STATE OF NEW YORK

4990

2021-2022 Regular Sessions

IN ASSEMBLY

February 10, 2021

Introduced by M. of A. HAWLEY, BRABENEC, MONTESANO, BLANKENBUSH, TAGUE, SALKA -- Multi-Sponsored by -- M. of A. BARCLAY, DeSTEFANO, B. MILLER -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to establishing the civil rights restoration act; to amend the penal law, in relation to medical and/or clinical records and reporting for purposes of firearm licenses, in relation to the destruction of firearms, in relation to registration of sellers of ammunition, and in relation to exempting certain individuals from having to provide a photograph for firearm licensing purposes; to amend the general business law, in relation to expanding the definition of immediate family; to amend the mental hygiene law, in relation to reporting; to repeal certain provisions of the penal law relating to firearms licenses and sellers of ammunition; and to repeal certain provisions of the mental hygiene law and the executive law, relating to reporting of substantial risk or threat of harm by mental health professionals

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

Section 1. Short title. This act shall be known and may be cited as the "civil rights restoration act".

§ 2. The civil rights law is amended by adding a new section 79-q to read as follows:

§ 79-q. Civil rights restoration. 1. In any proceeding that may impact an individual's rights under the second amendment of the United States constitution, or any similar state right, including such proceedings that could result in the loss of a license to carry or possess a firearm:

(a) No court order shall be issued nor proceeding be commenced unless all pleadings or other accusatory instruments have been filed and served in conformity with article thirty of the civil practice law and rules, and where such pleading includes an allegation that the individual has

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

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been "involuntarily committed to a mental institution," such pleading shall include an allegation as to the said court order date and jurisdiction;

(b) The burden of proof in such proceeding shall be no less than clear and convincing evidence;

(c) Individuals may examine the entire contents of his or her firearm license records constructed by state and local licensing and law enforcement authorities;

(d) There shall be a right to counsel, including the right to assigned counsel, if counsel cannot be afforded; and

(e) Any firearms confiscated and/or surrendered into law enforcement evidence status during such proceeding shall not be destroyed, unless specifically directed through a written order by a court of competent jurisdiction at the conclusion of all disqualification proceedings relating to the individual, including any appeals undertaken.

2. (a) There shall be contemporaneous written notification to all individuals being reported to any law enforcement database that could result in the deprivation of rights to own, possess, or use a firearm and/or the deprivation of a lawfully owned firearm, including, but not limited to, reports under former section 9.46 of the mental hygiene law and under 18 USC § 922(g).

(b) There shall be written notification transmitted within ninety days of the effective date of this section to all individuals previously reported into any law enforcement database that could result in the deprivation of rights to own, possess, or use a firearm and/or the deprivation of a lawfully owned firearm, including, but not limited to, the databases maintained by the office of mental health, the division of criminal justice services, and the division of state police in conjunction with reports made under the former section 9.46 of the mental hygiene law and/or under 18 USC § 922(g)(4), and that such written notification shall include notice that the individual may have a right to commence a proceeding in either the New York state supreme court or county court under article seventy-eight of the civil practice laws and rules if he or she believes that the information contained within the notification is in error.

(c) Any individual, business, or governmental official who, knowing the information reported, conveyed or circulated to be false, reports that a person has been involuntarily committed, shall be subject to a civil fine of not more than ten thousand dollars per offense.

(d) In any proceeding where an individual establishes that a report that he or she was involuntarily committed was false, reasonable attorney's fees and costs shall be reimbursed by the state.

(e) The state shall correct any false or incorrect report against an individual to state and federal databases, including those under 18 USC §922(g), within seven days of entry and service upon the state of a final order of disposition in a case. The failure of the state to timely do so shall be punishable as a contempt of court.

(f) Notwithstanding any law, rule or regulation to the contrary, an individual's medical and/or clinical records shall not be used for routine law enforcement reporting purposes relative to firearms ownership, use, possession, or suitability.

§ 3. Section 400.02 of the penal law, as amended by chapter 244 of the laws of 2019, is amended to read as follows:

§ 400.02 Statewide license and record database.

There shall be a statewide license and record database which shall be created and maintained by the division of state police the cost of which

shall not be borne by any municipality. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law**, excepting any non-identifying records such as existing statistical tabulations or those capable of being performed or such record responses as can be reasonably satisfied through redacted response**. Records containing granted license applications shall be periodically checked by the division of criminal justice services against criminal [~~conviction, mental health, and all other records~~] **convictions** as [~~are~~] **is** necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

§ 4. Paragraph (b) of subdivision 11 of section 400.00 of the penal law is REPEALED.

§ 5. Section 400.05 of the penal law is amended by adding a new subdivision 7 to read as follows:

7. Whenever any machine-gun or firearm is destroyed pursuant to subdivision two of this section, all state and local law enforcement agencies shall publish on their website, on an annual basis, an inventory of every machine-gun or firearm that is destroyed, including the caliber, make, model, manufacturer's name, serial number, or if none, any other distinguishing number or identification mark of the machine-gun or firearm, and if applicable, the jurisdiction and date of the court order directing the surrender and/or destruction of such machine-gun or firearm.

§ 6. Paragraph (c) of subdivisions 11 and 16-a and paragraph (b) of subdivision 10 of section 400.00 of the penal law are REPEALED.

§ 7. 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, 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 licen-

see, 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, **parents, brothers, sisters,** children and step-children.

§ 8. Subdivision 17 of section 400.00 of the penal law is renumbered subdivision 19 and a new subdivision 17 is added to read as follows:

17. Applicants who have a genuine and sincere religious belief, who have provided fingerprints pursuant to this section, shall not be required to provide photographs of themselves in order to obtain a license as required by this section.

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

§ 10. Subdivision 16-a of section 400.00 of the penal law is amended by adding a new paragraph (c) to read as follows:

(c) The division of state police shall not require the registration of a seller of ammunition, as defined in subdivision twenty-four of section 265.00 of this chapter, in order for such seller of ammunition to operate his or her business.

§ 11. Section 9.46 of the mental hygiene law is REPEALED.

§ 12. Subdivision 19 of section 837 of the executive law is REPEALED.

§ 13. Paragraph 12 of subdivision (c) of section 33.13 of the mental hygiene law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

12. to a director of community services as defined in article nine of this chapter or his or her designee, provided that such director or his or her designee [~~**(i)**~~] requests such information in the exercise of his or her statutory functions, powers and duties pursuant to section 9.37, 9.45, 9.47, 9.48, 9.60 or 41.13 of this chapter[~~**; or (ii) the disclosure of information is required pursuant to section 9.46 of this chapter**~~].

§ 14. One year after the completion of transmission of notification of all individuals pursuant to paragraph (b) of subdivision two of section 79-q of the civil rights law, as added by section two of this act, all offices and agencies in use or possession of reports required under the former section 9.46 of the mental hygiene law shall purge all such information.

§ 15. Severability. If any provision of this act, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision of this act, or in its application to the person or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

§ 16. This act shall take effect immediately.