

STATE OF NEW YORK

4928

2021-2022 Regular Sessions

IN ASSEMBLY

February 9, 2021

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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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 amended by chapter 129 of the laws of 2019, is amended to read as
12 follows:

13 2. (a) Before any sale, exchange or disposal pursuant to this article,
14 a national instant criminal background check must be completed by a
15 dealer who consents to conduct such check, and upon completion of such
16 background check, shall complete a document, the form of which shall be
17 approved by the superintendent of state police, that identifies and
18 confirms that such check was performed. Before a dealer who consents to
19 conduct a national instant criminal background check delivers a firearm,
20 rifle or shotgun to any person, either [~~(a)~~] (i) NICS issued a "proceed"
21 response to the dealer, or [~~(b)~~] (ii) thirty calendar days shall have
22 elapsed since the date the dealer contacted NICS to initiate a national
23 instant criminal background check and NICS has not notified the dealer
24 that the transfer of the firearm, rifle or shotgun to such person should
25 be denied.

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

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

48 (A) Provide such applicant with a copy of a notice form generated and
49 distributed by the superintendent of state police pursuant to subdivi-
50 sion four of section 400.02 of the penal law, informing denied appli-
51 cants of their right to appeal the denial; and

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

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

56 § 400.04 Dealer reporting of denied applications.

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

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

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

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

29 § 4. Section 400.02 of the penal law, as amended by chapter 244 of the
30 laws of 2019, is amended to read as follows:

31 § 400.02 Statewide license and record database.

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

1 2. (a) The division of state police shall create and maintain an elec-
2 tronic portal for firearm dealers licensed under federal law, to report
3 the information as required pursuant to subdivision one of section eight
4 hundred ninety-six of the general business law, subdivision two of
5 section eight hundred ninety-eight of such law or section 400.04 of this
6 article, pertaining to persons who have applied for the purchase or
7 transfer of a firearm and were denied as the result of a background
8 check or completed and submitted firearm purchase or transfer applica-
9 tion that indicates the applicant is ineligible to possess a firearm
10 under state or federal law.

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

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

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

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

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

53 4. (a) The superintendent of state police shall generate and distrib-
54 ute a notice form to all dealers, to be provided by such dealers to
55 applicants denied the purchase or transfer of a firearm as a result of a

1 background check that indicates the applicant is ineligible to possess a
2 firearm. Such notice form must contain the following statements:

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

6 (i) Identifying information of the applicant;

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

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

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

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

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

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

32 § 6. The executive law is amended by adding a new section 236 to read
33 as follows:

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

49 2. The notification requirements of this section apply to any tempo-
50 rary order of protection or order of protection issued under subdivision
51 one of section 530.12 of the criminal procedure law or subdivision one
52 of section 530.13 of such law, subdivision three of section two hundred
53 forty of the domestic relations law or section two hundred fifty-two of
54 such law or sections one hundred fifty-three-c, one hundred
55 fifty-four-d, 304.2, 352.3, four hundred thirty, four hundred forty-six,
56 five hundred fifty, five hundred fifty-one, six hundred fifty-five, six

1 hundred fifty-six, seven hundred forty, seven hundred fifty-nine, eight
2 hundred forty-two, one thousand twenty-nine or one thousand fifty-six of
3 the family court act and any foreign protection order filed with a New
4 York court pursuant to subdivision five of section 530.11 of the crimi-
5 nal procedure law or section one hundred fifty-four-e of the family
6 court act, where such order prohibits the respondent from possessing
7 firearms or where by operation of law the respondent is ineligible to
8 possess firearms during the term of such order. The notification
9 requirements of this section apply even if the respondent of such court
10 order has notified the division of state police that he or she has
11 appealed a background check denial under subdivision three of section
12 400.02 of the penal law.

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

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

28 § 7. The executive law is amended by adding a new section 237 to read
29 as follows:

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

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

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

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

47 § 89-a. Additional restrictions on access to law enforcement records.
48 The following investigative, law enforcement, and crime victim informa-
49 tion is exempt from public inspection and copying under this chapter:

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

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

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

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

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

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

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

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

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

30 (B) Information that meets the definition of protected health informa-
31 tion for purposes of the health insurance portability and accountability
32 act of 1996;

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

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

39 (iv) A minor;

40 (v) The body of a deceased person;

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

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

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

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

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

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

4 (ii) Provide the incident or case number;

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

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

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

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

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

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

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

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

52 (g) For purposes of this subdivision:

53 (i) "Body worn camera recording" means a video and/or sound recording
54 that is made by a body worn camera attached to the uniform or eyewear of
55 a law enforcement or corrections officer from a covered jurisdiction
56 while in the course of his or her official duties and that is made on or

1 after June ninth, two thousand eighteen, and prior to July first, two
2 thousand twenty-one; and

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

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

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

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