

# STATE OF NEW YORK

2441

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. FAHY -- 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 2019, 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 2019".

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

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

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1 background check in the National Instant Criminal Background Check  
2 System (NICS) or its successor. All applications must be signed and  
3 verified by the applicant.

4 (d) Upon receipt of an application for an employee background check  
5 certificate, the division of criminal justice services shall conduct a  
6 background check of the applicant in NICS or its successor. The results  
7 of the background check must indicate that there is no information that  
8 would disqualify the applicant from receiving or possessing a firearm,  
9 rifle, or shotgun under state or under federal law, and the division of  
10 criminal justice services shall document such result on an employee  
11 background check certificate.

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

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

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

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