

STATE OF NEW YORK

4261

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. PAULIN, DINOWITZ, DICKENS, SEAWRIGHT, L. ROSENTHAL, ZINERMAN -- read once and referred 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 207 of the laws of 2022, is amended to read as
3 follows:
4 12. Records required of gunsmiths and dealers in firearms. In addition
5 to the requirements set forth in article thirty-nine-BB of the general
6 business law, any person licensed as gunsmith or dealer in firearms
7 shall keep a record book approved as to form, except in the city of New
8 York, by the superintendent of state police. In the record book shall be
9 entered at the time of every transaction involving a firearm the date,
10 name, age, occupation and residence of any person from whom a firearm is
11 received or to whom a firearm is delivered, and the calibre, make,
12 model, manufacturer's name and serial number, or if none, any other
13 distinguishing number or identification mark on such firearm. Before
14 delivering a firearm to any person, the licensee shall require him to
15 produce either a license valid under this section to carry or possess
16 the same, or proof of lawful authority as an exempt person pursuant to
17 section 265.20 of this chapter and [~~either (a) the National Instant~~
18 ~~Criminal Background Check System (NICS) or its successor has issued a~~
19 ~~"proceed" response to the licensee, or (b) thirty calendar~~] ten business
20 days have elapsed since the date the licensee contacted [~~NICS~~] the
21 National Instant Criminal Background Check System (NICS) or its succes-
22 sor to initiate a national instant criminal background check and NICS
23 has not notified the licensee that the transfer of the firearm to such
24 person should be denied. In addition, before delivering a firearm to a

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

LBD08360-01-3

1 peace officer, the licensee shall verify that person's status as a peace
2 officer with the division of state police. After completing the forego-
3 ing, the licensee shall remove and retain the attached coupon and enter
4 in the record book the date of such license, number, if any, and name of
5 the licensing officer, in the case of the holder of a license to carry
6 or possess, or the shield or other number, if any, assignment and
7 department, unit or agency, in the case of an exempt person. The
8 original transaction report shall be forwarded to the division of state
9 police within ten days of delivering a firearm to any person, and a
10 duplicate copy shall be kept by the licensee. The superintendent of
11 state police may designate that such record shall be completed and tran-
12 smitted in electronic form. A dealer may be granted a waiver from trans-
13 mitting such records in electronic form if the superintendent determines
14 that such dealer is incapable of such transmission due to technological
15 limitations that are not reasonably within the control of the dealer, or
16 other exceptional circumstances demonstrated by the dealer, pursuant to
17 a process established in regulation, and at the discretion of the super-
18 intendent. Records assembled or collected for purposes of inclusion in
19 the database created pursuant to section 400.02 of this article shall
20 not be subject to disclosure pursuant to article six of the public offi-
21 cers law. The record book shall be maintained on the premises mentioned
22 and described in the license and shall be open at all reasonable hours
23 for inspection by any peace officer, acting pursuant to his special
24 duties, or police officer. In the event of cancellation or revocation of
25 the license for gunsmith or dealer in firearms, or discontinuance of
26 business by a licensee, such record book shall be immediately surren-
27 dered to the licensing officer in the city of New York, and in the coun-
28 ties of Nassau and Suffolk, and elsewhere in the state to the executive
29 department, division of state police.

30 § 2. Section 400.20 of the penal law, as added by chapter 129 of the
31 laws of 2019, is amended to read as follows:

32 § 400.20 Waiting period in connection with the sale or transfer of a
33 rifle or shotgun.

34 When a national instant criminal background check is required pursuant
35 to state or federal law to be conducted through the National Instant
36 Criminal Background Check System (NICS) or its successor in connection
37 with the sale or transfer of a rifle or shotgun to any person, before
38 delivering a rifle or shotgun to such person, ~~[either (a) NICS has~~
39 ~~issued a "proceed" response to the seller or transferor, or (b) thirty~~
40 ~~calendar]~~ ten business days shall have elapsed since the date the seller
41 or transferor contacted NICS to initiate a national instant criminal
42 background check ~~[and NICS has not notified the seller or transferor~~
43 ~~that the transfer of the rifle or shotgun to such person should be~~
44 ~~denied]~~.

45 § 3. Subdivision 1 of section 897 of the general business law, as
46 amended by chapter 129 of the laws of 2019, is amended to read as
47 follows:

48 1. A national instant criminal background check shall be conducted and
49 no person shall sell or transfer a firearm, rifle or shotgun at a gun
50 show, except in accordance with the provisions of 18 U.S.C. 922(t),
51 provided that before delivering a firearm, rifle or shotgun to any
52 person, ~~[either (a) the National Instant Criminal Background Check~~
53 ~~System (NICS) or its successor has issued a "proceed" response to the~~
54 ~~seller or transferor, or (b) thirty calendar]~~ ten business days shall
55 have elapsed since the date the seller or transferor contacted ~~[NICS]~~
56 the National Instant Criminal Background Check System (NICS) or its

1 successor to initiate a national instant criminal background check [~~and~~
2 ~~NICS has not notified the seller or transferor that the transfer of the~~
3 ~~firearm, rifle or shotgun to such person should be denied~~].

4 § 4. Subdivisions 1 and 2 of section 898 of the general business law,
5 as amended by chapter 129 of the laws of 2019, are amended to read as
6 follows:

7 1. In addition to any other requirements pursuant to state and federal
8 law, all sales, exchanges or disposals of firearms, rifles or shotguns
9 shall be conducted in accordance with this section unless such sale,
10 exchange or disposal is conducted by a licensed importer, licensed
11 manufacturer or licensed dealer, as those terms are defined in 18 USC §
12 922, when such sale, exchange or disposal is conducted pursuant to that
13 person's federal firearms license or such sale, exchange or disposal is
14 between members of an immediate family. When a sale, exchange or
15 disposal is conducted pursuant to a person's federal firearms license,
16 before delivering a firearm, rifle or shotgun to any person, [~~either (a)~~
17 ~~the National Instant Criminal Background Check System (NICS) or its~~
18 ~~successor has issued a "proceed" response to the federal firearms licen-~~
19 ~~see, or (b) thirty calendar~~] ten business days shall have elapsed since
20 the date the federal firearms licensee contacted [~~NICS~~] the National
21 Instant Criminal Background Check System (NICS) or its successor to
22 initiate a national instant criminal background check [~~and NICS has not~~
23 ~~notified the federal firearms licensee that the transfer of the firearm,~~
24 ~~rifle or shotgun to such person should be denied~~]. For purposes of this
25 section, "immediate family" shall mean spouses, domestic partners, chil-
26 dren and step-children.

27 2. Before any sale, exchange or disposal pursuant to this article, a
28 national instant criminal background check must be completed by a dealer
29 who consents to conduct such check, and upon completion of such back-
30 ground check, shall complete a document, the form of which shall be
31 approved by the superintendent of state police, that identifies and
32 confirms that such check was performed. Before a dealer who consents to
33 conduct a national instant criminal background check delivers a firearm,
34 rifle or shotgun to any person, [~~either (a) NICS issued a "proceed"~~
35 ~~response to the dealer, or (b) thirty calendar~~] ten business days shall
36 have elapsed since the date the dealer contacted [~~NICS~~] the National
37 Instant Criminal Background Check System (NICS) or its successor to
38 initiate a national instant criminal background check [~~and NICS has not~~
39 ~~notified the dealer that the transfer of the firearm, rifle or shotgun~~
40 ~~to such person should be denied~~].

41 § 4-a. Subdivision 2 of section 898 of the general business law, as
42 amended by chapter 371 of the laws of 2022, is amended to read as
43 follows:

44 2. Before any sale, exchange or disposal pursuant to this article, a
45 national instant criminal background check must be completed by a dealer
46 who shall submit a request to the division of state police pursuant to
47 section two hundred twenty-eight of the executive law to conduct such
48 check. Before a dealer who has submitted a request to the division of
49 state police to conduct a national instant criminal background check
50 delivers a firearm, rifle or shotgun to any person, [~~either (a) NICS~~
51 ~~shall have issued a "proceed" response, or (b) thirty calendar~~] ten
52 business days shall have elapsed since the date the dealer submitted a
53 request to the division of state police to contact the [~~NICS~~] National
54 Instant Criminal Background Check System (NICS) or its successor to
55 initiate a national instant criminal background check and NICS has not

1 notified the division of state police that the transfer of the firearm,
2 rifle or shotgun to such person should be denied.
3 § 5. This act shall take effect on the sixtieth day after it shall
4 have become a law; provided, however, that if chapter 371 of the laws of
5 2022 shall not have taken effect on or before such date then section
6 four-a of this act shall take effect on the same date and in the same
7 manner as such chapter of the laws of 2022 takes effect.