

# STATE OF NEW YORK

2844

2021-2022 Regular Sessions

## IN SENATE

January 26, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, the general business law and the penal law, in relation to the point of contact for conducting national instant criminal background checks; and to amend the state finance law, in relation to the creation of the background check fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 228 to  
2 read as follows:

3 § 228. National instant criminal background checks. The division is  
4 hereby authorized and directed to serve as a state point of contact for  
5 implementation of 18 U.S.C. sec. 922 (t), all federal regulations and  
6 applicable guidelines adopted pursuant thereto, and the national instant  
7 criminal background check system.

8 1. The division shall report the name, date of birth and physical  
9 description of any person prohibited from possessing a firearm pursuant  
10 to 18 USC 922(g) or (n) to the national instant criminal background  
11 check system index, denied persons files.

12 2. The superintendent shall promulgate a plan to coordinate back-  
13 ground checks for firearm purchases and any person, firm or corporation  
14 that sells, delivers or otherwise transfers any firearm shall contact  
15 the state police in order to complete the background checks in compli-  
16 ance with federal and state law, including NICS, in New York state.  
17 Following implementation of such plan, no application or record of sale  
18 shall be completed for the purchase or transfer of a firearm by a  
19 licensed dealer without first contacting the state police. Such plan  
20 shall include, but shall not be limited to the following features:

21 (a) The superintendent of the New York State Police shall create a  
22 centralized bureau within the New York State Police department with a  
23 contact center unit that handles all background checks and maintains an

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

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1 appeals unit. Staff may include but is not limited to: bureau chief,  
2 supervisors, managers, different levels of administrative analysts,  
3 appeals specialists and administrative personnel. The New York State  
4 Police shall employ and train such personnel to administer the  
5 provisions of this section.

6 (b) Procedures for carrying out the duties under this section, includ-  
7 ing at a minimum:

8 i. that the bureau shall be open for business from 9 a.m. to 9 p.m.  
9 every calendar day except for Christmas, Thanksgiving and the fourth of  
10 July, to complete background checks; and

11 ii. during hours of operation, all phone lines and databases shall be  
12 operational.

13 (c) The superintendent shall set up an automated phone system and web  
14 based application system, in order that the bureau shall provide a toll-  
15 free telephone number and/or web-based application option for any  
16 person, firm or corporation seeking a background check in order to sell,  
17 deliver or otherwise transfer a firearm, that is operational every day  
18 that the office is open for business for the purpose of responding to  
19 requests in accordance with this section.

20 (d) i. Upon receipt of a background check request, personnel should  
21 check all relevant federal and state databases and records, in order to  
22 return a result as efficiently as possible.

23 ii. In completing an instant background check, the New York State  
24 Police shall create and maintain an online automated check system to  
25 search through in accordance with federal and state law. The superinten-  
26 dent may create and maintain additional databases of information as  
27 needed to complete background checks.

28 (e) i. Each person, firm or corporation that sells any firearms shall  
29 pay a fee that is imposed by the bureau for performing a background  
30 check. Such fee will be collected electronically and shall be allocated  
31 to the background check fund established pursuant to section ninety-  
32 nine-ii of the state finance law. The amount of the fee shall not exceed  
33 the total amount of direct and indirect costs incurred by the bureau in  
34 performing the background check.

35 ii. The bureau shall transmit all moneys collected pursuant to this  
36 paragraph to the state comptroller, who shall credit the same to the  
37 background check fund.

38 iii. On January fifteenth of each calendar year, the bureau shall  
39 report to the joint budget committee concerning:

40 a. The number of employees used by the bureau in the preceding year  
41 for the purpose of performing background checks pursuant to this  
42 section; and

43 b. the calculations used to determine the amount of the fee imposed  
44 pursuant to this subdivision.

45 iv. If a person, firm or corporation that sells firearms demonstrates  
46 hardship in electronic payment, then such person, firm or corporation  
47 can arrange to be invoiced and paid by check and regular mail. If a  
48 person, firm or corporation that sells firearms does not remit payment  
49 within forty-five days, service shall be cut off.

50 (f) Upon establishment of such plan, the superintendent shall notify  
51 each person, firm or corporation holding a permit to sell firearms of  
52 the change in law as well as the following means to be used to apply for  
53 background checks:

54 i. any person, firm or corporation that sells, delivers or otherwise  
55 transfers firearms must obtain a completed ATF 4473 form from the poten-  
56 tial buyer or transferee including name, date of birth, gender, race,

1 social security number, or other identification numbers of such poten-  
2 tial buyer or transferee and must have inspected proper identification  
3 including an identification containing a photograph of the potential  
4 buyer or transferee. Information from the form can then be utilized in  
5 application for a background check through a toll-free telephone line or  
6 web-based application.

7 ii. it is unlawful for any person, in connection with the sale, acqui-  
8 sition or attempted acquisition of a firearm from any transferor, to  
9 willfully make any false, fictitious oral or written statement or to  
10 furnish or exhibit any false, fictitious, or misrepresented identifica-  
11 tion that is intended or likely to deceive such transferor with respect  
12 to any fact material to the lawfulness of the sale or other disposition  
13 of such firearm under federal or state law. Any person who violates the  
14 provisions of this subparagraph shall be guilty of a class A misdemea-  
15 nor.

16 3. Any applicant shall have thirty days to appeal the denial of a  
17 background check, using a form established by the superintendent. The  
18 division shall research the background check and provide such applicant  
19 a reason for a denial. Upon receipt of the reason for denial, the appel-  
20 lant may appeal to the attorney general.

21 § 2. Subdivision 2 of section 898 of the general business law, as  
22 added by chapter 129 of the laws of 2019, is amended to read as follows:

23 2. Before any sale, exchange or disposal pursuant to this article, a  
24 national instant criminal background check must be completed by a dealer  
25 who ~~[consents]~~ shall contact the division of state police to conduct  
26 such check~~[, and upon completion of such background check, shall~~  
27 ~~complete a document, the form of which shall be approved by the super-~~  
28 ~~intendent of state police, that identifies and confirms that such check~~  
29 ~~was performed]~~. Before a dealer who ~~[consents]~~ has contacted the divi-  
30 sion of state police to conduct a national instant criminal background  
31 check delivers a firearm, rifle or shotgun to any person, either (a)  
32 NICS shall have issued a "proceed" response ~~[to the dealer]~~, or (b)  
33 thirty calendar days shall have elapsed since the date the dealer  
34 contacted the division of state police to contact the NICS to initiate a  
35 national instant criminal background check and NICS has not notified the  
36 ~~[dealer]~~ division of state police that the transfer of the firearm,  
37 rifle or shotgun to such person should be denied.

38 § 3. Paragraph (c) of subdivision 1 of section 896 of the general  
39 business law, as added by chapter 189 of the laws of 2000, is amended to  
40 read as follows:

41 (c) coordinate with the division of state police to provide access at  
42 the gun show to ~~[a firearm dealer licensed under federal law who is~~  
43 ~~authorized to]~~ perform a national instant criminal background check  
44 ~~[where the seller or transferor of a firearm, rifle or shotgun is not~~  
45 ~~authorized to conduct such a check by (i) requiring firearm exhibitors~~  
46 ~~who are firearm dealers licensed under federal law and who are author-~~  
47 ~~ized to conduct a national instant criminal background check to provide~~  
48 ~~such a check at cost or (ii) designating a specific location at the gun~~  
49 ~~show where a firearm dealer licensed under federal law who is authorized~~  
50 ~~to conduct a national instant criminal background check will be present~~  
51 ~~to perform such a check at cost]~~ prior to any firearm sale or transfer.

52 Any firearm dealer licensed under federal law who ~~[performs]~~ contacts  
53 the division of state police to perform a national instant criminal  
54 background check pursuant to this paragraph shall provide the seller or  
55 transferor of the firearm, rifle or shotgun with a copy of the United  
56 States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms

1 Form ATF F 4473 and such dealer shall maintain such form and make such  
2 form available for inspection by law enforcement agencies for a period  
3 of ten years thereafter.

4 § 4. Subdivision 6 of section 400.03 of the penal law, as added by  
5 chapter 1 of the laws of 2013, is amended to read as follows:

6 6. If the superintendent of state police certifies that background  
7 checks of ammunition purchasers may be conducted through the national  
8 instant criminal background check system, [~~use of that system by~~] a  
9 dealer or seller shall contact the division of state police to conduct  
10 such check which shall be sufficient to satisfy subdivisions four and  
11 five of this section [~~and such checks shall be conducted through such~~  
12 ~~system, provided that a record of such transaction shall be forwarded to~~  
13 ~~the state police in a form determined by the superintendent~~].

14 § 5. The penal law is amended by adding a new section 400.06 to read  
15 as follows:

16 § 400.06 National instant criminal background checks.

17 1. Any dealer in firearms that delivers or otherwise transfers any  
18 firearm shall contact the division of state police to conduct a national  
19 instant criminal background check.

20 2. Failure to comply with the requirements of this section is a class  
21 A misdemeanor.

22 § 6. The state finance law is amended by adding a new section 99-ii to  
23 read as follows:

24 § 99-ii. Background check fund. 1. There is hereby established in the  
25 joint custody of the state comptroller and commissioner of taxation and  
26 finance a special fund to be known as the "background check fund".

27 2. Such fund shall consist of all revenues received by the comp-  
28 troller, pursuant to the provisions of section two hundred twenty-eight  
29 of the executive law and all other moneys appropriated thereto from any  
30 other fund or source pursuant to law. Nothing contained in this section  
31 shall prevent the state from receiving grants, gifts or bequests for the  
32 purposes of the fund as defined in this section and depositing them into  
33 the fund according to law.

34 3. The moneys of the background check fund, following appropriation by  
35 the legislature, shall be allocated for the direct costs associated with  
36 performing background checks pursuant to section two hundred twenty-  
37 eight of the executive law.

38 4. The state comptroller may invest any moneys in the background check  
39 fund not expended for the purpose of this section as provided by law.  
40 The state comptroller shall credit any interest and income derived from  
41 the deposit and investment of moneys in the background check fund to the  
42 background check fund.

43 5. (a) Any unexpended and unencumbered moneys remaining in the back-  
44 ground check fund at the end of a fiscal year shall remain in the back-  
45 ground check fund and shall not be credited to any other fund.

46 (b) To the extent practicable, any such remaining funds shall be used  
47 to reduce the amount of the fee described in subdivision two of section  
48 two hundred twenty-eight of the executive law.

49 § 7. This act shall take effect on the ninetieth day after it shall  
50 have become a law. Effective immediately, the addition, amendment and/or  
51 repeal of any rule or regulation necessary for the implementation of  
52 this act on its effective date are authorized to be made and completed  
53 on or before such effective date.