# STATE OF NEW YORK

930

2021-2022 Regular Sessions

# IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Governmental Operations

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:

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

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

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

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

(a) The superintendent of the New York State Police shall create a centralized bureau within the New York State Police department with a

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

LBD01973-01-1

contact center unit that handles all background checks and maintains an appeals unit. Staff may include but is not limited to: bureau chief, supervisors, managers, different levels of administrative analysts, appeals specialists and administrative personnel. The New York State Police shall employ and train such personnel to administer the provisions of this section.

(b) Procedures for carrying out the duties under this section, including at a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

i. any person, firm or corporation that sells, delivers or otherwise transfers firearms must obtain a completed ATF 4473 form from the potential buyer or transferee including name, date of birth, gender, race, social security number, or other identification numbers of such potential buyer or transferee and must have inspected proper identification including an identification containing a photograph of the potential buyer or transferee. Information from the form can then be utilized in application for a background check through a toll-free telephone line or web-based application.

ii. it is unlawful for any person, in connection with the sale, acquisition or attempted acquisition of a firearm from any transferor, to willfully make any false, fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification that is intended or likely to deceive such transferor with respect to any fact material to the lawfulness of the sale or other disposition of such firearm under federal or state law. Any person who violates the provisions of this subparagraph shall be guilty of a class A misdemeanor.

3. Any applicant shall have thirty days to appeal the denial of a background check, using a form established by the superintendent. The division shall research the background check and provide such applicant a reason for a denial. Upon receipt of the reason for denial, the appellant may appeal to the attorney general.

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

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

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

(c) coordinate with the division of state police to provide access at the gun show to [~~a firearm dealer licensed under federal law who is authorized to~~] perform a national instant criminal background check [~~where the seller or transferor of a firearm, rifle or shotgun is not authorized to conduct such a check by (i) requiring firearm exhibitors who are firearm dealers licensed under federal law and who are authorized to conduct a national instant criminal background check to provide such a check at cost or (ii) designating a specific location at the gun show where a firearm dealer licensed under federal law who is authorized to conduct a national instant criminal background check will be present to perform such a check at cost~~] prior to any firearm sale or transfer. Any firearm dealer licensed under federal law who [~~performs~~] contacts the division of state police to perform a national instant criminal background check pursuant to this paragraph shall provide the seller or transferor of the firearm, rifle or shotgun with a copy of the United

States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms Form ATF F 4473 and such dealer shall maintain such form and make such form available for inspection by law enforcement agencies for a period of ten years thereafter.

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

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

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

**§ 400.06 National instant criminal background checks.**

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

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

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

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

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

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

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

**5. (a) Any unexpended and unencumbered moneys remaining in the background check fund at the end of a fiscal year shall remain in the background check fund and shall not be credited to any other fund.**

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

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