STATE OF NEW YORK

2673

2017-2018 Regular Sessions

IN SENATE

January 17, 2017

Introduced by Sens. GIANARIS, ADDABBO, AVELLA, BRESLIN, KRUEGER, MONTGOMERY, PERKINS, RIVERA, SERRANO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to regulating firearms and ammunition sellers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 38-B to read as follows:

ARTICLE 38-B

FIREARMS AND AMMUNITION DEALERS

Section 825. Definitions.
826. Dealer permit.
827. Application for dealer permit.
828. Investigation by division.
829. Grounds for denial of permit.
830. Issuance of dealer permit.
831. Revocation.
832. Report of revocation.
833. Display of dealer permit.
834. Inspection.
835. Security.
836. Insurance.
837. Location of business.
838. Public warning.
839. Duties upon sale, lease or transfer.
840. Sales records and reporting.
841. Firearms acquisition records and reporting.
842. Inventory reports.
843. Lost or stolen ammunition reporting.

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

LBD02532-01-7

844. Restricted admittance.
845. Criminal penalty.

§ 825. Definitions. As used in this article:

1. "Applicant" means any person who applies for a dealer permit or the renewal thereof, to sell, lease or transfer firearms or ammunition.

2. "Commissioner" means the commissioner of criminal justice services.

3. "Division" means the division of criminal justice services.

4. "Engage in the business of selling, leasing or transferring firearms or ammunition" means:

(a) conducting the business of selling, leasing or transferring firearms or ammunition;

(b) holding oneself out as engaged in the business of selling, leasing or transferring firearms or ammunition; or

(c) the sale, lease or transfer of firearms or ammunition in quantity, in series, in individual transactions.

5. "Firearm" has the same meaning as that term is defined in subdivision three of section 265.00 of the penal law.

§ 826. Dealer permit. No person shall engage in the business of selling, leasing or transferring firearms or ammunition without a dealer permit issued pursuant to this article.

§ 827. Application for dealer permit. 1. A person who is required to obtain a dealer permit pursuant to this article shall:

(a) appear in person at a time and place designated by the commissioner;

(b) complete and submit to the division an application, in writing, signed under penalty of perjury, on a form prescribed by the commissioner;

(c) provide all information required by the commissioner, including:

(i) the applicant's full name and any other name by which the applicant has ever been known;

(ii) the home address and telephone number of the applicant;

(iii) the occupation, business address and business telephone number of the applicant;

(iv) the license and permit numbers of all federal, state and local licenses and permits held by the applicant that authorize the applicant to sell, lease or transfer firearms or ammunition, if any;

(v) such information as may be required by the commissioner relating to every other license or permit to sell, lease, transfer, purchase or possess firearms and ammunition which is held by or was sought by the applicant from the federal, or any state or local government, including, but not limited to, the type of license or permit held or sought, the date of each application and whether it resulted in the issuance of the license or permit, and the date and circumstances of any revocation or suspension;

(vi) the address of the location for which the permit is sought, if different than the applicant's business address;

(vii) the business name, and the name of any person, corporation, partnership, limited liability company or other entity that has any ownership in or control over the business;

(viii) the names, dates of birth and addresses of all persons who will have access to or control of workplace firearms or ammunition, including but not limited to, the applicant's employees, agents and supervisors, if any;

(ix) proof of a possessory interest in the property at which the business is or will be conducted, as owner, lessee or other legal occupant, and, if the applicant is not the owner of record of the real property

upon which the applicant's business is or is to be located and conducted, the written consent of the owner of record of such real property to the applicant's business;

(x) a floor plan of the business which illustrates the applicant's compliance with security requirements of this article;

(xi) proof of compliance with all applicable federal, state and local licensing, zoning, land use and other business laws;

(xii) certification of satisfaction of the insurance requirements of this article; and

(xiii) the dates, locations and nature of all criminal convictions of the applicant, if any, in any jurisdiction in the United States.

2. The division may impose a fee for the submission of an application pursuant to this section.

§ 828. Investigation by division. 1. The division shall conduct an investigation of the applicant to determine whether a dealer permit may be issued or renewed. The division shall require: (a) the applicant; and (b) all persons who will have access to or control of workplace firearms or ammunition, including but not limited to the applicant's employees, agents and/or supervisors, if any, to provide fingerprints, a recent photograph, a signed authorization for the release of pertinent records, and any additional information which the commissioner deems necessary to complete the investigation.

2. Prior to issuance or renewal of a dealer permit, the division shall inspect the premises of the applicant business to ensure compliance with this article.

3. The division may grant or renew a dealer permit if the applicant is in compliance with the provisions of this article and all other applicable federal, state and local laws.

§ 829. Grounds for denial of permit. 1. The division shall deny an application for the issuance or renewal of a dealer permit if the operation of the business would not or does not comply with federal, state and local laws, or if the applicant:

(a) is under twenty-one years of age;

(b) is not licensed as required by all applicable federal, state and local laws;

(c) has made a false or misleading statement of a material fact or omission of a material fact in the application for such permit, or in any other documents submitted to the division. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;

(d) has had a license or permit to sell, lease, transfer, purchase or possess firearms or ammunition from the federal or any state or local government revoked, suspended or denied for good cause within the preceding five years;

(e) is prohibited by any federal, state or local law from purchasing or possessing firearms or ammunition, or has been convicted of:

(i) a crime relating to the manufacture, sale, possession or use of a firearm, rifle, shotgun, dangerous deadly weapon or ammunition;

(ii) a crime involving the use of force or violence upon the person of another;

(iii) a crime involving theft, fraud, dishonesty or deceit; or

(iv) a crime involving the sale or possession of a controlled substance; or

(f) is currently or has been within the preceding five years, an unlawful user of or addicted to a controlled substance.

2. The employees, agents and supervisors of an applicant shall not have access to or control over workplace firearms or ammunition until the division has conducted an investigation pursuant to section eight hundred twenty-eight of this article, and verified that none of the conditions listed in subdivision one of this section exist, as applied to those employees, agents or supervisors. A new law enforcement investigation and background verification of such persons must be conducted each time the applicant renews his or her permit, or applies for a new permit.

§ 830. Issuance of dealer permit. A dealer permit shall be valid for a period of three years from the date of its issuance. A permit may be renewed prior to its expiration if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by the commissioner. Renewal of a permit shall be contingent upon the permittee's compliance with the terms and conditions of the original application and permit and any additional conditions arising pursuant to law. Any police officer may inspect the business premises for compliance with the provisions of this article prior to renewal of the permit. The renewal application and the renewal fee must be received by the division no later than forty-five days before the expiration of the current permit.

§ 831. Revocation. The division may revoke the dealer permit of any permittee found to be in violation of any provision of this article, or any applicable federal, state or local law.

§ 832. Report of revocation. In addition to any other penalty or remedy, the division shall report the revocation of any dealer permit to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

§ 833. Display of dealer permit. The dealer permit of a permitted business shall be conspicuously displayed upon the premises of such business in a location visible to the public.

§ 834. Inspection. Permitted places of business shall be open for inspection by any police officer during all hours of operation. The division shall conduct an inspection of the business in connection with the initial issuance of a permit, and thereafter conduct an inspection in connection with each renewal of the permit. Permittees shall maintain all records, documents, firearms and ammunition in a manner and place accessible for inspection by law enforcement officers.

§ 835. Security. 1. All firearms and ammunition in the inventory of a permittee shall be kept at the permitted business location.

2. If the business location is to be used at least in part for the sale of firearms, all perimeter doorways, windows, and heating, ventilating, air-conditioning and service openings shall be secured in a manner prescribed by the commissioner.

3. Any time a permitted business location is not open to the public, every firearm shall be stored in one of the following ways:

(a) in a locked fireproof safe or vault in the permittee's business premises that meets Underwriters Laboratories Residential Security Container rating standards by a Nationally Recognized Testing Laboratory; or

(b) secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. No more than five firearms may be affixed to any one rod or cable at any time.

4. Any time a permitted business location is open to the public, all firearms shall be kept unloaded and all firearms and ammunition shall be kept in an area of the permitted business inaccessible to the public,

except when in the immediate presence of and under the direct supervision of the permittee or his or her employees.

5. The permitted business locations shall be secured by an alarm system that is installed and maintained by an alarm company operator properly licensed pursuant to law. The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection.

6. Each permitted business location shall be equipped with a video surveillance system sufficient to monitor the critical areas of the business premises including, but not limited to, all places where firearms or ammunition are stored, handled, sold, transferred or carried. The video surveillance system shall operate continuously, without interruption, whenever the permitted business location is open to the public. Whenever the permitted business location is not open to the public, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area. In addition, the sale or transfer of a firearm or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible. The stored images shall be maintained at the permitted business location for a period not less than one year from the date of recordation, and shall be made available for inspection by a police officer upon request. The permittee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height: "THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED."

§ 836. Insurance. 1. If a business location is to be used for the sale of firearms, no dealer permit shall be issued or renewed unless there is in effect a policy of insurance in a form approved by the department of financial services and executed by an insurance company approved by such department, insuring the applicant against liability for damage to property and for injury to, or death of, any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business. The limits of liability shall not be less than one million dollars for each incident of damage to property or incident of injury or death to a person; provided, however, that increased limits of liability may be required by the division if deemed necessary.

2. The policy of insurance shall contain an endorsement providing that the policy shall not be cancelled until written notice has been given to the division at least thirty days prior to the time the cancellation becomes effective.

3. Upon expiration of the policy of insurance, and if no additional insurance is obtained, the dealer permit shall be considered revoked without further notice.

§ 837. Location of business. 1. The permitted business shall be carried on only in the building located at the street address shown on the permit. This requirement shall not prohibit the permittee from participating in a gun show or event as defined under federal law that is authorized by federal, state or local law upon compliance with those laws.

2. The permitted business premises shall not be located in any district or area that is zoned for residential use, or within fifteen hundred feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video

arcade, amusement park (not including a temporary carnival or similar event), or residentially zoned district or area.

§ 838. Public warning. Each permittee shall post conspicuously within the permitted premises the following warning in block letters not less than one inch in height: "CHILDREN ARE ATTRACTED TO AND CAN OPERATE FIREARMS THAT MAY CAUSE SEVERE INJURIES OR DEATH. PREVENT CHILD ACCESS BY ALWAYS KEEPING GUNS LOCKED AWAY AND UNLOADED WHEN NOT IN USE, WITH AMMUNITION STORED SEPARATELY."

§ 839. Duties upon sale, lease or transfer. 1. No permittee or agent, employee or other person acting under the permittee's authority shall sell, transfer, lease or loan any firearm or ammunition from the permittee's inventory until he or she has viewed the transferee's driver's license or other government-issued identification card that contains the transferee's signature, photograph and age.

2. No permittee or agent, employee or other person acting under the permittee's authority shall sell, transfer, lease or loan any firearm or ammunition to any person the permittee or agent, employee or other person acting under the permittee's authority knows or has reasonable cause to believe is prohibited by federal, state or local law from purchasing or possessing the firearm or ammunition.

§ 840. Sales records and reporting. 1. No permittee or agent, employee or other person acting under the permittee's authority shall sell, transfer, lease or loan any firearm or ammunition from the permittee's inventory without recording the following information in written or electronic form to be provided by the division:

(a) the date of the transaction;

(b) the name, address, telephone number and date of birth of the transferee;

(c) the number of the transferee's current driver's license or other government-issued identification card containing a photograph of the transferee and the name of the governmental authority that issued it;

(d) the make, model, caliber and serial number of any firearm transferred, and the brand, type, caliber or gauge, and quantity of any ammunition transferred;

(e) the transferee's signature; and

(f) the name of the permittee's agent or employee who processed the transaction.

2. The permittee and any agent, employee or other person acting under the permittee's authority shall also, at the time of purchase or transfer, obtain the right thumbprint of the transferee on the form described in subdivision one of this section.

3. Within twenty-four hours of a transfer, the permittee or any agents, employees or other persons acting under the permittee's authority shall electronically transmit to the division all such information. The electronic transmittal shall be by a method, and in a format, approved by the division. The division shall maintain such records for at least ten years.

4. The records created in accordance with this section must be permanently maintained on the business premises of the permittee and shall be made available for inspection by any police officer upon request.

§ 841. Firearms acquisition records and reporting. 1. The permittee or an agent, employee or other person acting under the permittee's authority shall record the following information regarding every firearm received or acquired for the permittee's inventory on a form to be established by the division:

(a) the name of the permittee;

(b) the particular make, model, caliber and serial number of each firearm received or acquired;

(c) the date each firearm was received or acquired; and

(d) the name, address and telephone number of the person from whom each firearm was received or acquired.

2. Within twenty-four hours of the receipt or acquisition of any firearm, the permittee and any agents, employees or other persons acting under the permittee's authority shall electronically transmit to the division all of the information required by this section. The electronic transmittal shall be by a method, and in a format, established by the division. The division shall maintain these records for at least ten years.

3. The records created in accordance with this section must be permanently maintained on the business premises of the permittee and shall be made available for inspection by any police officer upon request.

§ 842. Inventory reports. Within the first five business days of April and October of each calendar year, each permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, caliber and serial number, together with a listing of each firearm the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen since the last inventory period. Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the division, by such means as specified by the division. The division shall maintain a copy of the inventory for at least ten years. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the dealer permit was issued for a period of not less than five years from the date of the inventory and shall make the copy available for inspection by any police officer upon request.

§ 843. Lost or stolen ammunition reporting. A permittee shall report to the division the loss or theft of any quantity of ammunition from the permitted premises within forty-eight hours after he or she knows or reasonably should have known of such loss or theft.

§ 844. Restricted admittance. 1. Where firearm sales activity is the primary business performed at the permitted business location, no permittee or any of his or her agents, employees or other persons acting under the permittee's authority shall allow any person under the age of twenty-one years to enter into or remain on the premises, unless accompanied by his or her parent or legal guardian, provided that this provision shall not prevent a supervisory agent or employee who has the right to control activities at the business premises from keeping a single handgun on the business premises for purpose of lawful self-defense.

2. Where firearm sales activity is the primary business performed at the permitted business location, the permittee and any of his or her agents, employees or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subdivision one of this section by reason of age. Clear evidence of age and identity shall be a current driver's license

or other government-issued identification card containing the bearer's signature, photograph and date of birth.

3. Each permittee shall post the following notice conspicuously at each entrance to the permitted business location in block letters not less than one inch in height, "FIREARMS ARE KEPT, DISPLAYED OR OFFERED FOR SALE ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

4. Where firearm sales activity is the primary business performed at the permitted business location, no permittee or any of his or her agents, employees or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any of his or her agents, employees or other persons acting under the permittee's authority knows or has reason to know is prohibited from possession or purchasing firearms, rifles, shotguns or ammunition pursuant to federal, state or local law.

§ 845. Criminal penalty. Any violation of this article shall be a class A misdemeanor.

§ 2. 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 this act shall not apply to any person engaged in the business of selling, leasing or transferring firearms or ammunition on the effective date of this act, until the ninetieth day after such date.