

# STATE OF NEW YORK

449--A

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. PAULIN, DINOWITZ, GALEF, DICKENS, ABINANTI, SEAWRIGHT, GOTTFRIED, L. ROSENTHAL, ENGLEBRIGHT, ZINERMAN -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the general business law, in relation to establishing a waiting period before a firearm, shotgun or rifle may be delivered to a person

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 129 of the laws of 2019, is amended to read as  
3 follows:  
4 12. Records required of gunsmiths and dealers in firearms. Any person  
5 licensed as gunsmith or dealer in firearms shall keep a record book  
6 approved as to form, except in the city of New York, by the superinten-  
7 dent of state police. In the record book shall be entered at the time of  
8 every transaction involving a firearm the date, name, age, occupation  
9 and residence of any person from whom a firearm is received or to whom a  
10 firearm is delivered, and the calibre, make, model, manufacturer's name  
11 and serial number, or if none, any other distinguishing number or iden-  
12 tification mark on such firearm. Before delivering a firearm to any  
13 person, the licensee shall require him to produce either a license valid  
14 under this section to carry or possess the same, or proof of lawful  
15 authority as an exempt person pursuant to section 265.20 of this chapter  
16 and [~~either (a) the National Instant Criminal Background Check System~~  
17 ~~(NICS) or its successor has issued a "proceed" response to the licensee,~~  
18 ~~or (b) thirty calendar~~ ten business days have elapsed since the date  
19 the licensee contacted [~~NICS~~] the National Instant Criminal Background

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

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1 Check System (NICS) or its successor to initiate a national instant  
2 criminal background check [~~and NICS has not notified the licensee that~~  
3 ~~the transfer of the firearm to such person should be denied~~]. In addi-  
4 tion, before delivering a firearm to a peace officer, the licensee shall  
5 verify that person's status as a peace officer with the division of  
6 state police. After completing the foregoing, the licensee shall remove  
7 and retain the attached coupon and enter in the record book the date of  
8 such license, number, if any, and name of the licensing officer, in the  
9 case of the holder of a license to carry or possess, or the shield or  
10 other number, if any, assignment and department, unit or agency, in the  
11 case of an exempt person. The original transaction report shall be  
12 forwarded to the division of state police within ten days of delivering  
13 a firearm to any person, and a duplicate copy shall be kept by the  
14 licensee. The superintendent of state police may designate that such  
15 record shall be completed and transmitted in electronic form. A dealer  
16 may be granted a waiver from transmitting such records in electronic  
17 form if the superintendent determines that such dealer is incapable of  
18 such transmission due to technological limitations that are not reason-  
19 ably within the control of the dealer, or other exceptional circum-  
20 stances demonstrated by the dealer, pursuant to a process established in  
21 regulation, and at the discretion of the superintendent. Records assem-  
22 bled or collected for purposes of inclusion in the database created  
23 pursuant to section 400.02 of this article shall not be subject to  
24 disclosure pursuant to article six of the public officers law. The  
25 record book shall be maintained on the premises mentioned and described  
26 in the license and shall be open at all reasonable hours for inspection  
27 by any peace officer, acting pursuant to his special duties, or police  
28 officer. In the event of cancellation or revocation of the license for  
29 gunsmith or dealer in firearms, or discontinuance of business by a  
30 licensee, such record book shall be immediately surrendered to the  
31 licensing officer in the city of New York, and in the counties of Nassau  
32 and Suffolk, and elsewhere in the state to the executive department,  
33 division of state police.

34 § 2. Section 400.20 of the penal law, as added by chapter 129 of the  
35 laws of 2019, is amended to read as follows:

36 § 400.20 Waiting period in connection with the sale or transfer of a  
37 rifle or shotgun.

38 When a national instant criminal background check is required pursuant  
39 to state or federal law to be conducted through the National Instant  
40 Criminal Background Check System (NICS) or its successor in connection  
41 with the sale or transfer of a rifle or shotgun to any person, before  
42 delivering a rifle or shotgun to such person, [~~either (a) NICS has~~  
43 ~~issued a "proceed" response to the seller or transferor, or (b) thirty~~  
44 ~~calendar~~] ten business days shall have elapsed since the date the seller  
45 or transferor contacted NICS to initiate a national instant criminal  
46 background check [~~and NICS has not notified the seller or transferor~~  
47 ~~that the transfer of the rifle or shotgun to such person should be~~  
48 ~~denied~~].

49 § 3. Subdivision 1 of section 897 of the general business law, as  
50 amended by chapter 129 of the laws of 2019, is amended to read as  
51 follows:

52 1. A national instant criminal background check shall be conducted and  
53 no person shall sell or transfer a firearm, rifle or shotgun at a gun  
54 show, except in accordance with the provisions of 18 U.S.C. 922(t),  
55 provided that before delivering a firearm, rifle or shotgun to any  
56 person, [~~either (a) the National Instant Criminal Background Check~~

1 ~~System (NICS) or its successor has issued a "proceed" response to the~~  
2 ~~seller or transferor, or (b) thirty calendar~~ ten business days shall  
3 have elapsed since the date the seller or transferor contacted [~~NICS~~]  
4 the National Instant Criminal Background Check System (NICS) or its  
5 successor to initiate a national instant criminal background check [~~and~~  
6 ~~NICS has not notified the seller or transferor that the transfer of the~~  
7 ~~firearm, rifle or shotgun to such person should be denied~~].

8 § 4. Subdivisions 1 and 2 of section 898 of the general business law,  
9 as amended by chapter 129 of the laws of 2019, are amended to read as  
10 follows:

11 1. In addition to any other requirements pursuant to state and federal  
12 law, all sales, exchanges or disposals of firearms, rifles or shotguns  
13 shall be conducted in accordance with this section unless such sale,  
14 exchange or disposal is conducted by a licensed importer, licensed  
15 manufacturer or licensed dealer, as those terms are defined in 18 USC §  
16 922, when such sale, exchange or disposal is conducted pursuant to that  
17 person's federal firearms license or such sale, exchange or disposal is  
18 between members of an immediate family. When a sale, exchange or  
19 disposal is conducted pursuant to a person's federal firearms license,  
20 before delivering a firearm, rifle or shotgun to any person, [~~either (a)~~  
21 ~~the National Instant Criminal Background Check System (NICS) or its~~  
22 ~~successor has issued a "proceed" response to the federal firearms licen-~~  
23 ~~see, or (b) thirty calendar~~ ten business days shall have elapsed since  
24 the date the federal firearms licensee contacted [~~NICS~~] the National  
25 Instant Criminal Background Check System (NICS) or its successor to  
26 initiate a national instant criminal background check [~~and NICS has not~~  
27 ~~notified the federal firearms licensee that the transfer of the firearm,~~  
28 ~~rifle or shotgun to such person should be denied~~]. For purposes of this  
29 section, "immediate family" shall mean spouses, domestic partners, chil-  
30 dren and step-children.

31 2. Before any sale, exchange or disposal pursuant to this article, a  
32 national instant criminal background check must be completed by a dealer  
33 who consents to conduct such check, and upon completion of such back-  
34 ground check, shall complete a document, the form of which shall be  
35 approved by the superintendent of state police, that identifies and  
36 confirms that such check was performed. Before a dealer who consents to  
37 conduct a national instant criminal background check delivers a firearm,  
38 rifle or shotgun to any person, [~~either (a) NICS issued a "proceed"~~  
39 ~~response to the dealer, or (b) thirty calendar~~ ten business days shall  
40 have elapsed since the date the dealer contacted [~~NICS~~] the National  
41 Instant Criminal Background Check System (NICS) or its successor to  
42 initiate a national instant criminal background check [~~and NICS has not~~  
43 ~~notified the dealer that the transfer of the firearm, rifle or shotgun~~  
44 ~~to such person should be denied~~].

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