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I N   S E N A T E

May 11, 2016

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

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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.