable, provided that the seller notifies the [state police] DIVISION OF CRIMINAL JUSTICE SERVICES within seventy-two hours of the transfer and the buyer provides the [state police] DIVISION OF CRIMINAL JUSTICE SERVICES with information sufficient to constitute a registration under this section. Such registration shall not be valid if such registrant is prohibited or becomes prohibited from possessing a firearm pursuant to state or federal law. The [superintendent] DIVISION OF CRIMINAL JUSTICE SERVICES shall determine whether such registrant is prohibited from possessing a firearm under state or federal law. Such check shall be limited to determining whether the factors in 18 USC 922 (g) apply or whether a registrant has been convicted of a serious offense as defined in subdivision [sixteen-b] SEVENTEEN of section 265.00 of this chapter, so as to prohibit such registrant from possessing a firearm, and whether a report has been issued pursuant to section 9.46 of the mental hygiene law. All registrants shall recertify to the division of [state police] CRIMINAL JUSTICE SERVICES every five years thereafter. Failure to recertify shall result in a revocation of such registration.

(a-1) Notwithstanding any inconsistent provisions of paragraph (A) OFthis subdivision, an owner of an assault weapon as defined in subdivision twenty-two of section 265.00 of this chapter, who is a qualified retired New York or federal law enforcement officer as defined in subdivision twenty-five of section 265.00 of this chapter, where such weapon was issued to or purchased by such officer prior to retirement and in the course of his or her official duties, and for which such officer was qualified by the agency that employed such officer within twelve months prior to his or her retirement, must register such weapon within sixty days of retirement.

(b) The [superintendent of state police] DIVISION OF CRIMINAL JUSTICE SERVICES shall create and maintain an internet website to educate the

public as to which semiautomatic rifle, semiautomatic shotgun or semiautomatic pistol or weapon that are illegal as a result of the enactment of [the] chapter ONE of the laws of two thousand thirteen [which added this paragraph], as well as such assault weapons which are illegal pursuant to article two hundred sixty-five of this chapter. Such website shall contain information to assist the public in recognizing the relevant features proscribed by such article two hundred sixty-five, as well as which make and model of weapons that require registration.

(c) A person who knowingly fails to apply to register such weapon, as required by this section, within one year of the effective date of [the] chapter ONE of the laws of two thousand thirteen [which added this paragraph] shall be guilty of a class A misdemeanor and such person who unknowingly fails to validly register such weapon within such one year period shall be given a warning by an appropriate law enforcement authority about such failure and given thirty days in which to apply to register such weapon or to surrender it. A failure to apply or surrender such weapon within such thirty-day period shall result in such weapon being removed by an appropriate law enforcement authority and declared a nuisance.

16-b. The cost of the software, programming and interface required to transmit any record that must be electronically transmitted by the dealer or licensing officer to the division of [state police] CRIMINAL JUSTICE SERVICES, AND ANY COST BORNE BY THE LICENSING OFFICER TO ADMINISTER OR MAINTAIN RECORDS RELATED TO THE RECERTIFICATION PROCESS BY THE LICENSING OFFICER, BOTH pursuant to this chapter shall be borne by the state.

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

S 400.02 Statewide license and record database.

There shall be a statewide license and record database which shall be created and maintained by the division of [state police] CRIMINAL JUSTICE SERVICES the cost of which shall not be borne by any municipality. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. Records containing granted license applications shall be periodically checked by the division of criminal justice services against criminal conviction, mental health, and all other records as are necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database, as otherwise authorized by law, in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

S 3. This act shall take effect immediately.