

# STATE OF NEW YORK

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716

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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Introduced by 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:

1 Section 1. Subdivision 12 of section 400.00 of the penal law, as  
2 amended by chapter 1 of the laws of 2013, is amended to read as follows:  
3 12. Records required of gunsmiths and dealers in firearms. Any person  
4 licensed as gunsmith or dealer in firearms shall keep a record book  
5 approved as to form, except in the city of New York, by the superinten-  
6 dent of state police. In the record book shall be entered at the time of  
7 every transaction involving a firearm the date, name, age, occupation  
8 and residence of any person from whom a firearm is received or to whom a  
9 firearm is delivered, and the calibre, make, model, manufacturer's name  
10 and serial number, or if none, any other distinguishing number or iden-  
11 tification mark on such firearm. Before delivering a firearm to any  
12 person, the licensee shall require him to produce either a license valid  
13 under this section to carry or possess the same, or proof of lawful  
14 authority as an exempt person pursuant to section 265.20 of this chapter  
15 and the national instant criminal background check system or its succes-  
16 sor having issued a "proceed" response to the dealer. A licensee shall  
17 not deliver a firearm to any person if the national instant criminal  
18 background check system or its successor issues a response other than  
19 "proceed" to the licensee. In addition, before delivering a firearm to  
20 a peace officer, the licensee shall verify that person's status as a  
21 peace officer with the division of state police. After completing the  
22 foregoing, the licensee shall remove and retain the attached coupon and  
23 enter in the record book the date of such license, number, if any, and  
24 name of the licensing officer, in the case of the holder of a license to

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

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1 carry or possess, or the shield or other number, if any, assignment and  
2 department, unit or agency, in the case of an exempt person. The  
3 original transaction report shall be forwarded to the division of state  
4 police within ten days of delivering a firearm to any person, and a  
5 duplicate copy shall be kept by the licensee. The superintendent of  
6 state police may designate that such record shall be completed and trans-  
7 mitted in electronic form. A dealer may be granted a waiver from trans-  
8 mitting such records in electronic form if the superintendent determines  
9 that such dealer is incapable of such transmission due to technological  
10 limitations that are not reasonably within the control of the dealer, or  
11 other exceptional circumstances demonstrated by the dealer, pursuant to  
12 a process established in regulation, and at the discretion of the super-  
13 intendent. Records assembled or collected for purposes of inclusion in  
14 the database created pursuant to section 400.02 of this article shall  
15 not be subject to disclosure pursuant to article six of the public offi-  
16 cers law. The record book shall be maintained on the premises mentioned  
17 and described in the license and shall be open at all reasonable hours  
18 for inspection by any peace officer, acting pursuant to his special  
19 duties, or police officer. In the event of cancellation or revocation of  
20 the license for gunsmith or dealer in firearms, or discontinuance of  
21 business by a licensee, such record book shall be immediately surren-  
22 dered to the licensing officer in the city of New York, and in the coun-  
23 ties of Nassau and Suffolk, and elsewhere in the state to the executive  
24 department, division of state police.

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

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

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

40 1. In addition to any other requirements pursuant to state and federal  
41 law, all sales, exchanges or disposals of firearms, rifles or shotguns  
42 shall be conducted in accordance with this section unless such sale,  
43 exchange or disposal is conducted by a licensed importer, licensed  
44 manufacturer or licensed dealer, as those terms are defined in 18 USC §  
45 922, when such sale, exchange or disposal is conducted pursuant to that  
46 person's federal firearms license or such sale, exchange or disposal is  
47 between members of an immediate family. When a sale, exchange or  
48 disposal is conducted pursuant to a person's federal firearms license,  
49 before delivering a firearm, rifle or shotgun to any person, the  
50 national instant criminal background check system or its successor shall  
51 have issued a "proceed" response to the federal firearms licensee. A  
52 federal firearms licensee shall not deliver a firearm, rifle or shotgun  
53 to any person if the national instant criminal background check system  
54 or its successor issues a response other than "proceed" to the federal  
55 firearms licensee. For purposes of this section, "immediate family"  
56 shall mean spouses, domestic partners, children and step-children.

1     2. Before any sale, exchange or disposal pursuant to this article, a  
2 national instant criminal background check must be completed by a dealer  
3 who consents to conduct such check, and upon completion of such back-  
4 ground check, shall complete a document, the form of which shall be  
5 approved by the superintendent of state police, that identifies and  
6 confirms that such check was performed. Before a dealer who consents to  
7 conduct a national instant criminal background check delivers a firearm,  
8 rifle, or shotgun to any person, the national instant criminal back-  
9 ground check system or its successor shall have issued a "proceed"  
10 response to the dealer. A dealer shall not deliver a firearm, rifle or  
11 shotgun to any person if the national instant criminal background check  
12 system or its successor issues a response other than "proceed" to the  
13 federal firearms licensee.

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