

# STATE OF NEW YORK

9068--A

## IN ASSEMBLY

January 18, 2018

Introduced by M. of A. FAHY, SIMON, MOSLEY, GLICK -- read once and referred to the Committee on Codes -- 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 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. Section 400.00 of the penal law is amended by adding a new subdivi-  
4 sion 12-b to read as follows:

5 12-b. Employees of a gunsmith or dealer in firearms, rifles, or shot-  
6 guns. (a) No person shall be employed by a gunsmith or dealer in  
7 firearms, rifles, or shotguns for duties that include handling, selling,  
8 or otherwise disposing of firearms, rifles, or shotguns, if such person  
9 is prohibited from receiving or possessing firearms, rifles, or shotguns  
10 under federal law or if such person is prohibited from receiving or  
11 possessing firearms, rifles, or shotguns under local, state, or federal  
12 law or if such person would be ineligible for a license under this  
13 section.

14 (b) No gunsmith or dealer in firearms, rifles, or shotguns shall  
15 employ a person whose duties include handling, selling, or otherwise  
16 disposing of firearms, rifles, or shotguns, unless: (i) such person is  
17 twenty-one years of age or older and has been issued an employee back-  
18 ground check certificate from the division of criminal justice services;  
19 or (ii) such person has obtained and possesses a valid license issued  
20 under the provisions of this section or section 400.01 of this article;  
21 or (iii) such person is a police officer as defined in subdivision thir-  
22 ty-four of section 1.20 of the criminal procedure law.

23 (c) Applications for employee background check certificates shall be  
24 submitted by the applicant's prospective employer to the division of  
25 criminal justice services in a form approved by such division. Applica-  
26 tions must contain, at a minimum, the information required to conduct a  
27 background check in the National Instant Criminal Background Check

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

LBD02944-06-8

1 System (NICS) or its successor. All applications must be signed and  
2 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 NICS or its successor. The results  
6 of the background check must indicate that there is no information that  
7 would disqualify the applicant from receiving or possessing a firearm,  
8 rifle, or shotgun under state or under federal law, and the division of  
9 criminal justice services shall document such result on an employee  
10 background check certificate.

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

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

43 (g) A failure to adhere to the requirements of this subdivision shall  
44 constitute a violation on the part of both the employee and the gunsmith  
45 or dealer in firearms, rifles, or shotguns.

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