STATE OF NEW YORK

11327

IN ASSEMBLY

September 19, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Paulin) -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the general business law, in relation to eliminating the default proceed firearm loophole

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

Section 1. Subdivision 12 of section 400.00 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

12. Records required of gunsmiths and dealers in firearms. Any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as an exempt person pursuant to section 265.20 **of this chapter and the national instant criminal background check system or its successor having issued a "proceed" response to the dealer. A licensee shall not deliver a firearm to any person if the national instant criminal background check system or its successor issues a response other than "proceed" to the licensee**. In addition, before delivering a firearm to a peace officer, the licensee shall verify that person's status as a peace officer with the division of state police. After completing the foregoing, the licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department, unit or agency, in the case of an exempt person. The original transaction report shall be forwarded to the division of state police within ten days of delivering a firearm to any person, and a

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

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duplicate copy shall be kept by the licensee. The superintendent of state police may designate that such record shall be completed and transmitted in electronic form. A dealer may be granted a waiver from transmitting such records in electronic form if the superintendent determines that such dealer is incapable of such transmission due to technological limitations that are not reasonably within the control of the dealer, or other exceptional circumstances demonstrated by the dealer, pursuant to a process established in regulation, and at the discretion of the superintendent. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this article shall not be subject to disclosure pursuant to article six of the public officers law. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his special duties, or police officer. In the event of cancellation or revocation of the license for gunsmith or dealer in firearms, or discontinuance of business by a licensee, such record book shall be immediately surrendered to the licensing officer in the city of New York, and in the counties of Nassau and Suffolk, and elsewhere in the state to the executive department, division of state police.

§ 2. Subdivision 1 of section 897 of the general business law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

1. A national instant criminal background check shall be conducted and no person shall sell or transfer a firearm, rifle or shotgun at a gun show, except in accordance with the provisions of 18 U.S.C. 922(t)**, provided that before delivering a firearm, rifle or shotgun to any person the national instant criminal background check system or its successor shall have issued a "proceed" response to the seller or transferor. A seller or transferor shall not deliver a firearm, rifle or shotgun to any person if the national instant criminal background check system or its successor issues a response other than "proceed" to the seller or transferor**.

§ 3. Subdivisions 1 and 2 of section 898 of the general business law, as added by chapter 1 of the laws of 2013, are amended to read as follows:

1. In addition to any other requirements pursuant to state and federal law, all sales, exchanges or disposals of firearms, rifles or shotguns shall be conducted in accordance with this section unless such sale, exchange or disposal is conducted by a licensed importer, licensed manufacturer or licensed dealer, as those terms are defined in 18 USC § 922, when such sale, exchange or disposal is conducted pursuant to that person's federal firearms license or such sale, exchange or disposal is between members of an immediate family. **When a sale, exchange or disposal is conducted pursuant to a person's federal firearms license, before delivering a firearm, rifle or shotgun to any person, the national instant criminal background check system or its successor shall have issued a "proceed" response to the federal firearms licensee. A federal firearms licensee shall not deliver a firearm, rifle or shotgun to any person if the national instant criminal background check system or its successor issues a response other than "proceed" to the federal firearms licensee.** For purposes of this section, "immediate family" shall mean spouses, domestic partners, children and step-children.

2. Before any sale, exchange or disposal pursuant to this article, a national instant criminal background check must be completed by a dealer who consents to conduct such check, and upon completion of such background check, shall complete a document, the form of which shall be

approved by the superintendent of state police, that identifies and confirms that such check was performed. **Before a dealer who consents to conduct a national instant criminal background check delivers a firearm, rifle, or shotgun to any person, the national instant criminal background check system or its successor shall have issued a "proceed" response to the dealer. A dealer shall not deliver a firearm, rifle or shotgun to any person if the national instant criminal background check system or its successor issues a response other than "proceed" to the federal firearms licensee.**

§ 4. This act shall take effect on the sixtieth day after it shall have become a law.