STATE OF NEW YORK

4261--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. PAULIN, DINOWITZ, DICKENS, SEAWRIGHT, L. ROSENTHAL, 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:

Section 1. Subdivision 12 of section 400.00 of the penal law, as amended by chapter 207 of the laws of 2022, is amended to read as follows:

12. Records required of gunsmiths and dealers in firearms. In addition to the requirements set forth in article thirty-nine-BB of the general business law, any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as an exempt person pursuant to section 265.20 of this chapter and [~~either~~] (a) [~~the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the licensee, or (b) thirty calendar~~] **ten business** days have elapsed since the date the licensee contacted [~~NICS~~] **the New York State National Instant Background Check System ("NYS NICS") or its**

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

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successor to initiate a national instant criminal background check and (b) NYS NICS has [~~not notified~~] issued a "proceed" response to the licensee [~~that~~]. If, after thirty calendar days, NYS NICS has not issued a response to the licensee for the person requesting transfer of the firearm, the licensee may transfer the firearm to such person [~~should be denied~~] at the licensee's discretion. In addition, before delivering a firearm to a peace officer, the licensee shall verify that person's status as a peace officer with the division of state police. After completing the foregoing, the licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department, unit or agency, in the case of an exempt person. The original transaction report shall be forwarded to the division of state police within ten days of delivering a firearm to any person, and a duplicate copy shall be kept by the licensee. The superintendent of state police may designate that such record shall be completed and transmitted in electronic form. A dealer may be granted a waiver from transmitting such records in electronic form if the superintendent determines that such dealer is incapable of such transmission due to technological limitations that are not reasonably within the control of the dealer, or other exceptional circumstances demonstrated by the dealer, pursuant to a process established in regulation, and at the discretion of the superintendent. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this article shall not be subject to disclosure pursuant to article six of the public officers law. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his special duties, or police officer. In the event of cancellation or revocation of the license for gunsmith or dealer in firearms, or discontinuance of business by a licensee, such record book shall be immediately surrendered to the licensing officer in the city of New York, and in the counties of Nassau and Suffolk, and elsewhere in the state to the executive department, division of state police.

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

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

When a national instant criminal background check is required pursuant to state or federal law to be conducted through the New York State National Instant [~~Criminal~~] Background Check System [~~(NICS)~~] (NYS NICS) or its successor in connection with the sale or transfer of a rifle or shotgun to any person, before delivering a rifle or shotgun to such person, [~~either~~] (a) [~~NICS has issued a "proceed" response to the seller or transferor, or (b) thirty calendar~~] ten business days shall have elapsed since the date the seller or transferor contacted [~~NICS~~] NYS NICS to initiate a national instant criminal background check and (b) NYS NICS has [~~not notified~~] issued a "proceed" response to the seller or transferor [~~that~~]. If, after thirty calendar days, NYS NICS has not issued a response to the seller or transferor for the person requesting transfer of the rifle or shotgun, the seller or transferor may transfer the rifle or shotgun to such person [~~should be denied~~] at the seller or transferor's discretion.

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

1. A national instant criminal background check shall be conducted and no person shall sell or transfer a firearm, rifle or shotgun at a gun show, except in accordance with the provisions of 18 U.S.C. 922(t), provided that before delivering a firearm, rifle or shotgun to any person, [~~either~~] (a) [~~the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the seller or transferor, or (b) thirty calendar~~] **ten business** days shall have elapsed since the date the seller or transferor contacted [~~NICS~~] **the New York State National Instant Background Check System ("NYS NICS") or its successor** to initiate a national instant criminal background check and **NYS** NICS has [~~not notified~~] **issued a "proceed" response to** the seller or transferor [~~that~~]**. If, after thirty calendar days, NYS NICS has not issued a response to** the **seller or transferor for the person requesting** transfer of the firearm, rifle or shotgun**, the seller or transferor may transfer the firearm, rifle or shotgun** to such person [~~should be denied~~] **at the seller or transferor's discretion**.

§ 4. Subdivisions 1 and 2 of section 898 of the general business law, subdivision 1 as amended by chapter 129 of the laws of 2019 and subdivision 2 as amended by chapter 371 of the laws of 2022, are amended to read as follows:

1. In addition to any other requirements pursuant to state and federal law, all sales, exchanges or disposals of firearms, rifles or shotguns shall be conducted in accordance with this section unless such sale, exchange or disposal is conducted by a licensed importer, licensed manufacturer or licensed dealer, as those terms are defined in 18 USC § 922, when such sale, exchange or disposal is conducted pursuant to that person's federal firearms license or such sale, exchange or disposal is between members of an immediate family. When a sale, exchange or disposal is conducted pursuant to a person's federal firearms license, before delivering a firearm, rifle or shotgun to any person, [~~either~~] (a) [~~the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the federal firearms licensee, or (b) thirty calendar~~] **ten business** days shall have elapsed since the date the federal firearms licensee contacted [~~NICS~~] **the New York State National Instant Background Check System ("NYS NICS") or its successor** to initiate a national instant criminal background check and **(b) NYS** NICS has [~~not notified~~] **issued a "proceed" response to** the federal firearms licensee [~~that~~]**. If, after thirty calendar days, NYS NICS has not issued a response to** the **federal firearms licensee for the person requesting** transfer of the firearm, rifle or shotgun **, the federal firearm licensee may transfer the firearm, rifle or shotgun** to such person [~~should be denied~~] **at the federal firearm licensee's discretion**. For purposes of this section, "immediate family" shall mean spouses, domestic partners, children and step-children.

2. Before any sale, exchange or disposal pursuant to this article, a national instant criminal background check must be completed by a dealer who shall submit a request to the division of state police pursuant to section two hundred twenty-eight of the executive law to conduct such check. Before a dealer who has submitted a request to 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, or (b) thirty calendar~~] **ten business** days shall have elapsed since the date the dealer submitted a

request to the division of state police to contact the [~~NICS~~] **NYS NICS or its successor** to initiate a national instant criminal background check and **(b) NYS** NICS has [~~not notified~~] **issued a "proceed" response to** the [~~division of state police that~~] **dealer. If, after thirty calendar days, NYS NICS has not issued a response to** the **dealer for the person requesting** transfer of the firearm, rifle or shotgun**, the dealer may transfer the firearm, rifle or shotgun** to such person [~~should be denied~~] **at the dealer's discretion**.

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