

STATE OF NEW YORK

9055

IN ASSEMBLY

January 18, 2018

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Codes

AN ACT to amend the general business law, the penal law and the executive law in relation to denial of applications to purchase or transfer firearms; to amend the executive law in relation to notification of victims of certain crimes; and to amend the public officers law in relation to exemptions from public inspection and copying under the freedom of information law

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

1 Section 1. Subdivision 1 of section 896 of the general business law is
2 amended by adding a new paragraph (d) to read as follows:

3 (d) (i) A firearm dealer licensed under federal law shall report to
4 the division of state police information on each instance where such
5 dealer denies an application for the purchase or transfer of a firearm
6 as the result of a background check or completed and submitted firearm
7 purchase or transfer application that indicates the applicant is ineli-
8 gible to possess a firearm under state or federal law. Such dealer shall
9 report the denied application information to the division of state
10 police within five days of the denial in a format as prescribed by the
11 superintendent of state police. Such reported information must include
12 the identifying information of the applicant, the date of the applica-
13 tion and denial of such application, and other information or documents
14 as prescribed by the superintendent of state police. In any case where
15 the purchase or transfer of a firearm is initially denied by such dealer
16 as the result of a background check that indicates the applicant is
17 ineligible to possess a firearm, but the purchase or transfer is subse-
18 quently approved, such dealer shall report the subsequent approval to
19 the division of state police within one day of the approval.

20 (ii) Upon denying an application for the purchase or transfer of a
21 firearm as a result of a background check or completed and submitted
22 firearm purchase or transfer application that indicates the applicant is
23 ineligible to possess a firearm under state or federal law, the dealer
24 shall:

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

LBD13469-01-7

1 (A) Provide such applicant with a copy of a notice form generated and
2 distributed by the superintendent of state police under subdivision four
3 of section 400.02 of the penal law, informing denied applicants of their
4 right to appeal the denial; and

5 (B) Retain the original records of the attempted purchase or transfer
6 of a firearm for a period not less than six years.

7 § 2. Subdivision 2 of section 898 of the general business law, as
8 added by chapter 1 of the laws of 2013, is amended to read as follows:

9 2. (a) Before any sale, exchange or disposal pursuant to this article,
10 a national instant criminal background check must be completed by a
11 dealer who consents to conduct such check, and upon completion of such
12 background check, shall complete a document, the form of which shall be
13 approved by the superintendent of state police, that identifies and
14 confirms that such check was performed.

15 (b) (i) Such dealer shall report to the division of state police
16 information on each instance where such dealer denies an application for
17 the purchase or transfer of a firearm as the result of a background
18 check or completed and submitted firearm purchase or transfer applica-
19 tion that indicates the applicant is ineligible to possess a firearm
20 under state or federal law. Such dealer shall report the denied applica-
21 tion information to the division of state police within five days of the
22 denial in a format as prescribed by the superintendent of state police.
23 Such reported information must include the identifying information of
24 the applicant, the date of the application and denial of such applica-
25 tion, and other information or documents as prescribed by the super-
26 intendent of state police. In any case where the purchase or transfer of
27 a firearm is initially denied by such dealer as the result of a back-
28 ground check that indicates the applicant is ineligible to possess a
29 firearm, but the purchase or transfer is subsequently approved, such
30 dealer shall report the subsequent approval to the division of state
31 police within one day of the approval.

32 (ii) Upon denying an application for the purchase or transfer of a
33 firearm as a result of a background check or completed and submitted
34 firearm purchase or transfer application that indicates the applicant is
35 ineligible to possess a firearm under state or federal law, the dealer
36 shall:

37 (A) Provide such applicant with a copy of a notice form generated and
38 distributed by the superintendent of state police subdivision four of
39 section 400.02 of the penal law, informing denied applicants of their
40 right to appeal the denial; and

41 (B) Retain the original records of the attempted purchase or transfer
42 of a firearm for a period not less than six years.

43 § 3. The penal law is amended by adding a new section 400.04 to read
44 as follows:

45 § 400.04 Dealer reporting of denied applications.

46 1. A firearm dealer licensed under federal law shall report to the
47 division of state police information on each instance where such dealer
48 denies an application for the purchase or transfer of a firearm as the
49 result of a background check or completed and submitted firearm purchase
50 or transfer application that indicates the applicant is ineligible to
51 possess a firearm under state or federal law. Such dealer shall report
52 the denied application information to the division of state police with-
53 in five days of the denial in a format as prescribed by the superinten-
54 dent of state police. Such reported information must include the identi-
55 fying information of the applicant, the date of the application and
56 denial of such application, and other information or documents as

1 prescribed by the superintendent of state police. In any case where the
2 purchase or transfer of a firearm is initially denied by such dealer as
3 the result of a background check that indicates the applicant is ineli-
4 gible to possess a firearm, but the purchase or transfer is subsequently
5 approved, such dealer shall report the subsequent approval to the divi-
6 sion of state police within one day of the approval.

7 2. Upon denying an application for the purchase or transfer of a
8 firearm as a result of a background check or completed and submitted
9 firearm purchase or transfer application that indicates the applicant is
10 ineligible to possess a firearm under state or federal law, the dealer
11 shall:

12 (a) Provide such applicant with a copy of a notice form generated and
13 distributed by the superintendent of state police subdivision four of
14 section 400.02 of the penal law, informing denied applicants of their
15 right to appeal the denial; and

16 (b) Retain the original records of the attempted purchase or transfer
17 of a firearm for a period not less than six years.

18 § 4. Section 400.02 of the penal law, as added by chapter 1 of the
19 laws of 2013, is amended to read as follows:

20 § 400.02 Statewide license and record database.

21 1. There shall be a statewide license and record database which shall
22 be created and maintained by the division of state police the cost of
23 which shall not be borne by any municipality. Records assembled or
24 collected for purposes of inclusion in such database shall not be
25 subject to disclosure pursuant to article six of the public officers
26 law. Records containing granted or denied license applications shall be
27 periodically checked by the division of criminal justice services
28 against criminal conviction, mental health, and all other records as are
29 necessary to determine their continued accuracy as well as whether an
30 individual is no longer a valid license holder. The division of criminal
31 justice services shall also check pending applications made pursuant to
32 this article against such records to determine whether a license may be
33 granted. All state agencies shall cooperate with the division of crimi-
34 nal justice services, as otherwise authorized by law, in making their
35 records available for such checks. The division of criminal justice
36 services, upon determining that an individual is ineligible to possess a
37 license, or is no longer a valid license holder, shall notify the appli-
38 cable licensing official of such determination and such licensing offi-
39 cial shall not issue a license or revoke such license and any weapons
40 owned or possessed by such individual shall be removed consistent with
41 the provisions of subdivision eleven of section 400.00 of this article.
42 Local and state law enforcement shall have access to such database, as
43 otherwise authorized by law, in the performance of their duties. Records
44 assembled or collected for purposes of inclusion in the database estab-
45 lished by this section shall be released pursuant to a court order.

46 2. (a) The division of state police shall create and maintain an elec-
47 tronic portal for firearm dealers licensed under federal law, to report
48 the information as required pursuant to subdivision one of section eight
49 hundred ninety-six of the general business law, subdivision two of
50 section eight hundred ninety-eight of such law or section 400.04 of the
51 penal law, pertaining to persons who have applied for the purchase or
52 transfer of a firearm and were denied as the result of a background
53 check or completed and submitted firearm purchase or transfer applica-
54 tion that indicates the applicant is ineligible to possess a firearm
55 under state or federal law.

(b) Upon receipt of information from such dealer pursuant to subdivision one of section eight hundred ninety-six of the general business law, subdivision two of section eight hundred ninety-eight of such law or section 400.04 of the penal law that a person originally denied the purchase or transfer of a firearm as the result of a background check that indicates the applicant is ineligible to possess a firearm has subsequently been approved for the purchase or transfer, the division of state police must purge any record of such person's denial in its possession and inform the superintendent of state police and any local law enforcement agency participating in the grant program under section two hundred thirty-five of the executive law of the subsequent approval of the purchase or transfer.

(c) Information and records prepared, owned, used or retained by the division of state police pursuant to this act are exempt from public inspection and copying article six of the public officers law.

(d) The division of state police must destroy the information and data reported by a dealer pursuant to subdivision one of section eight hundred ninety-six of the general business law, subdivision two of section eight hundred ninety-eight of such law or section 400.04 of the penal law upon its satisfaction that the information and data is no longer necessary to carry out its duties pursuant to this section.

3. (a) Upon receipt of documentation that a person has appealed a background check denial, the division of state police shall immediately remove the record of such person initially reported pursuant to subdivision two of this section from such database accessible to law enforcement agencies and officers. The division of state police must keep a separate record of such person's information for a period of one year or until such time as such appeal has been resolved. Every twelve months, the division of state police shall notify such person that such person must provide documentation that his or her appeal is still pending or the record of such person's background check denial will be put back in such database accessible to law enforcement agencies and officers. At any time, upon receipt of documentation that such person's appeal has been granted, the division of state police shall remove any record of such person's denied firearms purchase or transfer application from such database accessible to law enforcement agencies and officers.

(b) Upon receipt of satisfactory proof that a person who was reported to the division of state police pursuant to subdivision two of this section is no longer ineligible to possess a firearm under state or federal law, the division of state police must remove any record of such person's denied firearms purchase or transfer application from such database accessible to law enforcement agencies and officers.

4. (a) The superintendent of state police shall generate and distribute a notice form to all dealers, to be provided by such dealers to applicants denied the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm. Such notice form must contain the following statements:

State law requires that I transmit the following information to New York State Police as a result of your firearm purchase or transfer denial within two days of the denial:

(i) Identifying information of the applicant;

(ii) The date of the application and denial of the application; and

(iii) Other information as prescribed by the New York State Police.

If you believe this denial is in error, and you do not exercise your right to appeal, you may be subject to criminal investigation by the New York State Police and/or a local law enforcement agency.

1 (b) Such notice form shall also contain information directing such
2 applicant to a web site describing the process of appealing a national
3 instant criminal background check system denial through the federal
4 bureau of investigation and refer the applicant to local law enforcement
5 for information on a denial based on a state background check. Such
6 notice form shall also contain a phone number for a contact at the divi-
7 sion of state police to direct such applicant to resources regarding an
8 individual's right to appeal a background check denial.

9 § 5. The executive law is amended by adding a new section 233 to read
10 as follows:

11 § 233. Reporting of denied firearm sales and transfers. The division
12 of state police shall prepare an annual report on the number of denied
13 firearms sales or transfers reported pursuant to section 400.02 of the
14 penal law. The report shall indicate the number of cases in which a
15 person was denied a firearms sale or transfer, the number of cases where
16 the denied sale or transfer was investigated for potential criminal
17 prosecution and the number of cases where an arrest was made, the case
18 was referred for prosecution and a conviction was obtained. The division
19 of state police shall submit the report to the appropriate committees of
20 the legislature on or before December thirty-first of each year.

21 § 6. The executive law is amended by adding a new section 234 to read
22 as follows:

23 § 234. Statewide automated protected person notification system. 1.
24 The superintendent of state police shall coordinate with the office of
25 information technology services to create and operate a statewide auto-
26 mated protected person notification system as part of the ALERT-NY
27 system to automatically notify a registered person via the registered
28 person's choice of telephone or email when a respondent subject to a
29 court order specified in subdivision two of this section has attempted
30 to purchase or acquire a firearm and been denied based on a background
31 check or completed and submitted firearm purchase or transfer applica-
32 tion that indicates the respondent is ineligible to possess a firearm
33 under state or federal law. The system shall permit a person to register
34 for notification, or a registered person to update the person's regis-
35 tration information, for the statewide automated protected person
36 notification system by calling a toll-free telephone number or by
37 accessing a public web site.

38 2. The notification requirements of this section apply to any tempo-
39 rary order of protection or order of protection issued under subdivision
40 one of section 530.12 of the criminal procedure law or subdivision one
41 of section 530.13 of such law, subdivision three of section two hundred
42 forty of the domestic relations law or section two hundred fifty-two of
43 such law or sections one hundred fifty-three-c, one hundred
44 fifty-four-d, 304.2, 352.3, four hundred thirty, four hundred forty-six,
45 five hundred fifty, five hundred fifty-one, six hundred fifty-five, six
46 hundred fifty-six, seven hundred forty, seven hundred fifty-nine, eight
47 hundred forty-two, one thousand twenty-nine or one thousand fifty-six of
48 the family court act and any foreign protection order filed with a New
49 York court pursuant to subdivision five of section 530.11 of the crimi-
50 nal procedure law or section one hundred fifty-four-e of the family
51 court act, where such order prohibits the respondent from possessing
52 firearms or where by operation of law the respondent is ineligible to
53 possess firearms during the term of such order. The notification
54 requirements of this section apply even if the respondent of such court
55 order has notified the division of state police that he or she has

1 appealed a background check denial under subdivision three of section
2 400.02 of the penal law.

3 3. An appointed or elected official, public employee, or public agen-
4 cy, or combination of units of government and its employees, are immune
5 from civil liability for damages for any release of information or the
6 failure to release information related to the statewide automated
7 protected person notification system in this section, so long as the
8 release or failure to release was without gross negligence. The immunity
9 provided under this subsection applies to the release of relevant and
10 necessary information to other public officials, public employees, or
11 public agencies, and to the general public.

12 4. Information and records prepared, owned, used, or retained by the
13 division of state police or office of information technology pursuant to
14 this section, including information a person submits to register and
15 participate in the statewide automated protected person notification
16 system, are exempt from public inspection and copying under article six
17 of the public officers law.

18 § 7. The executive law is amended by adding a new section 235 to read
19 as follows:

20 § 235. Illegal purchase or transfer of a firearm investigation grant.
21 1. The superintendent of state police shall establish a grant program
22 for local law enforcement agencies to conduct criminal investigations
23 regarding persons who illegally attempted to purchase or transfer a
24 firearm within their jurisdiction.

25 2. Each grant applicant must be required to submit reports to the
26 division of state police that indicate the number of cases in which a
27 person was denied a firearms sale or transfer, the number of cases where
28 the denied sale or transfer was investigated for potential criminal
29 prosecution, and the number of cases where an arrest was made, the case
30 was referred for prosecution, and a conviction was obtained.

31 3. Information and records prepared, owned, used, or retained by the
32 division of state police or local law enforcement agencies pursuant to
33 this section are exempt from public inspection and copying under article
34 six of the public officers law.

35 § 8. The public officers law is amended by adding a new section 89-a
36 to read as follows:

37 § 89-a. Additional restrictions on access to law enforcement records.
38 The following investigative, law enforcement, and crime victim informa-
39 tion is exempt from public inspection and copying under this chapter:

40 1. Information revealing the identity of child victims of sexual
41 assault who are under age eighteen. Identifying information means such
42 child victim's name, address, location, photograph, and in cases in
43 which such child victim is a relative or stepchild of the alleged perpe-
44 trator, identification of the relationship between such child and such
45 alleged perpetrator;

46 2. Information submitted to the division of criminal justice services
47 by a person for the purpose of receiving notifications from the ALERT-NY
48 system regarding registered sex offender relocations, including such
49 person's name, residential address, and email address;

50 3. Personally identifying information collected by law enforcement
51 agencies pursuant to local security alarm system programs and vacation
52 crime watch programs. Nothing in this subsection shall be interpreted so
53 as to prohibit the legal owner of a residence or business from accessing
54 information regarding his or her residence or business;

55 4. The global positioning system data that would indicate the location
56 of the residence of an employee or worker at a court or a government

1 agency which performs the administration of criminal justice pursuant to
2 a statute or executive order and which allocates a substantial part of
3 its annual budget to the administration of criminal justice;

4 5. Body worn camera recordings to the extent nondisclosure is essen-
5 tial for the protection of any person's right to privacy, including, but
6 not limited to, the circumstances enumerated in paragraph (a) of this
7 subdivision. A law enforcement or corrections agency shall not disclose
8 a body worn camera recording to the extent the recording is exempt under
9 this subsection.

10 (a) Disclosure of a body worn camera recording is presumed to be
11 protected from disclosure under this article to the extent it depicts:

12 (i)(A) Any areas of a medical facility, counseling, or therapeutic
13 program office where:

14 (1) A patient is registered to receive treatment, receiving treatment,
15 waiting for treatment, or being transported in the course of treatment;
16 or

17 (2) Health care information is shared with patients, their families,
18 or among the care team; or

19 (B) Information that meets the definition of protected health informa-
20 tion for purposes of the health insurance portability and accountability
21 act of 1996;

22 (ii) The interior of a place of residence where a person has a reason-
23 able expectation of privacy;

24 (iii) An intimate image taken in a private setting, not a matter of
25 public concern, and depicting sexual conduct as defined in subdivision
26 ten of section 130.00 of the penal law, or a person's intimate body
27 parts, whether nude or visible through less than opaque clothing;

28 (iv) A minor;

29 (v) The body of a deceased person;

30 (vi) The identity of or communications from a victim or witness of an
31 incident involving domestic violence, sexual assault or disclosure of
32 intimate images. If at the time of recording the victim or witness indi-
33 cates a desire for disclosure or nondisclosure of the recorded identity
34 or communications, such desire shall govern; or

35 (vii) The identifiable location information of a community-based
36 domestic violence program, or emergency shelter.

37 (b) The presumptions set out in paragraph (a) of this subdivision may
38 be rebutted by specific evidence in individual cases.

39 (c) In a court action seeking the right to inspect or copy a body worn
40 camera recording, a person who prevails against a law enforcement or
41 corrections agency that withholds or discloses all or part of a body
42 worn camera recording pursuant to paragraph (a) of this subdivision may
43 not be awarded fees, costs, or awards based upon such actions unless it
44 is shown that the law enforcement or corrections agency acted in bad
45 faith or with gross negligence.

46 (d) A request for body worn camera recordings must:

47 (i) Specifically identify a name of a person or persons involved in
48 the incident;

49 (ii) Provide the incident or case number;

50 (iii) Provide the date, time, and location of the incident or inci-
51 dents; or

52 (iv) Identify a law enforcement or corrections officer involved in the
53 incident or incidents.

54 (e)(i) A person directly involved in an incident recorded by the
55 requested body worn camera recording, an attorney representing a person
56 directly involved in an incident recorded by the requested body worn

1 camera recording, a person or his or her attorney who requests a body
2 worn camera recording relevant to a criminal case involving that person,
3 has the right to obtain the body worn camera recording, subject to any
4 exemption under this chapter or any applicable law. In addition, an
5 attorney who represents a person regarding a potential or existing civil
6 cause of action involving the denial of civil rights under the federal
7 or state Constitution, or a violation of a United States department of
8 justice settlement agreement, has the right to obtain the body worn
9 camera recording if relevant to the cause of action, subject to any
10 exemption under this chapter or any applicable law. The attorney must
11 explain the relevancy of the requested body worn camera recording to the
12 cause of action and specify that he or she is seeking relief from redac-
13 tion costs under this paragraph.

14 (ii) A law enforcement or corrections agency responding to requests
15 under subparagraph (i) of this paragraph may not require the requesting
16 individual to pay costs of any redacting, altering, distorting, pixelat-
17 ing, suppressing, or otherwise obscuring any portion of a body worn
18 camera recording.

19 (iii) A law enforcement or corrections agency may require any person
20 requesting a body worn camera recording pursuant to subparagraph (i) of
21 this paragraph to identify himself or herself to ensure he or she is a
22 person entitled to obtain the body worn camera recording under subpara-
23 graph (i) of this paragraph.

24 (f)(i) A law enforcement or corrections agency responding to a request
25 to disclose body worn camera recordings may require any requester not
26 listed in paragraph (e) of this subdivision to pay the reasonable costs
27 of redacting, altering, distorting, pixelating, suppressing, or other-
28 wise obscuring any portion of the body worn camera recording prior to
29 disclosure only to the extent necessary to comply with the exemptions in
30 this chapter or any applicable law.

31 (ii) An agency that charges redaction costs under this paragraph must
32 use redaction technology that provides the least costly commercially
33 available method of redacting body worn camera recordings, to the extent
34 possible and reasonable.

35 (iii) In any case where an agency charges a requestor for the costs of
36 redacting a body worn camera recording under this paragraph, the time
37 spent on redaction of the recording shall not count towards the agency's
38 allocation of, or limitation on, time or costs spent responding to
39 public records requests under this chapter, as established pursuant to
40 local ordinance, policy, procedure, or state law.

41 (g) For purposes of this subdivision:

42 (i) "Body worn camera recording" means a video and/or sound recording
43 that is made by a body worn camera attached to the uniform or eyewear of
44 a law enforcement or corrections officer from a covered jurisdiction
45 while in the course of his or her official duties and that is made on or
46 after June ninth, two thousand sixteen, and prior to July first, two
47 thousand nineteen; and

48 (ii) "Covered jurisdiction" means any jurisdiction that has deployed
49 body worn cameras as of June ninth, two thousand sixteen, regardless of
50 whether or not body worn cameras are being deployed in the jurisdiction
51 on June ninth, two thousand sixteen, including, but not limited to,
52 jurisdictions that have deployed body worn cameras on a pilot basis.

53 (h) Nothing in this subsection shall be construed to restrict access
54 to body worn camera recordings as otherwise permitted by law for offi-
55 cial or recognized civilian and accountability bodies or pursuant to any
56 court order.

1 (i) A law enforcement or corrections agency must retain body worn
2 camera recordings for at least sixty days and thereafter may destroy the
3 records.

4 § 9. This act shall take effect immediately; provided, however, that
5 effective immediately, the addition, amendment and/or repeal of any rule
6 or regulation necessary for the implementation of this act on its effec-
7 tive date is authorized and directed to be made and completed on or
8 before such effective date.