

STATE OF NEW YORK

3538

2021-2022 Regular Sessions

IN ASSEMBLY

January 27, 2021

Introduced by M. of A. HAWLEY, B. MILLER, DiPIETRO, J. M. GIGLIO, MORI-NELLO, DeSTEFANO, FRIEND, SMULLEN, ASHBY, SALKA -- read once and referred to the Committee on Codes

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

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

1 Section 1. Subdivision 2 of section 400.00 of the penal law, as
2 amended by chapter 189 of the laws of 2000, is amended to read as
3 follows:

4 2. Types of licenses. A license for gunsmith or dealer in firearms
5 shall be issued to engage in such business. A license for a pistol or
6 revolver, other than an assault weapon or a disguised gun, shall be
7 issued to [~~(a) have and~~] possess [~~in his dwelling by a householder, (b)~~
8 ~~have and possess in his place of business by a merchant or storekeeper,~~
9 ~~(c) have~~] and carry concealed [~~while so employed by a messenger employed~~
10 ~~by a banking institution or express company, (d) have and carry~~
11 ~~concealed by a justice of the supreme court in the first or second judi-~~
12 ~~cial departments, or by a judge of the New York city civil court or the~~
13 ~~New York city criminal court, (e) have and carry concealed while so~~
14 ~~employed by a regular employee of an institution of the state, or of any~~
15 ~~county, city, town or village, under control of a commissioner of~~
16 ~~correction of the city or any warden, superintendent or head keeper of~~
17 ~~any state prison, penitentiary, workhouse, county jail or other institu-~~
18 ~~tion for the detention of persons convicted or accused of crime or held~~
19 ~~as witnesses in criminal cases, provided that application is made there-~~
20 ~~for by such commissioner, warden, superintendent or head keeper, (f)~~
21 ~~have and carry concealed,~~] without regard to employment or place of
22 possession[, ~~by any person when proper cause exists for the issuance~~
23 ~~thereof, and (g) have, possess, collect and carry antique pistols which~~
24 ~~are defined as follows: (i) any single shot, muzzle loading pistol with~~

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

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~~a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica--~~

~~(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or~~

~~(2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade].~~

§ 2. Paragraph (a) of subdivision 3 of section 400.00 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

(a) Applications shall be made and renewed, in the case of a license to carry ~~[or]~~ **and** 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. 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 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.

§ 3. Subdivision 6 of section 400.00 of the penal law, as amended by chapter 104 of the laws of 2019, is amended to read as follows:

6. License: validity. Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. No license shall be transferable to any other person or premises. A license to carry ~~[or]~~ **and** possess a pistol or revolver~~[, not otherwise limited as to place or time of possession,~~] shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city. Such license to carry ~~[or]~~ **and** possess shall be valid within the city of New York in the absence of a permit issued by the police commissioner of that city, provided that (a) the firearms covered by such license have been purchased from a licensed

1 dealer within the city of New York and are being transported out of said
2 city forthwith and immediately from said dealer by the licensee in a
3 locked container during a continuous and uninterrupted trip; or provided
4 that (b) the firearms covered by such license are being transported by
5 the licensee in a locked container and the trip through the city of New
6 York is continuous and uninterrupted; or provided that (c) the firearms
7 covered by such license are carried by armored car security guards
8 transporting money or other valuables, in, to, or from motor vehicles
9 commonly known as armored cars, during the course of their employment;
10 or provided that (d) the licensee is a retired police officer as police
11 officer is defined pursuant to subdivision thirty-four of section 1.20
12 of the criminal procedure law or a retired federal law enforcement offi-
13 cer, as defined in section 2.15 of the criminal procedure law, who has
14 been issued a license by an authorized licensing officer as defined in
15 subdivision ten of section 265.00 of this chapter; provided, further,
16 however, that if such license was not issued in the city of New York it
17 must be marked "Retired Police Officer" or "Retired Federal Law Enforce-
18 ment Officer", as the case may be, and, in the case of a retired officer
19 the license shall be deemed to permit only police or federal law
20 enforcement regulations weapons; or provided that (e) the licensee is a
21 peace officer described in subdivision four of section 2.10 of the crim-
22 inal procedure law and the license, if issued by other than the city of
23 New York, is marked "New York State Tax Department Peace Officer" and in
24 such case the exemption shall apply only to the firearm issued to such
25 licensee by the department of taxation and finance. A license as
26 gunsmith or dealer in firearms shall not be valid outside the city or
27 county, as the case may be, where issued. Notwithstanding any inconsis-
28 tent provision of state or local law or rule or regulation, the premises
29 limitation set forth in any license to have and possess a pistol or
30 revolver in the licensee's dwelling or place of business pursuant to
31 paragraph (a) or (b) of subdivision two of this section shall not
32 prevent the transport of such pistol or revolver directly to or from (i)
33 another dwelling or place of business of the licensee where the licensee
34 is authorized to have and possess such pistol or revolver, (ii) an
35 indoor or outdoor shooting range that is authorized by law to operate as
36 such, (iii) a shooting competition at which the licensee may possess
37 such pistol or revolver consistent with the provisions of subdivision a
38 of section 265.20 of this chapter or consistent with the law applicable
39 at the place of such competition, or (iv) any other location where the
40 licensee is lawfully authorized to have and possess such pistol or
41 revolver; provided however, that during such transport to or from a
42 location specified in clauses (i) through (iv) of this paragraph, the
43 pistol or revolver shall be unloaded and carried in a locked container,
44 and the ammunition therefor shall be carried separately; provided
45 further, however, that a license to have and possess a pistol or revol-
46 ver in the licensee's dwelling or place of business pursuant to para-
47 graph (a) or (b) of subdivision two of this section that is issued by a
48 licensing officer other than the police commissioner of the city of New
49 York shall not authorize transport of a pistol or revolver into the city
50 of New York in the absence of written authorization to do so by the
51 police commissioner of that city. The term "locked container" shall not
52 include the glove compartment or console of a vehicle.

53 § 4. Subdivision 7 of section 400.00 of the penal law is amended to
54 read as follows:

55 7. License: form. Any license issued pursuant to this section shall,
56 except in the city of New York, be approved as to form by the super-

1 intendent of state police. A license to carry [~~or~~] **and** possess a pistol
2 or revolver shall have attached the licensee's photograph, and a coupon
3 which shall be removed and retained by any person disposing of a firearm
4 to the licensee. Such license shall specify the weapon covered by cali-
5 bre, make, model, manufacturer's name and serial number, or if none, by
6 any other distinguishing number or identification mark[, ~~and shall indi-~~
7 ~~cate whether issued to carry on the person or possess on the premises,~~
8 ~~and if on the premises shall also specify the place where the licensee~~
9 ~~shall possess the same~~]. If such license is issued to an alien, or to a
10 person not a citizen of and usually a resident in the state, the licens-
11 ing officer shall state in the license the particular reason for the
12 issuance and the names of the persons certifying to the good character
13 of the applicant. Any license as gunsmith or dealer in firearms shall
14 mention and describe the premises for which it is issued and shall be
15 valid only for such premises.

16 § 5. Subdivision 9 of section 400.00 of the penal law, as amended by
17 chapter 1 of the laws of 2013, is amended to read as follows:

18 9. License: amendment. Elsewhere than in the city of New York, a
19 person licensed to carry [~~or~~] **and** possess a pistol or revolver may apply
20 at any time to his or her licensing officer for amendment of his or her
21 license to include one or more such weapons or to cancel weapons held
22 under license. If granted, a record of the amendment describing the
23 weapons involved shall be filed by the licensing officer in the execu-
24 tive department, division of state police, Albany. The superintendent of
25 state police may authorize that such amendment be completed and trans-
26 mitted to the state police in electronic form. Notification of any
27 change of residence shall be made in writing by any licensee within ten
28 days after such change occurs, and a record of such change shall be
29 inscribed by such licensee on the reverse side of his or her license.
30 Elsewhere than in the city of New York, and in the counties of Nassau
31 and Suffolk, such notification shall be made to the executive depart-
32 ment, division of state police, Albany, and in the city of New York to
33 the police commissioner of that city, and in the county of Nassau to the
34 police commissioner of that county, and in the county of Suffolk to the
35 licensing officer of that county, who shall, within ten days after such
36 notification shall be received by him or her, give notice in writing of
37 such change to the executive department, division of state police, at
38 Albany.

39 § 6. Paragraph (a) of subdivision 10 of section 400.00 of the penal
40 law, as amended by chapter 1 of the laws of 2013, is amended to read as
41 follows:

42 (a) Any license for gunsmith or dealer in firearms and, in the city of
43 New York, any license to carry [~~or~~] **and** possess a pistol or revolver,
44 issued at any time pursuant to this section or prior to the first day of
45 July, nineteen hundred sixty-three and not limited to expire on an
46 earlier date fixed in the license, shall expire not more than three
47 years after the date of issuance. In the counties of Nassau, Suffolk and
48 Westchester, any license to carry [~~or~~] **and** possess a pistol or revolver,
49 issued at any time pursuant to this section or prior to the first day of
50 July, nineteen hundred sixty-three and not limited to expire on an
51 earlier date fixed in the license, shall expire not more than five years
52 after the date of issuance; however, in the county of Westchester, any
53 such license shall be certified prior to the first day of April, two
54 thousand, in accordance with a schedule to be contained in regulations
55 promulgated by the commissioner of the division of criminal justice
56 services, and every such license shall be recertified every five years

1 thereafter. For purposes of this section certification shall mean that
2 the licensee shall provide to the licensing officer the following infor-
3 mation only: current name, date of birth, current address, and the
4 make, model, caliber and serial number of all firearms currently
5 possessed. Such certification information shall be filed by the licens-
6 ing officer in the same manner as an amendment. Elsewhere than in the
7 city of New York and the counties of Nassau, Suffolk and Westchester,
8 any license to carry ~~[ex]~~ and possess a pistol or revolver, issued at
9 any time pursuant to this section or prior to the first day of July,
10 nineteen hundred sixty-three and not previously revoked or cancelled,
11 shall be in force and effect until revoked as herein provided. Any
12 license not previously cancelled or revoked shall remain in full force
13 and effect for thirty days beyond the stated expiration date on such
14 license. Any application to renew a license that has not previously
15 expired, been revoked or cancelled shall thereby extend the term of the
16 license until disposition of the application by the licensing officer.
17 In the case of a license for gunsmith or dealer in firearms, in counties
18 having a population of less than two hundred thousand inhabitants,
19 photographs and fingerprints shall be submitted on original applications
20 and upon renewal thereafter only at six year intervals. Upon satisfac-
21 tory proof that a currently valid original license has been despoiled,
22 lost or otherwise removed from the possession of the licensee and upon
23 application containing an additional photograph of the licensee, the
24 licensing officer shall issue a duplicate license.

25 § 7. Subdivision 12 of section 400.00 of the penal law, as amended by
26 chapter 129 of the laws of 2019, is amended to read as follows:

27 12. Records required of gunsmiths and dealers in firearms. Any person
28 licensed as gunsmith or dealer in firearms shall keep a record book
29 approved as to form, except in the city of New York, by the superinten-
30 dent of state police. In the record book shall be entered at the time of
31 every transaction involving a firearm the date, name, age, occupation
32 and residence of any person from whom a firearm is received or to whom a
33 firearm is delivered, and the calibre, make, model, manufacturer's name
34 and serial number, or if none, any other distinguishing number or iden-
35 tification mark on such firearm. Before delivering a firearm to any
36 person, the licensee shall require him to produce either a license valid
37 under this section to carry ~~[ex]~~ and possess the same, or proof of
38 lawful authority as an exempt person pursuant to section 265.20 of this
39 chapter and either (a) the National Instant Criminal Background Check
40 System (NICS) or its successor has issued a "proceed" response to the
41 licensee, or (b) thirty calendar days have elapsed since the date the
42 licensee contacted NICS to initiate a national instant criminal back-
43 ground check and NICS has not notified the licensee that the transfer of
44 the firearm to such person should be denied. In addition, before deliv-
45 ering a firearm to a peace officer, the licensee shall verify that
46 person's status as a peace officer with the division of state police.
47 After completing the foregoing, the licensee shall remove and retain the
48 attached coupon and enter in the record book the date of such license,
49 number, if any, and name of the licensing officer, in the case of the
50 holder of a license to carry ~~[ex]~~ and possess, or the shield or other
51 number, if any, assignment and department, unit or agency, in the case
52 of an exempt person. The original transaction report shall be forwarded
53 to the division of state police within ten days of delivering a firearm
54 to any person, and a duplicate copy shall be kept by the licensee. The
55 superintendent of state police may designate that such record shall be
56 completed and transmitted in electronic form. A dealer may be granted a

1 waiver from transmitting such records in electronic form if the super-
2 intendent determines that such dealer is incapable of such transmission
3 due to technological limitations that are not reasonably within the
4 control of the dealer, or other exceptional circumstances demonstrated
5 by the dealer, pursuant to a process established in regulation, and at
6 the discretion of the superintendent. Records assembled or collected
7 for purposes of inclusion in the database created pursuant to section
8 400.02 of this article shall not be subject to disclosure pursuant to
9 article six of the public officers law. The record book shall be main-
10 tained on the premises mentioned and described in the license and shall
11 be open at all reasonable hours for inspection by any peace officer,
12 acting pursuant to his special duties, or police officer. In the event
13 of cancellation or revocation of the license for gunsmith or dealer in
14 firearms, or discontinuance of business by a licensee, such record book
15 shall be immediately surrendered to the licensing officer in the city of
16 New York, and in the counties of Nassau and Suffolk, and elsewhere in
17 the state to the executive department, division of state police.

18 § 8. Subdivision 14 of section 400.00 of the penal law, as amended by
19 chapter 195 of the laws of 2005, is amended to read as follows:

20 14. Fees. In the city of New York and the county of Nassau, the annual
21 license fee shall be twenty-five dollars for gunsmiths and fifty dollars
22 for dealers in firearms. In such city, the city council and in the coun-
23 ty of Nassau the Board of Supervisors shall fix the fee to be charged
24 for a license to carry ~~[ex]~~ and possess a pistol or revolver and provide
25 for the disposition of such fees. Elsewhere in the state, the licensing
26 officer shall collect and pay into the county treasury the following
27 fees: for each license to carry ~~[ex]~~ and possess a pistol or revolver,
28 not less than three dollars nor more than ten dollars as may be deter-
29 mined by the legislative body of the county; for each amendment thereto,
30 three dollars, and five dollars in the county of Suffolk; and for each
31 license issued to a gunsmith or dealer in firearms, ten dollars. The fee
32 for a duplicate license shall be five dollars. The fee for processing a
33 license transfer between counties shall be five dollars. The fee for
34 processing a license or renewal thereof for a qualified retired police
35 officer as defined under subdivision thirty-four of section 1.20 of the
36 criminal procedure law, or a qualified retired sheriff, undersheriff, or
37 deputy sheriff of the city of New York as defined under subdivision two
38 of section 2.10 of the criminal procedure law, or a qualified retired
39 bridge and tunnel officer, sergeant or lieutenant of the triborough
40 bridge and tunnel authority as defined under subdivision twenty of
41 section 2.10 of the criminal procedure law, or a qualified retired
42 uniformed court officer in the unified court system, or a qualified
43 retired court clerk in the unified court system in the first and second
44 judicial departments, as defined in paragraphs a and b of subdivision
45 twenty-one of section 2.10 of the criminal procedure law or a retired
46 correction officer as defined in subdivision twenty-five of section 2.10
47 of the criminal procedure law shall be waived in all counties throughout
48 the state.

49 § 9. This act shall take effect immediately and shall apply to all
50 licenses held and issued on and after such date.