

# STATE OF NEW YORK

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1623

2021-2022 Regular Sessions

## IN SENATE

January 14, 2021

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Introduced by Sens. GALLIVAN, AKSHAR, HELMING, JORDAN, TEDISCO -- 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 the recertification process for licenses for firearms

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

1 Section 1. Subdivisions 5 and 10 of section 400.00 of the penal law,  
2 as amended by chapter 1 of the laws of 2013, subparagraph (iii) of para-  
3 graph (e) of subdivision 5 as amended by chapter 244 of the laws of  
4 2019, are amended to read as follows:

5 5. Filing of approved applications. (a) The application for any  
6 license, if granted, shall be filed by the licensing officer with the  
7 clerk of the county of issuance, except that in the city of New York  
8 and, in the counties of Nassau and Suffolk, the licensing officer shall  
9 designate the place of filing in the appropriate division, bureau or  
10 unit of the police department thereof, and in the county of Suffolk the  
11 county clerk is hereby authorized to transfer all records or applica-  
12 tions relating to firearms to the licensing authority of that county.  
13 Except as provided in paragraphs (b) through [~~(f)~~] (e) of this subdivi-  
14 sion, the name and address of any person to whom an application for any  
15 license has been granted shall be a public record. Upon application by a  
16 licensee who has changed his place of residence such records or applica-  
17 tions shall be transferred to the appropriate officer at the licensee's  
18 new place of residence. A duplicate copy of such application shall be  
19 filed by the licensing officer in the executive department, division of  
20 state police, Albany, within ten days after issuance of the license. The  
21 superintendent of state police may designate that such application shall  
22 be transmitted to the division of state police electronically. In the  
23 event the superintendent of the division of state police determines that  
24 it lacks any of the records required to be filed with the division, it

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

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1 may request that such records be provided to it by the appropriate  
2 clerk, department or authority and such clerk, department or authority  
3 shall provide the division with such records. In the event such clerk,  
4 department or authority lacks such records, the division may request the  
5 license holder provide information sufficient to constitute such record  
6 and such license holder shall provide the division with such informa-  
7 tion. Such information shall be limited to the license holder's name,  
8 date of birth, gender, race, residential address, social security number  
9 and firearms possessed by said license holder. Nothing in this subdivi-  
10 sion shall be construed to change the expiration date or term of such  
11 licenses if otherwise provided for in law. Records assembled or  
12 collected for purposes of inclusion in the database established by this  
13 section shall be released pursuant to a court order. Records assembled  
14 or collected for purposes of inclusion in the database created pursuant  
15 to section 400.02 of this chapter shall not be subject to disclosure  
16 pursuant to article six of the public officers law.

17 (b) Each application for a license pursuant to paragraph (a) of this  
18 subdivision shall include, on a separate written form prepared by the  
19 division of state police within thirty days of the effective date of  
20 ~~[the]~~ chapter one of the laws of two thousand thirteen~~[, which amended~~  
21 ~~this section,~~] and provided to the applicant at the same time and in the  
22 same manner as the application for a license, an opportunity for the  
23 applicant to request an exception from his or her application informa-  
24 tion becoming public record pursuant to paragraph (a) of this subdivi-  
25 sion. Such forms, which shall also be made available to individuals who  
26 had applied for or been granted a license prior to the effective date of  
27 ~~[the]~~ chapter one of the laws of two thousand thirteen ~~[which amended~~  
28 ~~this section,~~] shall notify applicants that, upon discovery that an  
29 applicant knowingly provided false information, such applicant may be  
30 subject to penalties pursuant to section 175.30 of this chapter, and  
31 further, that his or her request for an exception shall be null and  
32 void, provided that written notice containing such determination is  
33 provided to the applicant. Further, such forms shall provide each appli-  
34 cant an opportunity to specify the grounds on which he or she believes  
35 his or her application information should not be publicly disclosed.  
36 These grounds, which shall be identified on the application with a box  
37 beside each for checking, as applicable, by the applicant, shall be as  
38 follows:

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

41 (A) the applicant is an active or retired police officer, peace offi-  
42 cer, probation officer, parole officer, or corrections officer;

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

45 (C) the applicant is or was a witness in a criminal proceeding involv-  
46 ing a criminal charge;

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

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

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

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

3 ~~(c) [Each form provided for recertification pursuant to paragraph (b)~~  
4 ~~of subdivision ten of this section shall include an opportunity for the~~  
5 ~~applicant to request an exception from the information provided on such~~  
6 ~~form becoming public record pursuant to paragraph (a) of this subdivi-~~  
7 ~~sion. Such forms shall notify applicants that, upon discovery that an~~  
8 ~~applicant knowingly provided false information, such applicant may be~~  
9 ~~subject to penalties pursuant to section 175.30 of this chapter, and~~  
10 ~~further, that his or her request for an exception shall be null and~~  
11 ~~void, provided that written notice containing such determination is~~  
12 ~~provided to the applicant. Further, such forms shall provide each appli-~~  
13 ~~cant an opportunity to either decline to request the grant or continua-~~  
14 ~~tion of an exception, or specify the grounds on which he or she believes~~  
15 ~~his or her information should not be publicly disclosed. These grounds,~~  
16 ~~which shall be identified in the application with a box beside each for~~  
17 ~~checking, as applicable, by the applicant, shall be the same as provided~~  
18 ~~in paragraph (b) of this subdivision.~~

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

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

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

29 (iii) If an exception is sought and granted pursuant to paragraph (b)  
30 of this subdivision, the application information shall not be public  
31 record, unless the request is determined to be null and void. ~~[If an~~  
32 ~~exception is sought and granted pursuant to paragraph (c) of this subdivi-~~  
33 ~~vision, the information concerning such recertification application~~  
34 ~~shall not be public record, unless the request is determined to be null~~  
35 ~~and void.]~~ Notwithstanding the foregoing provisions of this subpara-

36 graph, local and state law enforcement shall, upon request, be granted  
37 access to and copies of such application information provided that such  
38 information obtained by law enforcement pursuant to this subparagraph  
39 shall not be considered a public record of such law enforcement agency.

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

52 ~~[(g)]~~ (f) If a request for an exception is determined to be null and  
53 void pursuant to paragraph (b) ~~[or (e)]~~ of this subdivision, an appli-  
54 cant may request review of such determination pursuant to article seven-  
55 ty-eight of the civil practice ~~[laws]~~ law and rules. Such proceeding  
56 must commence within thirty days after service of the written notice

1 containing the adverse determination. Notice of the right to commence  
2 such a petition, and the time period therefor, shall be included in the  
3 notice of the determination. Disclosure following such a petition shall  
4 not be made prior to the disposition of such review.

5 10. License: expiration, certification and renewal. ~~[(a)]~~ Any license  
6 for gunsmith or dealer in firearms and, in the city of New York, any  
7 license to carry or possess a pistol or revolver, issued at any time  
8 pursuant to this section or prior to the first day of July, nineteen  
9 hundred sixty-three and not limited to expire on an earlier date fixed  
10 in the license, shall expire not more than three years after the date of  
11 issuance. In the counties of Nassau, Suffolk and Westchester, any  
12 license to carry or possess a pistol or revolver, issued at any time  
13 pursuant to this section or prior to the first day of July, nineteen  
14 hundred sixty-three and not limited to expire on an earlier date fixed  
15 in the license, shall expire not more than five years after the date of  
16 issuance; however, in the county of Westchester, any such license shall  
17 be certified prior to the first day of April, two thousand, in accord-  
18 ance with a schedule to be contained in regulations promulgated by the  
19 commissioner of the division of criminal justice services, and every  
20 such license shall be recertified every five years thereafter. For  
21 purposes of this section certification shall mean that the licensee  
22 shall provide to the licensing officer the following information only:  
23 current name, date of birth, current address, and the make, model, cali-  
24 ber and serial number of all firearms currently possessed. Such certif-  
25 ication information shall be filed by the licensing officer in the same  
26 manner as an amendment. Elsewhere than in the city of New York and the  
27 counties of Nassau, Suffolk and Westchester, any license to carry or  
28 possess a pistol or revolver, issued at any time pursuant to this  
29 section or prior to the first day of July, nineteen hundred sixty-three  
30 and not previously revoked or cancelled, shall be in force and effect  
31 until revoked as herein provided. Any license not previously cancelled  
32 or revoked shall remain in full force and effect for thirty days beyond  
33 the stated expiration date on such license. Any application to renew a  
34 license that has not previously expired, been revoked or cancelled shall  
35 thereby extend the term of the license until disposition of the applica-  
36 tion by the licensing officer. In the case of a license for gunsmith or  
37 dealer in firearms, in counties having a population of less than two  
38 hundred thousand inhabitants, photographs and fingerprints shall be  
39 submitted on original applications and upon renewal thereafter only at  
40 six year intervals. Upon satisfactory proof that a currently valid  
41 original license has been despoiled, lost or otherwise removed from the  
42 possession of the licensee and upon application containing an additional  
43 photograph of the licensee, the licensing officer shall issue a dupli-  
44 cate license.

45 ~~[(b) All licensees shall be recertified to the division of state~~  
46 ~~police every five years thereafter. Any license issued before the effec-~~  
47 ~~tive date of the chapter of the laws of two thousand thirteen which~~  
48 ~~added this paragraph shall be recertified by the licensee on or before~~  
49 ~~January thirty-first, two thousand eighteen, and not less than one year~~  
50 ~~prior to such date, the state police shall send a notice to all license~~  
51 ~~holders who have not recertified by such time. Such recertification~~  
52 ~~shall be in a form as approved by the superintendent of state police,~~  
53 ~~which shall request the license holder's name, date of birth, gender,~~  
54 ~~race, residential address, social security number, firearms possessed by~~  
55 ~~such license holder, email address at the option of the license holder~~  
56 ~~and an affirmation that such license holder is not prohibited from~~

~~possessing firearms. The form may be in an electronic form if so designated by the superintendent of state police. Failure to recertify shall act as a revocation of such license. If the New York state police discover as a result of the recertification process that a licensee failed to provide a change of address, the New York state police shall not require the licensing officer to revoke such license.]~~

§ 2. This act shall take effect immediately.