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:

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

(d) (i) A firearm dealer licensed under federal law shall report to the division of state police information on each instance where such dealer denies an application for the purchase or transfer of a firearm as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law. Such dealer shall report the denied application information to the division of state police within five days of the denial in a format as prescribed by the superintendent of state police. Such reported information must include the identifying information of the applicant, the date of the application and denial of such application, and other information or documents as prescribed by the superintendent of state police. In any case where the purchase or transfer of a firearm is initially denied by such dealer as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, such dealer shall report the subsequent approval to the division of state police within one day of the approval.

(ii) Upon denying an application for the purchase or transfer of a 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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firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law, the dealer shall:

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

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

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

2. (a) 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.

(b) (i) Such dealer shall report to the division of state police information on each instance where such dealer denies an application for the purchase or transfer of a firearm as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law. Such dealer shall report the denied application information to the division of state police within five days of the denial in a format as prescribed by the superintendent of state police. Such reported information must include the identifying information of the applicant, the date of the application and denial of such application, and other information or documents as prescribed by the superintendent of state police. In any case where the purchase or transfer of a firearm is initially denied by such dealer as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, such dealer shall report the subsequent approval to the division of state police within one day of the approval.

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

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

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

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

§ 400.04 Dealer reporting of denied applications.

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

dent of state police. Such reported information must include the identifying information of the applicant, the date of the application and denial of such application, and other information or documents as prescribed by the superintendent of state police. In any case where the purchase or transfer of a firearm is initially denied by such dealer as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, such dealer shall report the subsequent approval to the division of state police within one day of the approval.

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

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

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

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

§ 400.02 Statewide license and record database.

1. There shall be a statewide license and record database which shall be created and maintained by the division of state police the cost of which shall not be borne by any municipality. Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. Records containing granted or denied license applications shall be periodically checked by the division of criminal justice services against criminal conviction, mental health, and all other records as are necessary to determine their continued accuracy as well as whether an individual is no longer a valid license holder. The division of criminal justice services shall also check pending applications made pursuant to this article against such records to determine whether a license may be granted. All state agencies shall cooperate with the division of criminal justice services, as otherwise authorized by law, in making their records available for such checks. The division of criminal justice services, upon determining that an individual is ineligible to possess a license, or is no longer a valid license holder, shall notify the applicable licensing official of such determination and such licensing official shall not issue a license or revoke such license and any weapons owned or possessed by such individual shall be removed consistent with the provisions of subdivision eleven of section 400.00 of this article. Local and state law enforcement shall have access to such database, as otherwise authorized by law, in the performance of their duties. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order.

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

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

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

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

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

3. (a) Upon receipt of documentation that a person has appealed a background check denial, the division of state police shall immediately remove the record of such person initially reported pursuant to subdivision two of this section from such database accessible to law enforcement agencies and officers. The division of state police must keep a separate record of such person's information for a period of one year or until such time as such appeal has been resolved. Every twelve months, the division of state police shall notify such person that such person must provide documentation that his or her appeal is still pending or the record of such person's background check denial will be put back in such database accessible to law enforcement agencies and officers. At any time, upon receipt of documentation that such person's appeal has been granted, the division of state police shall remove any record of such person's denied firearms purchase or transfer application from such database accessible to law enforcement agencies and officers.

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

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

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

(i) Identifying information of the applicant;

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

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

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

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

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

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

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

§ 234. Statewide automated protected person notification system. 1. The superintendent of state police shall coordinate with the office of information technology services to create and operate a statewide automated protected person notification system as part of the ALERT-NY system to automatically notify a registered person via the registered person's choice of telephone or email when a respondent subject to a court order specified in subdivision two of this section has attempted to purchase or acquire a firearm and been denied based on a background check or completed and submitted firearm purchase or transfer application that indicates the respondent is ineligible to possess a firearm under state or federal law. The system shall permit a person to register for notification, or a registered person to update the person's registration information, for the statewide automated protected person notification system by calling a toll-free telephone number or by accessing a public web site.

2. The notification requirements of this section apply to any temporary order of protection or order of protection issued under subdivision one of section 530.12 of the criminal procedure law or subdivision one of section 530.13 of such law, subdivision three of section two hundred forty of the domestic relations law or section two hundred fifty-two of such law or sections one hundred fifty-three-c, one hundred fifty-four-d, 304.2, 352.3, four hundred thirty, four hundred forty-six, five hundred fifty, five hundred fifty-one, six hundred fifty-five, six hundred fifty-six, seven hundred forty, seven hundred fifty-nine, eight hundred forty-two, one thousand twenty-nine or one thousand fifty-six of the family court act and any foreign protection order filed with a New York court pursuant to subdivision five of section 530.11 of the criminal procedure law or section one hundred fifty-four-e of the family court act, where such order prohibits the respondent from possessing firearms or where by operation of law the respondent is ineligible to possess firearms during the term of such order. The notification

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

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

(iv) A minor;

(v) The body of a deceased person;

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

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

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

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

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

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

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

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

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

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

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

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

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

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

(g) For purposes of this subdivision:

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

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

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

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

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