

STATE OF NEW YORK

9068

IN ASSEMBLY

January 18, 2018

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

AN ACT to amend the penal law, in relation to enacting the effective background check act of 2018, in relation to establishing a ten day period for background checks for the purchase of a firearm, rifle, or shotgun, and in relation to requiring gunsmiths or licensed firearms businesses to report the crime of criminal purchase of a weapon and requiring background checks for employees who would be authorized to possess or transfer firearms, rifles, or shotguns

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

1 Section 1. This act shall be known and may be cited as the "effective
2 background check act of 2018".

3 § 2. The penal law is amended by adding a new section 400.20 to read
4 as follows:

5 § 400.20 Time period for a background check for sale or transfer of a
6 firearm, rifle, or shotgun.

7 1. Whenever federal or state law requires that a background check be
8 conducted through the national instant criminal background check system
9 in accordance with the provisions of 18 U.S.C. 922(t) before sale or
10 transfer of a firearm, rifle, or shotgun, no person shall complete such
11 sale or transfer unless:

12 (a) the system provides a unique identification number pursuant to 18
13 U.S.C. 922(t)(1)(b)(i), indicating that there is no information in the
14 system that would disqualify the applicant from receiving or possessing
15 a firearm, rifle, or shotgun; or

16 (b) ten business days, as defined in 18 U.S.C. 922(t)(1)(b)(ii), have
17 elapsed from the date such background check was initiated by contacting
18 the system, and the system has not indicated that the applicant is
19 disqualified from receiving or possessing a firearm, rifle, or shotgun.

20 2. Notwithstanding any other provision of law, a violation of this
21 section shall be a class A misdemeanor.

22 § 3. Section 265.17 of the penal law, as amended by chapter 1 of the
23 laws of 2013, is amended to read as follows:

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

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1 § 265.17 Criminal purchase or disposal of a weapon.

2 1. A person is guilty of criminal purchase or disposal of a weapon
3 when:

4 ~~[1-]~~ (a) Knowing that he or she is prohibited by law from possessing a
5 firearm, rifle or shotgun because of a prior conviction or because of
6 some other disability which would render him or her ineligible to
7 lawfully possess a firearm, rifle or shotgun in this state, such person
8 purchases a firearm, rifle or shotgun from another person; or

9 ~~[2-]~~ (b) Knowing that it would be unlawful for another person to
10 possess a firearm, rifle or shotgun, he or she purchases a firearm,
11 rifle or shotgun for, on behalf of, or for the use of such other person;
12 or

13 ~~[3-]~~ (c) Knowing that another person is prohibited by law from
14 possessing a firearm, rifle or shotgun because of a prior conviction or
15 because of some other disability which would render him or her ineligi-
16 ble to lawfully possess a firearm, rifle or shotgun in this state, a
17 person disposes of a firearm, rifle or shotgun to such other person.

18 2. A gunsmith or dealer in firearms, rifles, or shotguns shall report
19 within twenty-four hours to the division of state police, or in the city
20 of New York the police department of such city, any instance in which
21 any person attempts to purchase a firearm, rifle, or shotgun from such
22 gunsmith or dealer, or through a sale, exchange, or disposal as provided
23 in section eight hundred ninety-eight of the general business law, if a
24 background check such gunsmith or dealer conducts in connection with
25 such attempted purchase, in the national instant criminal background
26 check system or any successor system, indicates a "denied" response as
27 defined in 28 C.F.R. § 25.6. Such gunsmith or dealer shall keep with the
28 other records required under subdivision twelve of section 400.00 of
29 this chapter, a record approved as to form by the superintendent of
30 state police, or in the city of New York by such city's police commis-
31 sioner, of having made each report required by this subdivision.

32 Criminal purchase or disposal of a weapon is a class D felony.

33 § 4. Section 400.00 of the penal law is amended by adding a new subdi-
34 vision 12-b to read as follows:

35 12-b. Employees of a gunsmith or dealer in firearms, rifles, or shot-
36 guns. (a) No person shall be employed by a gunsmith or dealer in
37 firearms, rifles, or shotguns for duties that include handling, selling,
38 or otherwise disposing of firearms, rifles, or shotguns, if such person
39 is prohibited from receiving or possessing firearms, rifles, or shotguns
40 under federal law or if such person would be ineligible for a license to
41 possess firearms, rifles, or shotguns under paragraph (c) or (e) of
42 subdivision one of this section.

43 (b) No gunsmith or dealer in firearms, rifles, or shotguns shall
44 employ a person whose duties include handling, selling, or otherwise
45 disposing of firearms, rifles, or shotguns, unless: (i) such person is
46 eighteen years of age or older and has been issued an employee back-
47 ground check certificate from the division of criminal justice services;
48 or (ii) such person has obtained and possesses a valid license issued
49 under the provisions of this section or section 400.01 of this article;
50 or (iii) such person is a police officer as defined in subdivision thir-
51 ty-four of section 1.20 of the criminal procedure law.

52 (c) Applications for employee background check certificates shall be
53 submitted by the applicant's prospective employer to the division of
54 criminal justice services in a form approved by such division. Applica-
55 tions must contain, at a minimum, the information required to conduct a

1 background check in the national instant criminal background check
2 system. All applications must be signed and verified by the applicant.

3 (d) Upon receipt of an application for an employee background check
4 certificate, the division of criminal justice services shall conduct a
5 background check of the applicant in the national instant criminal back-
6 ground check system. If the results of the background check indicate
7 that there is no information that would disqualify the applicant from
8 receiving or possessing a firearm, rifle, or shotgun under state or
9 under federal law, the division of criminal justice services shall docu-
10 ment such result on an employee background check certificate. If the
11 background check results in a "delayed" response as described in 28
12 C.F.R. § 25.6, the division of criminal justice services shall not issue
13 an employee background check certificate pending receipt of a follow-up
14 "proceed" response from the national instant criminal background check
15 system.

16 (e) The division of criminal justice services shall issue to qualify-
17 ing employees an employee background check certificate, which shall
18 certify that a background check was conducted on the holder of such
19 certificate and that the national instant criminal background check
20 system indicated that there was no information in the system as of the
21 date of the background check that would disqualify the applicant from
22 receiving or possessing a firearm, rifle, or shotgun. Such certificate
23 shall become invalid upon the termination of the employee's employment.
24 Such certificate shall have the effect of authorizing such employee to
25 handle, sell, or otherwise dispose of those firearms, rifles, or shot-
26 guns that are lawfully possessed, sold or disposed of by the gunsmith or
27 dealer in firearms, rifles, or shotguns only while such employee is
28 actually conducting business on behalf of the gunsmith or dealer in
29 firearms, rifles, or shotguns notwithstanding the fact that such weapons
30 may not be the type the employee would otherwise be licensed or author-
31 ized to possess under New York law. When an employee is conducting busi-
32 ness on behalf of a gunsmith or dealer in firearms, rifles, or shotguns
33 at any location other than the premises where such employee works, the
34 employee shall have in his or her possession a copy of his or her
35 certificate or valid license issued under the provisions of this section
36 or section 400.01 of this article or proof that he or she is a police
37 officer. A copy of such certificate or license or proof that an employ-
38 ee is a police officer shall be maintained by the gunsmith or dealer in
39 firearms, rifles, or shotguns on the premises where such employee works.
40 All certificates, licenses, or proof that an employee is a police offi-
41 cer and copies referred to in this paragraph shall be produced upon
42 request by any police officer or peace officer acting pursuant to his or
43 her special duties.

44 (f) For the purpose of this subdivision, the term handling shall not
45 include moving or carrying, in the normal course of business, a secured
46 crate or container that contains a firearm or firearms, rifle or rifles,
47 or shotgun or shotguns, from one location to another within the premises
48 of a gunsmith or dealer in firearms, rifles, or shotguns.

49 (g) Any employment in violation of this subdivision shall constitute a
50 violation on the part of both the employee and the gunsmith or dealer in
51 firearms, rifles, or shotguns.

52 § 5. This act shall take effect on the one hundred eightieth day after
53 it shall have become a law, except that the division of criminal justice
54 services shall promulgate any rules or regulations or approve any forms
55 necessary for applications for employee background check certificates to
56 be submitted to and approved by such division and for certificates to be

1 issued by such division pursuant to subdivision 12-b of section 400.00
2 of the penal law as added by section four of this act, and shall begin
3 to issue such certificates to qualifying employees before the one
4 hundred eightieth day after this act shall have become a law.