

# STATE OF NEW YORK

3829

2021-2022 Regular Sessions

## IN ASSEMBLY

January 28, 2021

Introduced by M. of A. ABINANTI, TAYLOR, PAULIN, BENEDETTO, SEAWRIGHT, DARLING -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Codes

AN ACT to amend the general business law, the mental hygiene law and the penal law, in relation to requiring a mental health evaluation prior to the purchase of any firearm, rifle or shotgun

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

1 Section 1. Section 897 of the general business law is amended by  
2 adding a new subdivision 1-a to read as follows:

3 1-a. Before any sale, exchange, or disposal pursuant to this article,  
4 a purchaser of any firearm, rifle or shotgun shall submit to a mental  
5 health evaluation and provide the seller with proof of his or her  
6 approval to purchase such firearm, rifle or shotgun pursuant to subdivi-  
7 sion (m) of section 7.09 of the mental hygiene law.

8 § 2. Subdivision 1 of section 898 of the general business law, as  
9 amended by chapter 129 of the laws of 2019, is amended and a new subdivi-  
10 sion 2-a is added to read as 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~~[7]~~ or 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  
17 that person's federal firearms license ~~[or such sale, exchange or~~  
18 ~~disposal is between members of an immediate family]~~. When a sale,  
19 exchange or disposal is conducted pursuant to a person's federal  
20 firearms license, before delivering a firearm, rifle or shotgun to any  
21 person, either (a) the National Instant Criminal Background Check System  
22 (NICS) or its successor has issued a "proceed" response to the federal  
23 firearms licensee, or (b) thirty calendar days shall have elapsed since

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

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1 the date the federal firearms licensee contacted NICS to initiate a  
 2 national instant criminal background check and NICS has not notified the  
 3 federal firearms licensee that the transfer of the firearm, rifle or  
 4 shotgun to such person should be denied. [~~For purposes of this section,~~  
 5 ~~"immediate family" shall mean spouses, domestic partners, children and~~  
 6 ~~step-children.~~]

7 2-a. Before any sale, exchange, or disposal pursuant to this article,  
 8 a purchaser of any firearm, rifle or shotgun shall submit to a mental  
 9 health evaluation and provide the seller with proof of his or her  
 10 approval to purchase such firearm, rifle or shotgun pursuant to subdivi-  
 11 sion (m) of section 7.09 of the mental hygiene law.

12 § 3. Section 7.09 of the mental hygiene law is amended by adding a new  
 13 subdivision (m) to read as follows:

14 (m) The commissioner shall establish within the office of mental  
 15 health an administrative process for the mental health evaluation of any  
 16 individual prior to such individual's purchase of any firearm, rifle or  
 17 shotgun. The commissioner shall promulgate regulations to establish the  
 18 mental health evaluation process, which shall include, but not be limit-  
 19 ed to, provisions relating to: (1) the mental health professionals  
 20 approved to perform such evaluation, (2) the process for evaluation by  
 21 such mental health professionals and (3) the development of a standard-  
 22 ized form to be used by the mental health professional performing such  
 23 evaluation to approve or deny an individual for purchase of a firearm,  
 24 rifle or shotgun. The denial of an individual for purchase of any  
 25 firearm, rifle or shotgun may be reviewed de novo pursuant to the  
 26 proceedings under article seventy-eight of the civil practice law and  
 27 rules.

28 § 4. Subdivision 3 of section 265.17 of the penal law, as added by  
 29 chapter 1 of the laws of 2013, is amended and a new subdivision 4 is  
 30 added to read as follows:

31 3. Knowing that another person is prohibited by law from possessing a  
 32 firearm, rifle or shotgun because of a prior conviction or because of  
 33 some other disability which would render him or her ineligible to  
 34 lawfully possess a firearm, rifle or shotgun in this state, a person  
 35 disposes of a firearm, rifle or shotgun to such other person[-]; or

36 4. Knowing that a mental health evaluation is required pursuant to  
 37 subdivision (m) of section 7.09 of the mental hygiene law, he or she  
 38 either purchases or disposes of a firearm, rifle or shotgun without such  
 39 mental health evaluation approval for purchase.

40 § 5. This act shall take effect on the one hundred eightieth day after  
 41 it shall have become a law. Effective immediately, the addition, amend-  
 42 ment and/or repeal of any rule or regulation necessary for the implemen-  
 43 tation of this act on its effective date are authorized to be made and  
 44 completed on or before such date.