

7596

I N S E N A T E

May 11, 2016

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the general business law, in relation to establishing a waiting period before a firearm, shotgun or rifle may be delivered to a person

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 12 of section 400.00 of the penal law, as
2 amended by chapter 1 of the laws of 2013, is amended to read as follows:
3 12. Records required of gunsmiths and dealers in firearms. Any person
4 licensed as gunsmith or dealer in firearms shall keep a record book
5 approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of
6 every transaction involving a firearm the date, name, age, occupation
7 and residence of any person from whom a firearm is received or to whom a
8 firearm is delivered, and the calibre, make, model, manufacturer's name
9 and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any
10 person, the licensee shall require him to produce either a license valid
11 under this section to carry or possess the same, or proof of lawful
12 authority as an exempt person pursuant to section 265.20 OF THIS CHAPTER
13 AND EITHER (A) THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM
14 (NICS) OR ITS SUCCESSOR HAS ISSUED A "PROCEED" RESPONSE TO THE LICENSEE,
15 OR (B) TEN BUSINESS DAYS HAVE ELAPSED SINCE THE DATE THE LICENSEE
16 CONTACTED NICS TO INITIATE A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
17 AND NICS HAS NOT NOTIFIED THE LICENSEE THAT THE TRANSFER OF THE FIREARM
18 TO SUCH PERSON SHOULD BE DENIED. In addition, before delivering a
19 firearm to a peace officer, the licensee shall verify that person's
20 status as a peace officer with the division of state police. After
21 completing the foregoing, the licensee shall remove and retain the
22 attached coupon and enter in the record book the date of such license,
23 number, if any, and name of the licensing officer, in the case of the
24 holder of a license to carry or possess, or the shield or other number,
25 if any, assignment and department, unit or agency, in the case of an

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

LBD13653-05-6

1 exempt person. The original transaction report shall be forwarded to the
2 division of state police within ten days of delivering a firearm to any
3 person, and a duplicate copy shall be kept by the licensee. The super-
4 intendent of state police may designate that such record shall be
5 completed and transmitted in electronic form. A dealer may be granted a
6 waiver from transmitting such records in electronic form if the super-
7 intendent determines that such dealer is incapable of such transmission
8 due to technological limitations that are not reasonably within the
9 control of the dealer, or other exceptional circumstances demonstrated
10 by the dealer, pursuant to a process established in regulation, and at
11 the discretion of the superintendent. Records assembled or collected for
12 purposes of inclusion in the database created pursuant to section 400.02
13 of this article shall not be subject to disclosure pursuant to article
14 six of the public officers law. The record book shall be maintained on
15 the premises mentioned and described in the license and shall be open at
16 all reasonable hours for inspection by any peace officer, acting pursu-
17 ant to his special duties, or police officer. In the event of cancella-
18 tion or revocation of the license for gunsmith or dealer in firearms, or
19 discontinuance of business by a licensee, such record book shall be
20 immediately surrendered to the licensing officer in the city of New
21 York, and in the counties of Nassau and Suffolk, and elsewhere in the
22 state to the executive department, division of state police.

23 S 2. The penal law is amended by adding a new section 400.20 to read
24 as follows:

25 S 400.20 WAITING PERIOD IN CONNECTION WITH THE SALE OR TRANSFER OF A
26 RIFLE OR SHOTGUN.

27 WHEN A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK IS REQUIRED PURSUANT
28 TO STATE OR FEDERAL LAW TO BE CONDUCTED THROUGH THE NATIONAL INSTANT
29 CRIMINAL BACKGROUND CHECK SYSTEM (NICS) OR ITS SUCCESSOR IN CONNECTION
30 WITH THE SALE OR TRANSFER OF A RIFLE OR SHOTGUN TO ANY PERSON, BEFORE
31 DELIVERING A RIFLE OR SHOTGUN TO SUCH PERSON, EITHER (A) NICS HAS ISSUED
32 A "PROCEED" RESPONSE TO THE SELLER OR TRANSFEROR, OR (B) TEN BUSINESS
33 DAYS SHALL HAVE ELAPSED SINCE THE DATE THE SELLER OR TRANSFEROR
34 CONTACTED NICS TO INITIATE A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
35 AND NICS HAS NOT NOTIFIED THE SELLER OR TRANSFEROR THAT THE TRANSFER OF
36 THE RIFLE OR SHOTGUN TO SUCH PERSON SHOULD BE DENIED.

37 S 3. Subdivision 1 of section 897 of the general business law, as
38 added by chapter 189 of the laws of 2000, is amended to read as follows:

39 1. A national instant criminal background check shall be conducted and
40 no person shall sell or transfer a firearm, rifle or shotgun at a gun
41 show, except in accordance with the provisions of 18 U.S.C. 922(t),
42 PROVIDED THAT BEFORE DELIVERING A FIREARM, RIFLE OR SHOTGUN TO ANY
43 PERSON, EITHER (A) THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM
44 (NICS) OR ITS SUCCESSOR HAS ISSUED A "PROCEED" RESPONSE TO THE SELLER OR
45 TRANSFEROR, OR (B) TEN BUSINESS DAYS SHALL HAVE ELAPSED SINCE THE DATE
46 THE SELLER OR TRANSFEROR CONTACTED NICS TO INITIATE A NATIONAL INSTANT
47 CRIMINAL BACKGROUND CHECK AND NICS HAS NOT NOTIFIED THE SELLER OR
48 TRANSFEROR THAT THE TRANSFER OF THE FIREARM, RIFLE OR SHOTGUN TO SUCH
49 PERSON SHOULD BE DENIED.

50 S 4. Subdivisions 1 and 2 of section 898 of the general business law,
51 as added by chapter 1 of the laws of 2013, are amended to read as
52 follows:

53 1. In addition to any other requirements pursuant to state and feder-
54 al law, all sales, exchanges or disposals of firearms, rifles or shot-
55 guns shall be conducted in accordance with this section unless such
56 sale, exchange or disposal is conducted by a licensed importer, licensed

1 manufacturer or licensed dealer, as those terms are defined in 18 USC S
2 922, when such sale, exchange or disposal is conducted pursuant to that
3 person's federal firearms license or such sale, exchange or disposal is
4 between members of an immediate family. WHEN A SALE, EXCHANGE OR
5 DISPOSAL IS CONDUCTED PURSUANT TO A PERSON'S FEDERAL FIREARMS LICENSE,
6 BEFORE DELIVERING A FIREARM, RIFLE OR SHOTGUN TO ANY PERSON, EITHER (A)
7 THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) OR ITS
8 SUCCESSOR HAS ISSUED A "PROCEED" RESPONSE TO THE FEDERAL FIREARMS LICEN-
9 SEE, OR (B) TEN BUSINESS DAYS SHALL HAVE ELAPSED SINCE THE DATE THE
10 FEDERAL FIREARMS LICENSEE CONTACTED NICS TO INITIATE A NATIONAL INSTANT
11 CRIMINAL BACKGROUND CHECK AND NICS HAS NOT NOTIFIED THE FEDERAL FIREARMS
12 LICENSEE THAT THE TRANSFER OF THE FIREARM, RIFLE OR SHOTGUN TO SUCH
13 PERSON SHOULD BE DENIED. For purposes of this section, "immediate fami-
14 ly" shall mean spouses, domestic partners, children and step-children.

15 2. Before any sale, exchange or disposal pursuant to this article, a
16 national instant criminal background check must be completed by a dealer
17 who consents to conduct such check, and upon completion of such back-
18 ground check, shall complete a document, the form of which shall be
19 approved by the superintendent of state police, that identifies and
20 confirms that such check was performed. BEFORE A DEALER WHO CONSENTS TO
21 CONDUCT A NATIONAL INSTANT CRIMINAL BACKGROUND CHECK DELIVERS A FIREARM,
22 RIFLE OR SHOTGUN TO ANY PERSON, EITHER (A) NICS ISSUED A "PROCEED"
23 RESPONSE TO THE DEALER, OR (B) TEN BUSINESS DAYS SHALL HAVE ELAPSED
24 SINCE THE DATE THE DEALER CONTACTED NICS TO INITIATE A NATIONAL INSTANT
25 CRIMINAL BACKGROUND CHECK AND NICS HAS NOT NOTIFIED THE DEALER THAT THE
26 TRANSFER OF THE FIREARM, RIFLE OR SHOTGUN TO SUCH PERSON SHOULD BE
27 DENIED.

28 S 5. This act shall take effect on the sixtieth day after it shall
29 have become a law.