

STATE OF NEW YORK

1738

2019-2020 Regular Sessions

IN ASSEMBLY

January 16, 2019

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Codes

AN ACT to amend the general business law, the penal law and the executive law in relation to denial of applications to purchase or transfer firearms; to amend the executive law in relation to notification of victims of certain crimes; and to amend the public officers law in relation to exemptions from public inspection and copying under the freedom of information law

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

1 Section 1. Subdivision 1 of section 896 of the general business law is
2 amended by adding a new paragraph (d) to read as follows:

3 (d) (i) A firearm dealer licensed under federal law shall report to
4 the division of state police information on each instance where such
5 dealer denies an application for the purchase or transfer of a firearm
6 as the result of a background check or completed and submitted firearm
7 purchase or transfer application that indicates the applicant is ineli-
8 gible to possess a firearm under state or federal law. Such dealer shall
9 report the denied application information to the division of state
10 police within five days of the denial in a format as prescribed by the
11 superintendent of state police. Such reported information must include
12 the identifying information of the applicant, the date of the applica-
13 tion and denial of such application, and other information or documents
14 as prescribed by the superintendent of state police. In any case where
15 the purchase or transfer of a firearm is initially denied by such dealer
16 as the result of a background check that indicates the applicant is
17 ineligible to possess a firearm, but the purchase or transfer is subse-
18 quently approved, such dealer shall report the subsequent approval to
19 the division of state police within one day of the approval.

20 (ii) Upon denying an application for the purchase or transfer of a
21 firearm as a result of a background check or completed and submitted

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

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1 firearm purchase or transfer application that indicates the applicant is
2 ineligible to possess a firearm under state or federal law, the dealer
3 shall:

4 (A) Provide such applicant with a copy of a notice form generated and
5 distributed by the superintendent of state police under subdivision four
6 of section 400.02 of the penal law, informing denied applicants of their
7 right to appeal the denial; and

8 (B) Retain the original records of the attempted purchase or transfer
9 of a firearm for a period not less than six years.

10 § 2. Subdivision 2 of section 898 of the general business law, as
11 added by chapter 1 of the laws of 2013, is amended to read as follows:

12 2. (a) Before any sale, exchange or disposal pursuant to this article,
13 a national instant criminal background check must be completed by a
14 dealer who consents to conduct such check, and upon completion of such
15 background check, shall complete a document, the form of which shall be
16 approved by the superintendent of state police, that identifies and
17 confirms that such check was performed.

18 (b) (i) Such dealer shall report to the division of state police
19 information on each instance where such dealer denies an application for
20 the purchase or transfer of a firearm as the result of a background
21 check or completed and submitted firearm purchase or transfer applica-
22 tion that indicates the applicant is ineligible to possess a firearm
23 under state or federal law. Such dealer shall report the denied applica-
24 tion information to the division of state police within five days of the
25 denial in a format as prescribed by the superintendent of state police.
26 Such reported information must include the identifying information of
27 the applicant, the date of the application and denial of such applica-
28 tion, and other information or documents as prescribed by the super-
29 intendent of state police. In any case where the purchase or transfer of
30 a firearm is initially denied by such dealer as the result of a back-
31 ground check that indicates the applicant is ineligible to possess a
32 firearm, but the purchase or transfer is subsequently approved, such
33 dealer shall report the subsequent approval to the division of state
34 police within one day of the approval.

35 (ii) Upon denying an application for the purchase or transfer of a
36 firearm as a result of a background check or completed and submitted
37 firearm purchase or transfer application that indicates the applicant is
38 ineligible to possess a firearm under state or federal law, the dealer
39 shall:

40 (A) Provide such applicant with a copy of a notice form generated and
41 distributed by the superintendent of state police subdivision four of
42 section 400.02 of the penal law, informing denied applicants of their
43 right to appeal the denial; and

44 (B) Retain the original records of the attempted purchase or transfer
45 of a firearm for a period not less than six years.

46 § 3. The penal law is amended by adding a new section 400.04 to read
47 as follows:

48 § 400.04 Dealer reporting of denied applications.

49 1. A firearm dealer licensed under federal law shall report to the
50 division of state police information on each instance where such dealer
51 denies an application for the purchase or transfer of a firearm as the
52 result of a background check or completed and submitted firearm purchase
53 or transfer application that indicates the applicant is ineligible to
54 possess a firearm under state or federal law. Such dealer shall report
55 the denied application information to the division of state police with-
56 in five days of the denial in a format as prescribed by the superinten-

1 dent of state police. Such reported information must include the identi-
2 ifying information of the applicant, the date of the application and
3 denial of such application, and other information or documents as
4 prescribed by the superintendent of state police. In any case where the
5 purchase or transfer of a firearm is initially denied by such dealer as
6 the result of a background check that indicates the applicant is ineli-
7 gible to possess a firearm, but the purchase or transfer is subsequently
8 approved, such dealer shall report the subsequent approval to the divi-
9 sion of state police within one day of the approval.

10 2. Upon denying an application for the purchase or transfer of a
11 firearm as a result of a background check or completed and submitted
12 firearm purchase or transfer application that indicates the applicant is
13 ineligible to possess a firearm under state or federal law, the dealer
14 shall:

15 (a) Provide such applicant with a copy of a notice form generated and
16 distributed by the superintendent of state police subdivision four of
17 section 400.02 of the penal law, informing denied applicants of their
18 right to appeal the denial; and

19 (b) Retain the original records of the attempted purchase or transfer
20 of a firearm for a period not less than six years.

21 § 4. Section 400.02 of the penal law, as added by chapter 1 of the
22 laws of 2013, is amended to read as follows:

23 § 400.02 Statewide license and record database.

24 1. There shall be a statewide license and record database which shall
25 be created and maintained by the division of state police the cost of
26 which shall not be borne by any municipality. Records assembled or
27 collected for purposes of inclusion in such database shall not be
28 subject to disclosure pursuant to article six of the public officers
29 law. Records containing granted or denied license applications shall be
30 periodically checked by the division of criminal justice services
31 against criminal conviction, mental health, and all other records as are
32 necessary to determine their continued accuracy as well as whether an
33 individual is no longer a valid license holder. The division of criminal
34 justice services shall also check pending applications made pursuant to
35 this article against such records to determine whether a license may be
36 granted. All state agencies shall cooperate with the division of crimi-
37 nal justice services, as otherwise authorized by law, in making their
38 records available for such checks. The division of criminal justice
39 services, upon determining that an individual is ineligible to possess a
40 license, or is no longer a valid license holder, shall notify the appli-
41 cable licensing official of such determination and such licensing offi-
42 cial shall not issue a license or revoke such license and any weapons
43 owned or possessed by such individual shall be removed consistent with
44 the provisions of subdivision eleven of section 400.00 of this article.
45 Local and state law enforcement shall have access to such database, as
46 otherwise authorized by law, in the performance of their duties. Records
47 assembled or collected for purposes of inclusion in the database estab-
48 lished by this section shall be released pursuant to a court order.

49 2. (a) The division of state police shall create and maintain an elec-
50 tronic portal for firearm dealers licensed under federal law, to report
51 the information as required pursuant to subdivision one of section eight
52 hundred ninety-six of the general business law, subdivision two of
53 section eight hundred ninety-eight of such law or section 400.04 of this
54 article, pertaining to persons who have applied for the purchase or
55 transfer of a firearm and were denied as the result of a background
56 check or completed and submitted firearm purchase or transfer applica-

1 tion that indicates the applicant is ineligible to possess a firearm
2 under state or federal law.

3 (b) Upon receipt of information from such dealer pursuant to subdivi-
4 sion one of section eight hundred ninety-six of the general business
5 law, subdivision two of section eight hundred ninety-eight of such law
6 or section 400.04 of this article that a person originally denied the
7 purchase or transfer of a firearm as the result of a background check
8 that indicates the applicant is ineligible to possess a firearm has
9 subsequently been approved for the purchase or transfer, the division of
10 state police must purge any record of such person's denial in its
11 possession and inform the superintendent of state police and any local
12 law enforcement agency participating in the grant program under section
13 two hundred thirty-five of the executive law of the subsequent approval
14 of the purchase or transfer.

15 (c) Information and records prepared, owned, used or retained by the
16 division of state police pursuant to this act are exempt from public
17 inspection and copying article six of the public officers law.

18 (d) The division of state police must destroy the information and data
19 reported by a dealer pursuant to subdivision one of section eight
20 hundred ninety-six of the general business law, subdivision two of
21 section eight hundred ninety-eight of such law or section 400.04 of this
22 article upon its satisfaction that the information and data is no longer
23 necessary to carry out its duties pursuant to this section.

24 3. (a) Upon receipt of documentation that a person has appealed a
25 background check denial, the division of state police shall immediately
26 remove the record of such person initially reported pursuant to subdivi-
27 sion two of this section from such database accessible to law enforce-
28 ment agencies and officers. The division of state police must keep a
29 separate record of such person's information for a period of one year or
30 until such time as such appeal has been resolved. Every twelve months,
31 the division of state police shall notify such person that such person
32 must provide documentation that his or her appeal is still pending or
33 the record of such person's background check denial will be put back in
34 such database accessible to law enforcement agencies and officers. At
35 any time, upon receipt of documentation that such person's appeal has
36 been granted, the division of state police shall remove any record of
37 such person's denied firearms purchase or transfer application from such
38 database accessible to law enforcement agencies and officers.

39 (b) Upon receipt of satisfactory proof that a person who was reported
40 to the division of state police pursuant to subdivision two of this
41 section is no longer ineligible to possess a firearm under state or
42 federal law, the division of state police must remove any record of such
43 person's denied firearms purchase or transfer application from such
44 database accessible to law enforcement agencies and officers.

45 4. (a) The superintendent of state police shall generate and distrib-
46 ute a notice form to all dealers, to be provided by such dealers to
47 applicants denied the purchase or transfer of a firearm as a result of a
48 background check that indicates the applicant is ineligible to possess a
49 firearm. Such notice form must contain the following statements:

50 State law requires that I transmit the following information to New
51 York State Police as a result of your firearm purchase or transfer
52 denial within two days of the denial:

53 (i) Identifying information of the applicant;

54 (ii) The date of the application and denial of the application; and

55 (iii) Other information as prescribed by the New York State Police.

1 If you believe this denial is in error, and you do not exercise your
2 right to appeal, you may be subject to criminal investigation by the New
3 York State Police and/or a local law enforcement agency.

4 (b) Such notice form shall also contain information directing such
5 applicant to a web site describing the process of appealing a national
6 instant criminal background check system denial through the federal
7 bureau of investigation and refer the applicant to local law enforcement
8 for information on a denial based on a state background check. Such
9 notice form shall also contain a phone number for a contact at the divi-
10 sion of state police to direct such applicant to resources regarding an
11 individual's right to appeal a background check denial.

12 § 5. The executive law is amended by adding a new section 233 to read
13 as follows:

14 § 233. Reporting of denied firearm sales and transfers. The division
15 of state police shall prepare an annual report on the number of denied
16 firearms sales or transfers reported pursuant to section 400.02 of the
17 penal law. The report shall indicate the number of cases in which a
18 person was denied a firearms sale or transfer, the number of cases where
19 the denied sale or transfer was investigated for potential criminal
20 prosecution and the number of cases where an arrest was made, the case
21 was referred for prosecution and a conviction was obtained. The division
22 of state police shall submit the report to the appropriate committees of
23 the legislature on or before December thirty-first of each year.

24 § 6. The executive law is amended by adding a new section 234 to read
25 as follows:

26 § 234. Statewide automated protected person notification system. 1.
27 The superintendent of state police shall coordinate with the office of
28 information technology services to create and operate a statewide auto-
29 mated protected person notification system as part of the ALERT-NY
30 system to automatically notify a registered person via the registered
31 person's choice of telephone or email when a respondent subject to a
32 court order specified in subdivision two of this section has attempted
33 to purchase or acquire a firearm and been denied based on a background
34 check or completed and submitted firearm purchase or transfer applica-
35 tion that indicates the respondent is ineligible to possess a firearm
36 under state or federal law. The system shall permit a person to register
37 for notification, or a registered person to update the person's regis-
38 tration information, for the statewide automated protected person
39 notification system by calling a toll-free telephone number or by
40 accessing a public web site.

41 2. The notification requirements of this section apply to any tempo-
42 rary order of protection or order of protection issued under subdivision
43 one of section 530.12 of the criminal procedure law or subdivision one
44 of section 530.13 of such law, subdivision three of section two hundred
45 forty of the domestic relations law or section two hundred fifty-two of
46 such law or sections one hundred fifty-three-c, one hundred
47 fifty-four-d, 304.2, 352.3, four hundred thirty, four hundred forty-six,
48 five hundred fifty, five hundred fifty-one, six hundred fifty-five, six
49 hundred fifty-six, seven hundred forty, seven hundred fifty-nine, eight
50 hundred forty-two, one thousand twenty-nine or one thousand fifty-six of
51 the family court act and any foreign protection order filed with a New
52 York court pursuant to subdivision five of section 530.11 of the crimi-
53 nal procedure law or section one hundred fifty-four-e of the family
54 court act, where such order prohibits the respondent from possessing
55 firearms or where by operation of law the respondent is ineligible to
56 possess firearms during the term of such order. The notification

1 requirements of this section apply even if the respondent of such court
2 order has notified the division of state police that he or she has
3 appealed a background check denial under subdivision three of section
4 400.02 of the penal law.

5 3. An appointed or elected official, public employee, or public agen-
6 cy, or combination of units of government and its employees, are immune
7 from civil liability for damages for any release of information or the
8 failure to release information related to the statewide automated
9 protected person notification system in this section, so long as the
10 release or failure to release was without gross negligence. The immunity
11 provided under this subsection applies to the release of relevant and
12 necessary information to other public officials, public employees, or
13 public agencies, and to the general public.

14 4. Information and records prepared, owned, used, or retained by the
15 division of state police or office of information technology pursuant to
16 this section, including information a person submits to register and
17 participate in the statewide automated protected person notification
18 system, are exempt from public inspection and copying under article six
19 of the public officers law.

20 § 7. The executive law is amended by adding a new section 235 to read
21 as follows:

22 § 235. Illegal purchase or transfer of a firearm investigation grant.
23 1. The superintendent of state police shall establish a grant program
24 for local law enforcement agencies to conduct criminal investigations
25 regarding persons who illegally attempted to purchase or transfer a
26 firearm within their jurisdiction.

27 2. Each grant applicant must be required to submit reports to the
28 division of state police that indicate the number of cases in which a
29 person was denied a firearms sale or transfer, the number of cases where
30 the denied sale or transfer was investigated for potential criminal
31 prosecution, and the number of cases where an arrest was made, the case
32 was referred for prosecution, and a conviction was obtained.

33 3. Information and records prepared, owned, used, or retained by the
34 division of state police or local law enforcement agencies pursuant to
35 this section are exempt from public inspection and copying under article
36 six of the public officers law.

37 § 8. The public officers law is amended by adding a new section 89-a
38 to read as follows:

39 § 89-a. Additional restrictions on access to law enforcement records.
40 The following investigative, law enforcement, and crime victim informa-
41 tion is exempt from public inspection and copying under this chapter:

42 1. Information revealing the identity of child victims of sexual
43 assault who are under age eighteen. Identifying information means such
44 child victim's name, address, location, photograph, and in cases in
45 which such child victim is a relative or stepchild of the alleged perpe-
46 trator, identification of the relationship between such child and such
47 alleged perpetrator;

48 2. Information submitted to the division of criminal justice services
49 by a person for the purpose of receiving notifications from the ALERT-NY
50 system regarding registered sex offender relocations, including such
51 person's name, residential address, and email address;

52 3. Personally identifying information collected by law enforcement
53 agencies pursuant to local security alarm system programs and vacation
54 crime watch programs. Nothing in this subsection shall be interpreted so
55 as to prohibit the legal owner of a residence or business from accessing
56 information regarding his or her residence or business;

1 4. The global positioning system data that would indicate the location
2 of the residence of an employee or worker at a court or a government
3 agency which performs the administration of criminal justice pursuant to
4 a statute or executive order and which allocates a substantial part of
5 its annual budget to the administration of criminal justice;

6 5. Body worn camera recordings to the extent nondisclosure is essen-
7 tial for the protection of any person's right to privacy, including, but
8 not limited to, the circumstances enumerated in paragraph (a) of this
9 subdivision. A law enforcement or corrections agency shall not disclose
10 a body worn camera recording to the extent the recording is exempt under
11 this subsection.

12 (a) Disclosure of a body worn camera recording is presumed to be
13 protected from disclosure under this article to the extent it depicts:

14 (i)(A) Any areas of a medical facility, counseling, or therapeutic
15 program office where:

16 (1) A patient is registered to receive treatment, receiving treatment,
17 waiting for treatment, or being transported in the course of treatment;
18 or

19 (2) Health care information is shared with patients, their families,
20 or among the care team; or

21 (B) Information that meets the definition of protected health informa-
22 tion for purposes of the health insurance portability and accountability
23 act of 1996;

24 (ii) The interior of a place of residence where a person has a reason-
25 able expectation of privacy;

26 (iii) An intimate image taken in a private setting, not a matter of
27 public concern, and depicting sexual conduct as defined in subdivision
28 ten of section 130.00 of the penal law, or a person's intimate body
29 parts, whether nude or visible through less than opaque clothing;

30 (iv) A minor;

31 (v) The body of a deceased person;

32 (vi) The identity of or communications from a victim or witness of an
33 incident involving domestic violence, sexual assault or disclosure of
34 intimate images. If at the time of recording the victim or witness indi-
35 cates a desire for disclosure or nondisclosure of the recorded identity
36 or communications, such desire shall govern; or

37 (vii) The identifiable location information of a community-based
38 domestic violence program, or emergency shelter.

39 (b) The presumptions set out in paragraph (a) of this subdivision may
40 be rebutted by specific evidence in individual cases.

41 (c) In a court action seeking the right to inspect or copy a body worn
42 camera recording, a person who prevails against a law enforcement or
43 corrections agency that withholds or discloses all or part of a body
44 worn camera recording pursuant to paragraph (a) of this subdivision may
45 not be awarded fees, costs, or awards based upon such actions unless it
46 is shown that the law enforcement or corrections agency acted in bad
47 faith or with gross negligence.

48 (d) A request for body worn camera recordings must:

49 (i) Specifically identify a name of a person or persons involved in
50 the incident;

51 (ii) Provide the incident or case number;

52 (iii) Provide the date, time, and location of the incident or inci-
53 dents; or

54 (iv) Identify a law enforcement or corrections officer involved in the
55 incident or incidents.

1 (e)(i) A person directly involved in an incident recorded by the
2 requested body worn camera recording, an attorney representing a person
3 directly involved in an incident recorded by the requested body worn
4 camera recording, a person or his or her attorney who requests a body
5 worn camera recording relevant to a criminal case involving that person,
6 has the right to obtain the body worn camera recording, subject to any
7 exemption under this chapter or any applicable law. In addition, an
8 attorney who represents a person regarding a potential or existing civil
9 cause of action involving the denial of civil rights under the federal
10 or state Constitution, or a violation of a United States department of
11 justice settlement agreement, has the right to obtain the body worn
12 camera recording if relevant to the cause of action, subject to any
13 exemption under this chapter or any applicable law. The attorney must
14 explain the relevancy of the requested body worn camera recording to the
15 cause of action and specify that he or she is seeking relief from redac-
16 tion costs under this paragraph.

17 (ii) A law enforcement or corrections agency responding to requests
18 under subparagraph (i) of this paragraph may not require the requesting
19 individual to pay costs of any redacting, altering, distorting, pixelat-
20 ing, suppressing, or otherwise obscuring any portion of a body worn
21 camera recording.

22 (iii) A law enforcement or corrections agency may require any person
23 requesting a body worn camera recording pursuant to subparagraph (i) of
24 this paragraph to identify himself or herself to ensure he or she is a
25 person entitled to obtain the body worn camera recording under subpara-
26 graph (i) of this paragraph.

27 (f)(i) A law enforcement or corrections agency responding to a request
28 to disclose body worn camera recordings may require any requester not
29 listed in paragraph (e) of this subdivision to pay the reasonable costs
30 of redacting, altering, distorting, pixelating, suppressing, or other-
31 wise obscuring any portion of the body worn camera recording prior to
32 disclosure only to the extent necessary to comply with the exemptions in
33 this chapter or any applicable law.

34 (ii) An agency that charges redaction costs under this paragraph must
35 use redaction technology that provides the least costly commercially
36 available method of redacting body worn camera recordings, to the extent
37 possible and reasonable.

38 (iii) In any case where an agency charges a requestor for the costs of
39 redacting a body worn camera recording under this paragraph, the time
40 spent on redaction of the recording shall not count towards the agency's
41 allocation of, or limitation on, time or costs spent responding to
42 public records requests under this chapter, as established pursuant to
43 local ordinance, policy, procedure, or state law.

44 (g) For purposes of this subdivision:

45 (i) "Body worn camera recording" means a video and/or sound recording
46 that is made by a body worn camera attached to the uniform or eyewear of
47 a law enforcement or corrections officer from a covered jurisdiction
48 while in the course of his or her official duties and that is made on or
49 after June ninth, two thousand eighteen, and prior to July first, two
50 thousand twenty-one; and

51 (ii) "Covered jurisdiction" means any jurisdiction that has deployed
52 body worn cameras as of June ninth, two thousand eighteen, regardless of
53 whether or not body worn cameras are being deployed in the jurisdiction
54 on June ninth, two thousand eighteen, including, but not limited to,
55 jurisdictions that have deployed body worn cameras on a pilot basis.

1 (h) Nothing in this subsection shall be construed to restrict access
2 to body worn camera recordings as otherwise permitted by law for offi-
3 cial or recognized civilian and accountability bodies or pursuant to any
4 court order.

5 (i) A law enforcement or corrections agency must retain body worn
6 camera recordings for at least sixty days and thereafter may destroy the
7 records.

8 § 9. This act shall take effect immediately. Effective immediately,
9 the addition, amendment and/or repeal of any rule or regulation neces-
10 sary for the implementation of this act on its effective date are
11 authorized to be made and completed on or before such effective date.