

7994

2015-2016 Regular Sessions

I N A S S E M B L Y

June 3, 2015

Introduced by M. of A. KAVANAGH, SCHIMEL, ORTIZ, MOSLEY, ARROYO, PAULIN,
WEPRIN, PICHARDO, STECK -- 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 2015, 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "effective
2 background check act of 2015".
3 S 2. The penal law is amended by adding a new section 400.20 to read
4 as follows:
5 S 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.

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

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2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A VIOLATION OF THIS SECTION SHALL BE A CLASS A MISDEMEANOR.

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

S 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. S 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.

S 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.

1 (C) APPLICATIONS FOR EMPLOYEE BACKGROUND CHECK CERTIFICATES SHALL BE
2 SUBMITTED BY THE APPLICANT'S PROSPECTIVE EMPLOYER TO THE DIVISION OF
3 CRIMINAL JUSTICE SERVICES IN A FORM APPROVED BY SUCH DIVISION. APPLICA-
4 TIONS MUST CONTAIN, AT A MINIMUM, THE INFORMATION REQUIRED TO CONDUCT A
5 BACKGROUND CHECK IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
6 SYSTEM. ALL APPLICATIONS MUST BE SIGNED AND VERIFIED BY THE APPLICANT.

7 (D) UPON RECEIPT OF AN APPLICATION FOR AN EMPLOYEE BACKGROUND CHECK
8 CERTIFICATE, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL CONDUCT A
9 BACKGROUND CHECK OF THE APPLICANT IN THE NATIONAL INSTANT CRIMINAL BACK-
10 GROUND CHECK SYSTEM. IF THE RESULTS OF THE BACKGROUND CHECK INDICATE
11 THAT THERE IS NO INFORMATION THAT WOULD DISQUALIFY THE APPLICANT FROM
12 RECEIVING OR POSSESSING A FIREARM, RIFLE, OR SHOTGUN UNDER STATE OR
13 UNDER FEDERAL LAW, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL DOCU-
14 MENT SUCH RESULT ON AN EMPLOYEE BACKGROUND CHECK CERTIFICATE. IF THE
15 BACKGROUND CHECK RESULTS IN A "DELAYED" RESPONSE AS DESCRIBED IN 28
16 C.F.R. S 25.6, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOT ISSUE
17 AN EMPLOYEE BACKGROUND CHECK CERTIFICATE PENDING RECEIPT OF A FOLLOW-UP
18 "PROCEED" RESPONSE FROM THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
19 SYSTEM.

20 (E) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ISSUE TO QUALIFY-
21 ING EMPLOYEES AN EMPLOYEE BACKGROUND CHECK CERTIFICATE, WHICH SHALL
22 CERTIFY THAT A BACKGROUND CHECK WAS CONDUCTED ON THE HOLDER OF SUCH
23 CERTIFICATE AND THAT THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
24 SYSTEM INDICATED THAT THERE WAS NO INFORMATION IN THE SYSTEM AS OF THE
25 DATE OF THE BACKGROUND CHECK THAT WOULD DISQUALIFY THE APPLICANT FROM
26 RECEIVING OR POSSESSING A FIREARM, RIFLE, OR SHOTGUN. SUCH CERTIFICATE
27 SHALL BECOME INVALID UPON THE TERMINATION OF THE EMPLOYEE'S EMPLOYMENT.
28 SUCH CERTIFICATE SHALL HAVE THE EFFECT OF AUTHORIZING SUCH EMPLOYEE TO
29 HANDLE, SELL, OR OTHERWISE DISPOSE OF THOSE FIREARMS, RIFLES, OR SHOT-
30 GUNS THAT ARE LAWFULLY POSSESSED, SOLD OR DISPOSED OF BY THE GUNSMITH OR
31 DEALER IN FIREARMS, RIFLES, OR SHOTGUNS ONLY WHILE SUCH EMPLOYEE IS
32 ACTUALLY CONDUCTING BUSINESS ON BEHALF OF THE GUNSMITH OR DEALER IN
33 FIREARMS, RIFLES, OR SHOTGUNS NOTWITHSTANDING THE FACT THAT SUCH WEAPONS
34 MAY NOT BE THE TYPE THE EMPLOYEE WOULD OTHERWISE BE LICENSED OR AUTHOR-
35 IZED TO POSSESS UNDER NEW YORK LAW. WHEN AN EMPLOYEE IS CONDUCTING BUSI-
36 NESS ON BEHALF OF A GUNSMITH OR DEALER IN FIREARMS, RIFLES, OR SHOTGUNS
37 AT ANY LOCATION OTHER THAN THE PREMISES WHERE SUCH EMPLOYEE WORKS, THE
38 EMPLOYEE SHALL HAVE IN HIS OR HER POSSESSION A COPY OF HIS OR HER
39 CERTIFICATE OR VALID LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION
40 OR SECTION 400.01 OF THIS ARTICLE OR PROOF THAT HE OR SHE IS A POLICE
41 OFFICER. A COPY OF SUCH CERTIFICATE OR LICENSE OR PROOF THAT AN EMPLOY-
42 EE IS A POLICE OFFICER SHALL BE MAINTAINED BY THE GUNSMITH OR DEALER IN
43 FIREARMS, RIFLES, OR SHOTGUNS ON THE PREMISES WHERE SUCH EMPLOYEE WORKS.
44 ALL CERTIFICATES, LICENSES, OR PROOF THAT AN EMPLOYEE IS A POLICE OFFI-
45 CER AND COPIES REFERRED TO IN THIS PARAGRAPH SHALL BE PRODUCED UPON
46 REQUEST BY ANY POLICE OFFICER OR PEACE OFFICER ACTING PURSUANT TO HIS OR
47 HER SPECIAL DUTIES.

48 (F) FOR THE PURPOSE OF THIS SUBDIVISION, THE TERM HANDLING SHALL NOT
49 INCLUDE MOVING OR CARRYING, IN THE NORMAL COURSE OF BUSINESS, A SECURED
50 CRATE OR CONTAINER THAT CONTAINS A FIREARM OR FIREARMS, RIFLE OR RIFLES,
51 OR SHOTGUN OR SHOTGUNS, FROM ONE LOCATION TO ANOTHER WITHIN THE PREMISES
52 OF A GUNSMITH OR DEALER IN FIREARMS, RIFLES, OR SHOTGUNS.

53 (G) ANY EMPLOYMENT IN VIOLATION OF THIS SUBDIVISION SHALL CONSTITUTE A
54 VIOLATION ON THE PART OF BOTH THE EMPLOYEE AND THE GUNSMITH OR DEALER IN
55 FIREARMS, RIFLES, OR SHOTGUNS.

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