STATE OF NEW YORK

1689

2021-2022 Regular Sessions

IN SENATE

January 14, 2021

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:

Section 1. Paragraph (g) of subdivision 22 of section 265.00 of the penal law is amended by adding a new subparagraph (vii) to read as follows:

(vii) any weapon legally possessed and validly registered pursuant to subdivision sixteen-a of section 400.00 of this chapter prior to such person's death and bequeathed or passed through intestacy to an immediate family member of the deceased. Such weapons shall be subject to the provisions of paragraph (h) of this subdivision. For purposes of this subparagraph, the meaning of immediate family member is as defined by subdivision one of section eight hundred ninety-eight of the general business law;

§ 2. Paragraph (h) of subdivision 22 of section 265.00 of the penal law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

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

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(h) (i) Any weapon defined in paragraph (e) or (f) of this subdivision and any large capacity ammunition feeding device that was legally possessed by an individual prior to [~~the enactment of the chapter of the laws of two thousand thirteen which added this paragraph~~] January fifteenth, two thousand thirteen, may only be sold to, exchanged with or disposed of to a purchaser authorized to possess such weapons or to an individual or entity outside of the state provided that any such transfer to an individual or entity outside of the state must be reported to the entity wherein the weapon is registered within seventy-two hours of such transfer. An individual who transfers any such weapon or large capacity ammunition device to an individual inside New York state or without complying with the provisions of this paragraph shall be guilty of a class A misdemeanor unless such large capacity ammunition feeding device, the possession of which is made illegal by [~~the~~] chapter one of the laws of two thousand thirteen [~~which added this paragraph~~], is transferred within one year [~~of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph~~] of January fifteenth, two thousand fourteen.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, any weapon defined in paragraph (e) or (f) of this subdivision that was legally possessed and validly registered by an individual prior to his or her death may be transferred by the estate of such individual to one of his or her immediate family members. For purposes of this subparagraph, the meaning of immediate family member is as defined by subdivision one of section eight hundred ninety-eight of the general business law.

§ 3. Subdivision 1 of section 898 of the general business law, as amended by chapter 129 of the laws of 2019, is amended to read as follows:

1. In addition to any other requirements pursuant to state and federal law, all sales, exchanges or disposals of firearms, rifles or shotguns shall be conducted in accordance with this section unless such sale, exchange or disposal is conducted by a licensed importer, licensed manufacturer or licensed dealer, as those terms are defined in 18 USC § [~~922~~] 921, when such sale, exchange or disposal is conducted pursuant to that person's federal firearms license or such sale, exchange or disposal is between members of an immediate family. When a sale, exchange or disposal is conducted pursuant to a person's federal firearms license, before delivering a firearm, rifle or shotgun to any person, either (a) the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the federal firearms licensee, or (b) thirty calendar days shall have elapsed since the date the federal firearms licensee contacted NICS to initiate a national instant criminal background check and NICS has not notified the federal firearms licensee that the transfer of the firearm, rifle or shotgun to such person should be denied. For purposes of this section, "immediate family" shall mean spouses, domestic partners, children [~~and~~], step-children, siblings, grandparents and grandchildren.

§ 4. Subdivision 5 of section 400.00 of the penal law, as amended by chapter 1 of the laws of 2013, subparagraph (iii) of paragraph (e) as amended by chapter 244 of the laws of 2019, is amended to read as follows:

5. Filing of approved applications. [~~(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~~] **The application and any supporting records, including any information contained therein,** of any person to whom an application for any license has been granted shall **not** be a public record **and shall not be subject to disclosure pursuant to article six of the public officers law**. Upon application by a licensee who has changed his **or her** 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, Albany, within ten days after issuance of the license. The superintendent of state police may designate that such application shall be transmitted to the division of state police electronically. In the event the superintendent of the division of state police 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 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~~] **article** shall not be subject to disclosure pursuant to article six of the public officers law.

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

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

~~(A) the applicant is an active or retired police officer, peace officer, probation officer, parole officer, or corrections officer;~~

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

~~(C) the applicant is or was a witness in a criminal proceeding involving a criminal charge;~~

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

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

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

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

~~(c) Each form provided for recertification pursuant to paragraph (b) of subdivision ten of this section shall include an opportunity for the applicant to request an exception from the information provided on such form becoming public record pursuant to paragraph (a) of this subdivision. Such forms shall notify applicants that, upon discovery that an applicant knowingly provided false information, such applicant may be subject to penalties pursuant to section 175.30 of this chapter, and further, that his or her request for an exception shall be null and void, provided that written notice containing such determination is provided to the applicant. Further, such forms shall provide each applicant an opportunity to either decline to request the grant or continuation of an exception, or specify the grounds on which he or she believes his or her information should not be publicly disclosed. These grounds, which shall be identified in the application with a box beside each for checking, as applicable, by the applicant, shall be the same as provided in paragraph (b) of this subdivision.~~

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

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

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

~~(iii) If an exception is sought and granted pursuant to paragraph (b) of this subdivision, the application information shall not be public record, unless the request is determined to be null and void. If an exception is sought and granted pursuant to paragraph (c) of this subdivision, the information concerning such recertification application shall not be public record, unless the request is determined to be null and void. Notwithstanding the foregoing provisions of this subparagraph, local and state law enforcement shall, upon request, be granted access to and copies of such application information provided that such information obtained by law enforcement pursuant to this subparagraph shall not be considered a public record of such law enforcement agency.~~

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

~~(g) If a request for an exception is determined to be null and void pursuant to paragraph (b) or (c) of this subdivision, an applicant may request review of such determination pursuant to article seventy-eight of the civil practice laws and rules. Such proceeding must commence within thirty days after service of the written notice containing the adverse determination. Notice of the right to commence such a petition, and the time period therefor, shall be included in the notice of the determination. Disclosure following such a petition shall not be made prior to the disposition of such review.~~]

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

11-a. Possession of a large capacity ammunition feeding device by an individual who legally possessed the large capacity ammunition feeding device before April fifteenth, two thousand thirteen.

§ 6. Section 265.37 of the penal law is REPEALED.

§ 7. Section 400.03 of the penal law is REPEALED.

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

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