

3375

2015-2016 Regular Sessions

I N S E N A T E

February 6, 2015

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to authorizing the transfer of certain weapons from an estate to an immediate member of the decedent's family; to amend the general business law, in relation to expanding the definition of immediate family to include siblings, grandparents and grandchildren as such term relates to the private sale or disposal of certain firearms; to amend the penal law, in relation to the filing of approved applications for licenses to carry, possess, repair and dispose of firearms; to amend the penal law, in relation to certain large capacity ammunition feeding devices; to repeal section 265.37 of the penal law, relating to unlawful possession of certain ammunition feeding devices; and to repeal section 400.03 of the penal law relating to sellers of ammunition

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

1 Section 1. Paragraph (g) of subdivision 22 of section 265.00 of the
2 penal law is amended by adding a new subparagraph (vii) to read as
3 follows:
4 (VII) ANY WEAPON LEGALLY POSSESSED AND VALIDLY REGISTERED PURSUANT TO
5 SUBDIVISION SIXTEEN-A OF SECTION 400.00 OF THIS CHAPTER PRIOR TO SUCH
6 PERSON'S DEATH AND BEQUEATHED OR PASSED THROUGH INTESTACY TO AN IMMEDI-
7 ATE FAMILY MEMBER OF THE DECEASED. SUCH WEAPONS SHALL BE SUBJECT TO THE
8 PROVISIONS OF PARAGRAPH (H) OF THIS SUBDIVISION. FOR PURPOSES OF THIS
9 SUBPARAGRAPH, THE MEANING OF IMMEDIATE FAMILY MEMBER IS AS DEFINED BY
10 SUBDIVISION ONE OF SECTION EIGHT HUNDRED NINETY-EIGHT OF THE GENERAL
11 BUSINESS LAW;
12 S 2. Paragraph (h) of subdivision 22 of section 265.00 of the penal
13 law, as added by chapter 1 of the laws of 2013, is amended to read as
14 follows:

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

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1 (h) (I) Any weapon defined in paragraph (e) or (f) of this subdivision
2 and any large capacity ammunition feeding device that was legally
3 possessed by an individual prior to [the enactment of the chapter of the
4 laws of two thousand thirteen which added this paragraph] JANUARY
5 FIFTEENTH, TWO THOUSAND THIRTEEN, may only be sold to, exchanged with or
6 disposed of to a purchaser authorized to possess such weapons or to an
7 individual or entity outside of the state provided that any such trans-
8 fer to an individual or entity outside of the state must be reported to
9 the entity wherein the weapon is registered within seventy-two hours of
10 such transfer. An individual who transfers any such weapon or large
11 capacity ammunition device to an individual inside New York state or
12 without complying with the provisions of this paragraph shall be guilty
13 of a class A misdemeanor unless such large capacity ammunition feeding
14 device, the possession of which is made illegal by [the] chapter ONE of
15 the laws of two thousand thirteen [which added this paragraph], is
16 transferred within one year [of the effective date of the chapter of the
17 laws of two thousand thirteen which added this paragraph] JANUARY
18 FIFTEENTH, TWO THOUSAND FOURTEEN.

19 (II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARA-
20 GRAPH, ANY WEAPON DEFINED IN PARAGRAPH (E) OR (F) OF THIS SUBDIVISION
21 THAT WAS LEGALLY POSSESSED AND VALIDLY REGISTERED BY AN INDIVIDUAL PRIOR
22 TO HIS OR HER DEATH MAY BE TRANSFERRED BY THE ESTATE OF SUCH INDIVIDUAL
23 TO ONE OF HIS OR HER IMMEDIATE FAMILY MEMBERS. FOR PURPOSES OF THIS
24 SUBPARAGRAPH, THE MEANING OF IMMEDIATE FAMILY MEMBER IS AS DEFINED BY
25 SUBDIVISION ONE OF SECTION EIGHT HUNDRED NINETY-EIGHT OF THE GENERAL
26 BUSINESS LAW.

27 S 3. Subdivision 1 of section 898 of the general business law, as
28 added by chapter 1 of the laws of 2013, is amended to read as follows:

29 1. In addition to any other requirements pursuant to state and feder-
30 al law, all sales, exchanges or disposals of firearms, rifles or shot-
31 guns shall be conducted in accordance with this section unless such
32 sale, exchange or disposal is conducted by a licensed importer, licensed
33 manufacturer or licensed dealer, as those terms are defined in 18 USC S
34 [922] 921, when such sale, exchange or disposal is conducted pursuant to
35 that person's federal firearms license or such sale, exchange or
36 disposal is between members of an immediate family. For purposes of this
37 section, "immediate family" shall mean spouses, domestic partners, chil-
38 dren and step-children, SIBLINGS, GRANDPARENTS AND GRANDCHILDREN.

39 S 4. Subdivision 5 of section 400.00 of the penal law, as amended by
40 chapter 1 of the laws of 2013, is amended to read as follows:

41 5. Filing of approved applications. [(a)] The application for any
42 license, if granted, shall be filed by the licensing officer with the
43 clerk of the county of issuance, except that in the city of New York
44 and, in the counties of Nassau and Suffolk, the licensing officer shall
45 designate the place of filing in the appropriate division, bureau or
46 unit of the police department thereof, and in the county of Suffolk the
47 county clerk is hereby authorized to transfer all records or applica-
48 tions relating to firearms to the licensing authority of that county.
49 [Except as provided in paragraphs (b) through (f) of this subdivision,
50 the name and address] THE APPLICATION AND ANY SUPPORTING RECORDS,
51 INCLUDING ANY INFORMATION CONTAINED THEREIN, of any person to whom an
52 application for any license has been granted shall NOT be a public
53 record AND SHALL NOT BE SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF
54 THE PUBLIC OFFICERS LAW. Upon application by a licensee who has changed
55 his OR HER place of residence such records or applications shall be
56 transferred to the appropriate officer at the licensee's new place of

1 residence. A duplicate copy of such application shall be filed by the
2 licensing officer in the executive department, division of state police,
3 Albany, within ten days after issuance of the license. The superinten-
4 dent of state police may designate that such application shall be trans-
5 mitted to the division of state police electronically. In the event the
6 superintendent of the division of state police determines that it lacks
7 any of the records required to be filed with the division, it may
8 request that such records be provided to it by the appropriate clerk,
9 department or authority and such clerk, department or authority shall
10 provide the division with such records. In the event such clerk, depart-
11 ment or authority lacks such records, the division may request the
12 license holder provide information sufficient to constitute such record
13 and such license holder shall provide the division with such informa-
14 tion. Such information shall be limited to the license holder's name,
15 date of birth, gender, race, residential address, social security number
16 and firearms possessed by said license holder. Nothing in this subdivi-
17 sion shall be construed to change the expiration date or term of such
18 licenses if otherwise provided for in law. Records assembled or
19 collected for purposes of inclusion in the database established by this
20 section shall be released pursuant to a court order. Records assembled
21 or collected for purposes of inclusion in the database created pursuant
22 to section 400.02 of this [chapter] ARTICLE shall not be subject to
23 disclosure pursuant to article six of the public officers law.

24 [(b) Each application for a license pursuant to paragraph (a) of this
25 subdivision shall include, on a separate written form prepared by the
26 division of state police within thirty days of the effective date of the
27 chapter of the laws of two thousand thirteen, which amended this
28 section, and provided to the applicant at the same time and in the same
29 manner as the application for a license, an opportunity for the appli-
30 cant to request an exception from his or her application information
31 becoming public record pursuant to paragraph (a) of this subdivision.
32 Such forms, which shall also be made available to individuals who had
33 applied for or been granted a license prior to the effective date of the
34 chapter of the laws of two thousand thirteen which amended this section,
35 shall notify applicants that, upon discovery that an applicant knowingly
36 provided false information, such applicant may be subject to penalties
37 pursuant to section 175.30 of this chapter, and further, that his or her
38 request for an exception shall be null and void, provided that written
39 notice containing such determination is provided to the applicant.
40 Further, such forms shall provide each applicant an opportunity to spec-
41 ify the grounds on which he or she believes his or her application
42 information should not be publicly disclosed. These grounds, which shall
43 be identified on the application with a box beside each for checking, as
44 applicable, by the applicant, shall be as follows:

45 (i) the applicant's life or safety may be endangered by disclosure
46 because:

47 (A) the applicant is an active or retired police officer, peace offi-
48 cer, probation officer, parole officer, or corrections officer;

49 (B) the applicant is a protected person under a currently valid order
50 of protection;

51 (C) the applicant is or was a witness in a criminal proceeding involv-
52 ing a criminal charge;

53 (D) the applicant is participating or previously participated as a
54 juror in a criminal proceeding, or is or was a member of a grand jury;
55 or

1 (E) the applicant is a spouse, domestic partner or household member of
2 a person identified in this subparagraph or subparagraph (ii) of this
3 paragraph, specifying which subparagraph or subparagraphs and clauses
4 apply.

5 (ii) the applicant has reason to believe his or her life or safety may
6 be endangered by disclosure due to reasons stated by the applicant.

7 (iii) the applicant has reason to believe he or she may be subject to
8 unwarranted harassment upon disclosure of such information.

9 (c) Each form provided for recertification pursuant to paragraph (b)
10 of subdivision ten of this section shall include an opportunity for the
11 applicant to request an exception from the information provided on such
12 form becoming public record pursuant to paragraph (a) of this subdivi-
13 sion. Such forms shall notify applicants that, upon discovery that an
14 applicant knowingly provided false information, such applicant may be
15 subject to penalties pursuant to section 175.30 of this chapter, and
16 further, that his or her request for an exception shall be null and
17 void, provided that written notice containing such determination is
18 provided to the applicant. Further, such forms shall provide each appli-
19 cant an opportunity to either decline to request the grant or continua-
20 tion of an exception, or specify the grounds on which he or she believes
21 his or her information should not be publicly disclosed. These grounds,
22 which shall be identified in the application with a box beside each for
23 checking, as applicable, by the applicant, shall be the same as provided
24 in paragraph (b) of this subdivision.

25 (d) Information submitted on the forms described in paragraph (b) of
26 this subdivision shall be excepted from disclosure and maintained by the
27 entity retaining such information separate and apart from all other
28 records.

29 (e) (i) Upon receiving a request for exception from disclosure, the
30 licensing officer shall grant such exception, unless the request is
31 determined to be null and void, pursuant to paragraph (b) or (c) of this
32 subdivision.

33 (ii) A request for an exception from disclosure may be submitted at
34 any time, including after a license or recertification has been granted.

35 (iii) If an exception is sought and granted pursuant to paragraph (b)
36 of this subdivision, the application information shall not be public
37 record, unless the request is determined to be null and void. If an
38 exception is sought and granted pursuant to paragraph (c) of this subdivi-
39 sion, the information concerning such recertification application
40 shall not be public record, unless the request is determined to be null
41 and void.

42 (f) The information of licensees or applicants for a license shall not
43 be disclosed to the public during the first one hundred twenty days
44 following the effective date of the chapter of the laws of two thousand
45 thirteen, which amended this section. After such period, the information
46 of those who had applied for or been granted a license prior to the
47 preparation of the form for requesting an exception, pursuant to para-
48 graph (b) of this subdivision, may be released only if such individuals
49 did not file a request for such an exception during the first sixty days
50 following such preparation; provided, however, that no information
51 contained in an application for licensure or recertification shall be
52 disclosed by an entity that has not completed processing any such
53 requests received during such sixty days.

54 (g) If a request for an exception is determined to be null and void
55 pursuant to paragraph (b) or (c) of this subdivision, an applicant may
56 request review of such determination pursuant to article seventy-eight

1 of the civil practice laws and rules. Such proceeding must commence
2 within thirty days after service of the written notice containing the
3 adverse determination. Notice of the right to commence such a petition,
4 and the time period therefor, shall be included in the notice of the
5 determination. Disclosure following such a petition shall not be made
6 prior to the disposition of such review.]

7 S 5. Subdivision a of section 265.20 of the penal law is amended by
8 adding a new paragraph 11-a to read as follows:

9 11-A. POSSESSION OF A LARGE CAPACITY AMMUNITION FEEDING DEVICE BY AN
10 INDIVIDUAL WHO LEGALLY POSSESSED THE LARGE CAPACITY AMMUNITION FEEDING
11 DEVICE BEFORE APRIL FIFTEENTH, TWO THOUSAND THIRTEEN.

12 S 6. Section 265.37 of the penal law is REPEALED.

13 S 7. Section 400.03 of the penal law is REPEALED.

14 S 8. Any funds or portion of funds allocated in the state budget or
15 otherwise appropriated to any office, agency or department for the
16 purpose of implementing the provisions of section 400.03 of the penal
17 law repealed by this act shall be reallocated or appropriated for the
18 purpose of hiring school resource officers in public schools in the
19 state.

20 S 9. This act shall take effect immediately; provided, however, that
21 the provisions of section four of this act shall take effect the first
22 of November next succeeding the date on which it shall have become a
23 law; and provided, further, that the provisions of section five of this
24 act shall be deemed to have been in full force and effect on and after
25 January 15, 2014.