STATE OF NEW YORK

5808--A

2017-2018 Regular Sessions

IN SENATE

May 1, 2017

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

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

(b) ten business days, as defined in 18 U.S.C. 922(t)(1)(b)(ii), have elapsed from the date such background check was initiated by contacting

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

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the system, and the system has not indicated that the applicant is disqualified from receiving or possessing a firearm, rifle, or shotgun.

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

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

§ 265.17 Criminal purchase or disposal of a weapon.

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

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

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

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

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

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

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

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

(b) No gunsmith or dealer in firearms, rifles, or shotguns shall employ a person whose duties include handling, selling, or otherwise disposing of firearms, rifles, or shotguns, unless: (i) such person is eighteen years of age or older and has been issued an employee background check certificate from the division of criminal justice services; or (ii) such person has obtained and possesses a valid license issued under the provisions of this section or section 400.01 of this article;

or (iii) such person is a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law.

(c) Applications for employee background check certificates shall be submitted by the applicant's prospective employer to the division of criminal justice services in a form approved by such division. Applications must contain, at a minimum, the information required to conduct a background check in the national instant criminal background check system. All applications must be signed and verified by the applicant.

(d) Upon receipt of an application for an employee background check certificate, the division of criminal justice services shall conduct a background check of the applicant in the national instant criminal background check system. If the results of the background check indicate that there is no information that would disqualify the applicant from receiving or possessing a firearm, rifle, or shotgun under state or under federal law, the division of criminal justice services shall document such result on an employee background check certificate. If the background check results in a "delayed" response as described in 28 C.F.R. § 25.6, the division of criminal justice services shall not issue an employee background check certificate pending receipt of a follow-up "proceed" response from the national instant criminal background check system.

(e) The division of criminal justice services shall issue to qualifying employees an employee background check certificate, which shall certify that a background check was conducted on the holder of such certificate and that the national instant criminal background check system indicated that there was no information in the system as of the date of the background check that would disqualify the applicant from receiving or possessing a firearm, rifle, or shotgun. Such certificate shall become invalid upon the termination of the employee's employment. Such certificate shall have the effect of authorizing such employee to handle, sell, or otherwise dispose of those firearms, rifles, or shotguns that are lawfully possessed, sold or disposed of by the gunsmith or dealer in firearms, rifles, or shotguns only while such employee is actually conducting business on behalf of the gunsmith or dealer in firearms, rifles, or shotguns notwithstanding the fact that such weapons may not be the type the employee would otherwise be licensed or authorized to possess under New York law. When an employee is conducting business on behalf of a gunsmith or dealer in firearms, rifles, or shotguns at any location other than the premises where such employee works, the employee shall have in his or her possession a copy of his or her certificate or valid license issued under the provisions of this section or section 400.01 of this article or proof that he or she is a police officer. A copy of such certificate or license or proof that an employee is a police officer shall be maintained by the gunsmith or dealer in firearms, rifles, or shotguns on the premises where such employee works. All certificates, licenses, or proof that an employee is a police officer and copies referred to in this paragraph shall be produced upon request by any police officer or peace officer acting pursuant to his or her special duties.

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

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

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law, except that the division of criminal justice services shall promulgate any rules or regulations or approve any forms necessary for applications for employee background check certificates to be submitted to and approved by such division and for certificates to be issued by such division pursuant to subdivision 12-b of section 400.00 of the penal law as added by section four of this act, and shall begin to issue such certificates to qualifying employees before the one hundred eightieth day after this act shall have become a law.