

8028

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:

1 Section 1. Paragraph (a) of subdivision 3, subdivision 4, paragraph
2 (a) of subdivision 5 and subdivisions 7, 9, 10, 16-a and 16-b of section
3 400.00 of the penal law, paragraph (a) of subdivision 3, subdivision 4,
4 paragraph (a) of subdivision 5 and subdivisions 9 and 10 as amended and
5 subdivisions 16-a and 16-b as added by chapter 1 of the laws of 2013,
6 paragraph (a-1) of subdivision 16-a as added by chapter 98 of the laws
7 of 2013, are amended to read as follows:
8 (a) Applications shall be made and renewed, in the case of a license
9 to carry or possess a pistol or revolver, to the licensing officer in
10 the city or county, as the case may be, where the applicant resides, is
11 principally employed or has his or her principal place of business as
12 merchant or storekeeper; and, in the case of a license as gunsmith or
13 dealer in firearms, to the licensing officer where such place of busi-
14 ness is located. Blank applications shall, except in the city of New
15 York, be approved as to form by the [superintendent of state police]
16 DIVISION OF CRIMINAL JUSTICE SERVICES. An application shall state the
17 full name, date of birth, residence, present occupation of each person
18 or individual signing the same, whether or not he or she is a citizen of
19 the United States, whether or not he or she complies with each require-
20 ment for eligibility specified in subdivision one of this section and
21 such other facts as may be required to show the good character, compe-
22 tency and integrity of each person or individual signing the applica-
23 tion. An application shall be signed and verified by the applicant. Each
24 individual signing an application shall submit one photograph of himself
25 or herself and a duplicate for each required copy of the application.
26 Such photographs shall have been taken within thirty days prior to
27 filing the application. In case of a license as gunsmith or dealer in
28 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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1 application shall also state the previous occupation of each individual
2 signing the same and the location of the place of such business, or of
3 the bureau, agency, subagency, office or branch office for which the
4 license is sought, specifying the name of the city, town or village,
5 indicating the street and number and otherwise giving such apt
6 description as to point out reasonably the location thereof. In such
7 case, if the applicant is a firm, partnership or corporation, its name,
8 date and place of formation, and principal place of business shall be
9 stated. For such firm or partnership, the application shall be signed
10 and verified by each individual composing or intending to compose the
11 same, and for such corporation, by each officer thereof.

12 4. Investigation. Before a license is issued or renewed, there shall
13 be an investigation of all statements required in the application by the
14 duly constituted police authorities of the locality where such applica-
15 tion is made, including but not limited to such records as may be acces-
16 sible to the [division of state police or] division of criminal justice
17 services pursuant to section 400.02 of this article. For that purpose,
18 the records of the appropriate office of the department of mental
19 hygiene concerning previous or present mental illness of the applicant
20 shall be available for inspection by the investigating officer of the
21 police authority. In order to ascertain any previous criminal record,
22 the investigating officer shall take the fingerprints and physical
23 descriptive data in quadruplicate of each individual by whom the appli-
24 cation is signed and verified. Two copies of such fingerprints shall be
25 taken on standard fingerprint cards eight inches square, and one copy
26 may be taken on a card supplied for that purpose by the federal bureau
27 of investigation; provided, however, that in the case of a corporate
28 applicant that has already been issued a dealer in firearms license and
29 seeks to operate a firearm dealership at a second or subsequent
30 location, the original fingerprints on file may be used to ascertain any
31 criminal record in the second or subsequent application unless any of
32 the corporate officers have changed since the prior application, in
33 which case the new corporate officer shall comply with procedures
34 governing an initial application for such license. When completed, one
35 standard card shall be forwarded to and retained by the division of
36 criminal justice services in the executive department, at Albany. A
37 search of the files of such division and written notification of the
38 results of the search to the investigating officer shall be made without
39 unnecessary delay. Thereafter, such division shall notify the licensing
40 officer and the executive department, division of state police, Albany,
41 of any criminal record of the applicant filed therein subsequent to the
42 search of its files. A second standard card, or the one supplied by the
43 federal bureau of investigation, as the case may be, shall be forwarded
44 to that bureau at Washington with a request that the files of the bureau
45 be searched and notification of the results of the search be made to the
46 investigating police authority. Of the remaining two fingerprint cards,
47 one shall be filed with the executive department, division of [state
48 police] CRIMINAL JUSTICE SERVICES, Albany, within ten days after issu-
49 ance of the license, and the other remain on file with the investigating
50 police authority. No such fingerprints may be inspected by any person
51 other than a peace officer, who is acting pursuant to his special
52 duties, or a police officer, except on order of a judge or justice of a
53 court of record either upon notice to the licensee or without notice, as
54 the judge or justice may deem appropriate. Upon completion of the inves-
55 tigation, the police authority shall report the results to the licensing
56 officer without unnecessary delay.

1 (a) The application for any license, if granted, shall be filed by the
2 licensing officer with the clerk of the county of issuance, except that
3 in the city of New York and, in the counties of Nassau and Suffolk, the
4 licensing officer shall designate the place of filing in the appropriate
5 division, bureau or unit of the police department thereof, and in the
6 county of Suffolk the county clerk is hereby authorized to transfer all
7 records or applications relating to firearms to the licensing authority
8 of that county. Except as provided in paragraphs (b) through (f) of this
9 subdivision, the name and address of any person to whom an application
10 for any license has been granted shall be a public record. Upon applica-
11 tion by a licensee who has changed his place of residence such records
12 or applications shall be transferred to the appropriate officer at the
13 licensee's new place of residence. A duplicate copy of such application
14 shall be filed by the licensing officer in the executive department,
15 division of [state police] CRIMINAL JUSTICE SERVICES, Albany, within ten
16 days after issuance of the license. The [superintendent of state police]
17 DIVISION OF CRIMINAL JUSTICE SERVICES may designate that such applica-
18 tion shall be transmitted to the division of [state police] CRIMINAL
19 JUSTICE SERVICES electronically. In the event the [superintendent of the
20 division of state police] DIVISION OF CRIMINAL JUSTICE SERVICES deter-
21 mines that it lacks any of the records required to be filed with the
22 division, it may request that such records be provided to it by the
23 appropriate clerk, department or authority and such clerk, department or
24 authority shall provide the division with such records. In the event
25 such clerk, department or authority lacks such records, the division OF
26 CRIMINAL JUSTICE SERVICES may request the license holder provide infor-
27 mation sufficient to constitute such record and such license holder
28 shall provide the division with such information. Such information shall
29 be limited to the license holder's name, date of birth, gender, race,
30 residential address, social security number and firearms possessed by
31 said license holder. Nothing in this subdivision shall be construed to
32 change the expiration date or term of such licenses if otherwise
33 provided for in law. Records assembled or collected for purposes of
34 inclusion in the database established by this section shall be released
35 pursuant to a court order. Records assembled or collected for purposes
36 of inclusion in the database created pursuant to section 400.02 of this
37 chapter shall not be subject to disclosure pursuant to article six of
38 the public officers law.

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

1 9. License: amendment. Elsewhere than in the city of New York, a
2 person licensed to carry or possess a pistol or revolver may apply at
3 any time to his or her licensing officer for amendment of his or her
4 license to include one or more such weapons or to cancel weapons held
5 under license. If granted, a record of the amendment describing the
6 weapons involved shall be filed by the licensing officer in the execu-
7 tive department, division of [state police] CRIMINAL JUSTICE SERVICES,
8 Albany. The [superintendent of state police] DIVISION OF CRIMINAL
9 JUSTICE SERVICES may authorize that such amendment be completed and
10 transmitted to the [state police] DIVISION in electronic form. Notifi-
11 cation of any change of residence shall be made in writing by any licen-
12 see within ten days after such change occurs, and a record of such
13 change shall be inscribed by such licensee on the reverse side of his or
14 her license. Elsewhere than in the city of New York, and in the counties
15 of Nassau and Suffolk, such notification shall be made to the executive
16 department, division of [state police] CRIMINAL JUSTICE SERVICES, Alba-
17 ny, and in the city of New York to the police commissioner of that city,
18 and in the county of Nassau to the police commissioner of that county,
19 and in the county of Suffolk to the licensing officer of that county,
20 who shall, within ten days after such notification shall be received by
21 him or her, give notice in writing of such change to the executive
22 department, division of [state police] CRIMINAL JUSTICE SERVICES, at
23 Albany.

24 10. License: expiration, certification and renewal. (a) Any license
25 for gunsmith or dealer in firearms and, in the city of New York, any
26 license to carry or possess a pistol or revolver, issued at any time
27 pursuant to this section or prior to the first day of July, nineteen
28 hundred sixty-three and not limited to expire on an earlier date fixed
29 in the license, shall expire not more than three years after the date of
30 issuance. In the counties of Nassau, Suffolk and Westchester, any
31 license to carry or possess a pistol or revolver, issued at any time
32 pursuant to this section or prior to the first day of July, nineteen
33 hundred sixty-three and not limited to expire on an earlier date fixed
34 in the license, shall expire not more than five years after the date of
35 issuance; however, in the county of Westchester, any such license shall
36 be certified prior to the first day of April, two thousand, in accord-
37 ance with a schedule to be contained in regulations promulgated by the
38 commissioner of the division of criminal justice services, and every
39 such license shall be recertified every five years thereafter. For
40 purposes of this section certification shall mean that the licensee
41 shall provide to the licensing officer the following information only:
42 current name, date of birth, current address, and the make, model, cali-
43 ber and serial number of all firearms currently possessed. Such certif-
44 ication information shall be filed by the licensing officer in the same
45 manner as an amendment. Elsewhere than in the city of New York and the
46 counties of Nassau, Suffolk and Westchester, any license to carry or
47 possess a pistol or revolver, issued at any time pursuant to this
48 section or prior to the first day of July, nineteen hundred sixty-three
49 and not previously revoked or cancelled, shall be in force and effect
50 until revoked as herein provided. Any license not previously cancelled
51 or revoked shall remain in full force and effect for thirty days beyond
52 the stated expiration date on such license. Any application to renew a
53 license that has not previously expired, been revoked or cancelled shall
54 thereby extend the term of the license until disposition of the applica-
55 tion by the licensing officer. In the case of a license for gunsmith or
56 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,

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

9 16-a. Registration. (a) An owner of a weapon defined in paragraph (e)
10 or (f) of subdivision twenty-two of section 265.00 of this chapter,
11 possessed before the date of the effective date of [the] chapter ONE of
12 the laws of two thousand thirteen [which added this paragraph], must
13 make an application to register such weapon with the [superintendent of
14 state police] DIVISION OF CRIMINAL JUSTICE SERVICES, in the manner
15 provided by the [superintendent] DIVISION OF CRIMINAL JUSTICE SERVICES,
16 or by amending a license issued pursuant to this section within one year
17 of the effective date of this subdivision except any weapon defined
18 under subparagraph (vi) of paragraph (g) of subdivision twenty-two of
19 section 265.00 of this chapter transferred into the state may be regis-
20 tered at any time, provided such weapons are registered within thirty
21 days of their transfer into the state. Registration information shall
22 include the registrant's name, date of birth, gender, race, residential
23 address, social security number and a description of each weapon being
24 registered. A registration of any weapon defined under subparagraph (vi)
25 of paragraph (g) of subdivision twenty-two of section 265.00 or a feed-
26 ing device as defined under subdivision twenty-three of section 265.00
27 of this chapter shall be transferable, provided that the seller notifies
28 the [state police] DIVISION OF CRIMINAL JUSTICE SERVICES within seven-
29 ty-two hours of the transfer and the buyer provides the [state police]
30 DIVISION OF CRIMINAL JUSTICE SERVICES with information sufficient to
31 constitute a registration under this section. Such registration shall
32 not be valid if such registrant is prohibited or becomes prohibited from
33 possessing a firearm pursuant to state or federal law. The [superinten-
34 dent] DIVISION OF CRIMINAL JUSTICE SERVICES shall determine whether such
35 registrant is prohibited from possessing a firearm under state or feder-
36 al law. Such check shall be limited to determining whether the factors
37 in 18 USC 922 (g) apply or whether a registrant has been convicted of a
38 serious offense as defined in subdivision [sixteen-b] SEVENTEEN of
39 section 265.00 of this chapter, so as to prohibit such registrant from
40 possessing a firearm, and whether a report has been issued pursuant to
41 section 9.46 of the mental hygiene law. All registrants shall recertify
42 to the division of [state police] CRIMINAL JUSTICE SERVICES every five
43 years thereafter. Failure to recertify shall result in a revocation of
44 such registration.

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

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

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

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

20 16-b. The cost of the software, programming and interface required to
21 transmit any record that must be electronically transmitted by the deal-
22 er or licensing officer to the division of [state police] CRIMINAL
23 JUSTICE SERVICES, AND ANY COST BORNE BY THE LICENSING OFFICER TO ADMIN-
24 ISTER OR MAINTAIN RECORDS RELATED TO THE RECERTIFICATION PROCESS BY THE
25 LICENSING OFFICER, BOTH pursuant to this chapter shall be borne by the
26 state.

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

56 S 3. This act shall take effect immediately.