

Establishes a license for a pistol or revolver shall be issued to have and carry concealed, without regard to employment or place of employment and without judicial discretion on whether proper cause exists for the issuance thereof; requires the police authority in the locality where an application is made for a license to carry, possess, repair and dispose of firearms to conduct a search of the National Instant Criminal Background Check System (NICS).

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**Sponsor:** [ESPAILLAT](#) / **Committee:** [CODES](#)  
**Law Section:** [Penal Law](#) / **Law:** Amd S400.00, Pen L

## **S1863-2011 Actions**

- Jan 4, 2012: REFERRED TO CODES
- Jan 13, 2011: REFERRED TO CODES

## **S1863-2011 Memo**

BILL NUMBER: S1863

### TITLE OF BILL:

An act

to amend the penal law, in relation to licenses to carry, possess, repair and dispose of firearms

### PURPOSE OF THE BILL:

This legislation would remove a gun licensing officer's ability to deny or restrict the issuance of licenses to law abiding citizens who have successfully undergone the state's strict application process and appropriate New York State and Federal Bureau of Investigations fingerprint background check required under law. In addition, this bill will conform New York State law to current ATF requirements regarding background checks for firearms transfers.

### SUMMARY OF SPECIFIC PROVISIONS:

1- Amends paragraph (f) of subdivision 2 and subdivision 4 of 400.00 of the Penal Law.

2- Effective date.

### JUSTIFICATION:

New York was once one of only a handful of states that issued permits to carry a concealed handgun. However, in recent years, the vast majority of states have adopted "shall issue" laws, automatically granting a license to carry a concealed handgun to any citizen who applies for one, unless good cause exists for denying a particular individual such license. New York is now one of only eight states that issues handgun permits, but requires law-abiding citizens to prove a need to carry a handgun, thus allowing licensing officers to deny or restrict licenses to law abiding New Yorkers.

Currently, a person applying for a handgun license in New York must pick up an application in person, complete the application in duplicate, find at least three references to give statements as to the applicant's good character, obtain a copy of their driver's

abstract, pay a \$99 fingerprinting fee, undergo both State DCJS and Federal Bureau of Investigations fingerprint background checks, meet with a police officer, submit to a character investigation, and allow a search of the New York State Office of Mental Health records. In many counties, an applicant is also required to pay for and attend a handgun safety class, and meet with a judge, prior to the issuance of a license. If an individual wishes to purchase a handgun, they must receive permission to do so from their licensing officer, for each handgun they purchase.

Although not provided for by any provision of law, many licensing officers throughout the State limit a concealed handgun licensee to carrying their handgun to and from target ranges, or while hunting. Requiring licensing officers to issue a handgun permit to any citizen for whom no good cause exists to deny such a license will also prevent licensing officers from placing arbitrary restrictions on individuals' licenses to carry handguns.

The simple fact is that New York's strict law applies only to law abiding people. Criminals who are willing to commit serious violent crimes, such as murder, robbery, or drug dealing, are not dissuaded from illegally purchasing a handgun in order to do so. Law abiding people who are willing to submit to a criminal and character background check are not likely to commit a crime, and there is no rational basis for denying them the constitutional right to own and carry a handgun.

In addition, in 1998, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) sent an Open Letter to all New York State Federal Firearms Licensees (FFLS) advising them that New York State licenses to carry and possess handguns would qualify as an alternative to the National Instant Criminal Background Check System (NICS) background check required under the Brady Law. In 2004, the ATF began reviewing the background check requirements of all States that had permits that qualified as alternatives to NICS and has since deemed that New York licenses to carry and possess handguns no longer qualify as a NICS check alternative.

This legislation will require that along with all other requirements stipulated under law, including other state and federal background checks, that a NICS background check also be performed on an individual wishing to obtain a handgun license.

**PRIOR LEGISLATIVE HISTORY:**

2007-2008: A.6378. Similar to the intent of A.3195/S.282 of 2005-2006

**FISCAL IMPLICATIONS:**

None.

**EFFECTIVE DATE:**

This act shall take effect on the ninetieth day after it shall have become a law.

# S1863-2011 Text

S T A T E   O F   N E W   Y O R K

1863

2011-2012 Regular Sessions  
I N   S E N A T E  
January 13, 2011

Introduced by Sen. ESPAILLAT -- 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 licenses to carry, possess, repair and dispose of firearms  
THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (f) of subdivision 2 and subdivision 4 of section 400.00 of the penal law, paragraph (f) of subdivision 2 as amended by chapter 189 of the laws of 2000 and subdivision 4 as amended by chapter 331 of the laws of 2005, are amended to read as follows:

(f) have and carry concealed, without regard to employment or place of possession[  
]; and

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. THE POLICE AUTHORITY IN THE LOCALITY WHERE THE APPLICATION IS MADE SHALL CONDUCT A SEARCH OF THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS). In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at

Deleted: , by any person when proper cause exists for the issuance

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Albany. A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a permit pursuant to the provisions of this section. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.