

# STATE OF NEW YORK

4818

2023-2024 Regular Sessions

## IN SENATE

February 15, 2023

Introduced by Sens. GIANARIS, BAILEY, MAYER, RAMOS, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the general business law and the penal law, in relation to establishing a waiting period for the purchase of a firearm

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

1 Section 1. The general business law is amended by adding a new article  
2 38-B to read as follows:

3 ARTICLE 38-B

4 WAITING PERIOD FOR PURCHASE OF

5 FIREARMS

6 Section 825. Definitions.

7 826. Waiting period.

8 827. Exemptions.

9 828. Penalty.

10 § 825. Definitions. As used in this section:

11 1. "Dealer in firearms" has the same meaning as that term is defined  
12 in subdivision nine of section 265.00 of the penal law.

13 2. "Firearm" has the same meaning as that term is defined in subdivi-  
14 sion three of section 265.00 of the penal law.

15 § 826. Waiting period. No dealer in firearms shall deliver any  
16 firearm, and no person shall take possession of any firearm from a deal-  
17 er in firearms unless:

18 1. ten days have elapsed from the date such dealer initiated the  
19 national instant criminal background check of the purchaser as required  
20 by 18 U.S.C. § 922(t), after receiving a completed federal Firearms  
21 Transaction Record, Form 4473, from the purchaser; and

22 2. such dealer has received notice that the purchaser has passed all  
23 background checks required by federal, state and local law.

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

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1 § 827. Exemptions. Section eight hundred twenty-six of this article  
2 shall not apply to:

3 1. any law enforcement or correctional agency, or police officer or  
4 corrections officer acting within the course or scope of his or her  
5 employment;

6 2. any federal officer or employee authorized to possess or carry a  
7 firearm in the course of his or her duties, and any member of the armed  
8 forces of the United States or the national guard;

9 3. any manufacturer, distributor or dealer of firearms when trans-  
10 ferring weapons to a manufacturer, distributor or dealer;

11 4. any gunsmith licensed pursuant to section 400.00 of the penal law,  
12 receiving a firearm for service or repair;

13 5. any common carrier or other person engaged, in the course of its  
14 business, in the business of storing or transporting goods; and

15 6. firearms loaned or leased solely for use as a prop in a motion  
16 picture, streaming, television, video, theatrical, or other production  
17 or event when the firearm is not loaded with ammunition and the loan or  
18 lease is made by a licensed dealer in firearms in the state of New York.  
19 Ammunition shall not include blank ammunition consisting of a charge and  
20 no projectile.

21 § 828. Penalty. Any person who violates the provisions of this article  
22 shall be guilty of a class A misdemeanor.

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

26 1. A national instant criminal background check shall be conducted and  
27 no person shall sell or transfer a firearm, rifle or shotgun at a gun  
28 show, except in accordance with the provisions of 18 U.S.C. 922(t),  
29 provided that before delivering a firearm, rifle or shotgun to any  
30 person, [~~either (a)~~] the National Instant Criminal Background Check  
31 System (NICS) or its successor has issued a "proceed" response to the  
32 seller or transferor, [~~or (b) thirty calendar days shall have elapsed~~  
33 ~~since the date the seller or transferor contacted NICS to initiate a~~  
34 ~~national instant criminal background check and NICS has not notified the~~  
35 ~~seller or transferor that the transfer of the firearm, rifle or shotgun~~  
36 ~~to such person should be denied] and ten days shall have elapsed from  
37 the date such seller or transferor initiated the national instant crimi-  
38 nal background check of the purchaser as required by 18 U.S.C. § 922(t),  
39 after receiving a completed federal Firearms Transaction Record, Form  
40 4473, from the purchaser; and such seller or transferor has received  
41 notice that the purchaser has passed all background checks required by  
42 federal, state and local law.~~

43 § 3. Subdivisions 1 and 2 of section 898 of the general business law,  
44 subdivision 1 as amended by chapter 129 of the laws of 2019 and subdivi-  
45 sion 2 as amended by chapter 371 of the laws of 2022, are amended to  
46 read as follows:

47 1. In addition to any other requirements pursuant to state and federal  
48 law, all sales, exchanges or disposals of firearms, rifles or shotguns  
49 shall be conducted in accordance with this section unless such sale,  
50 exchange or disposal is conducted by a licensed importer, licensed  
51 manufacturer or licensed dealer, as those terms are defined in 18 USC §  
52 922, when such sale, exchange or disposal is conducted pursuant to that  
53 person's federal firearms license or such sale, exchange or disposal is  
54 between members of an immediate family. When a sale, exchange or  
55 disposal is conducted pursuant to a person's federal firearms license,  
56 before delivering a firearm, rifle or shotgun to any person, [~~either~~

1 ~~(a)~~] the National Instant Criminal Background Check System (NICS) or its  
2 successor has issued a "proceed" response to the federal firearms licen-  
3 see, [~~or (b) thirty calendar days shall have elapsed since the date the~~  
4 ~~federal firearms licensee contacted NICS to initiate a national instant~~  
5 ~~criminal background check and NICS has not notified the federal firearms~~  
6 ~~licensee that the transfer of the firearm, rifle or shotgun to such~~  
7 ~~person should be denied]~~ and ten days shall have elapsed from the date  
8 such dealer initiated the national instant criminal background check of  
9 the purchaser as required by 18 U.S.C. § 922(t), after receiving a  
10 completed federal Firearms Transaction Record, Form 4473, from the  
11 purchaser; and such dealer has received notice that the purchaser has  
12 passed all background checks required by federal, state and local law.  
13 For purposes of this section, "immediate family" shall mean spouses,  
14 domestic partners, children and step-children.

15 2. Before any sale, exchange or disposal pursuant to this article, a  
16 national instant criminal background check must be completed by a dealer  
17 who shall submit a request to the division of state police pursuant to  
18 section two hundred twenty-eight of the executive law to conduct such  
19 check. Before a dealer who has submitted a request to the division of  
20 state police to conduct a national instant criminal background check  
21 delivers a firearm, rifle or shotgun to any person, [~~either (a)~~] NICS  
22 shall have issued a "proceed" response, [~~or (b) thirty calendar days~~  
23 ~~shall have elapsed since the date the dealer submitted a request to the~~  
24 ~~division of state police to contact the NICS to initiate a national~~  
25 ~~instant criminal background check and NICS has not notified the division~~  
26 ~~of state police that the transfer of the firearm, rifle or shotgun to~~  
27 ~~such person should be denied]~~ and ten days shall have elapsed from  
28 the date such dealer initiated the national instant criminal background  
29 check of the purchaser as required by 18 U.S.C. § 922(t), after receiv-  
30 ing a completed federal Firearms Transaction Record, Form 4473, from the  
31 purchaser; and such dealer has received notice that the purchaser has  
32 passed all background checks required by federal, state and local law.

33 § 4. Subdivision 12 of section 400.00 of the penal law, as amended by  
34 chapter 207 of the laws of 2022, is amended to read as follows:

35 12. Records required of gunsmiths and dealers in firearms. In addition  
36 to the requirements set forth in article thirty-nine-BB of the general  
37 business law, any person licensed as gunsmith or dealer in firearms  
38 shall keep a record book approved as to form, except in the city of New  
39 York, by the superintendent of state police. In the record book shall be  
40 entered at the time of every transaction involving a firearm the date,  
41 name, age, occupation and residence of any person from whom a firearm is  
42 received or to whom a firearm is delivered, and the calibre, make,  
43 model, manufacturer's name and serial number, or if none, any other  
44 distinguishing number or identification mark on such firearm. Before  
45 delivering a firearm to any person, the licensee shall require him or  
46 her to produce either a license valid under this section to carry or  
47 possess the same, or proof of lawful authority as an exempt person  
48 pursuant to section 265.20 of this chapter and [~~either (a)~~] the National  
49 Instant Criminal Background Check System (NICS) or its successor has  
50 issued a "proceed" response to the licensee, [~~or (b) thirty calendar~~  
51 ~~days have elapsed since the date the licensee contacted NICS to initiate~~  
52 ~~a national instant criminal background check and NICS has not notified~~  
53 ~~the licensee that the transfer of the firearm to such person should be~~  
54 ~~denied]~~ and ten days shall have elapsed from the date such dealer initi-  
55 ated the national instant criminal background check of the purchaser as  
56 required by 18 U.S.C. § 922(t), after receiving a completed federal

1 Firearms Transaction Record, Form 4473, from the purchaser; and such  
2 dealer has received notice that the purchaser has passed all background  
3 checks required by federal, state and local law. In addition, before  
4 delivering a firearm to a peace officer, the licensee shall verify that  
5 person's status as a peace officer with the division of state police.  
6 After completing the foregoing, the licensee shall remove and retain the  
7 attached coupon and enter in the record book the date of such license,  
8 number, if any, and name of the licensing officer, in the case of the  
9 holder of a license to carry or possess, or the shield or other number,  
10 if any, assignment and department, unit or agency, in the case of an  
11 exempt person. The original transaction report shall be forwarded to the  
12 division of state police within ten days of delivering a firearm to any  
13 person, and a duplicate copy shall be kept by the licensee. The super-  
14 intendent of state police may designate that such record shall be  
15 completed and transmitted in electronic form. A dealer may be granted a  
16 waiver from transmitting such records in electronic form if the super-  
17 intendent determines that such dealer is incapable of such transmission  
18 due to technological limitations that are not reasonably within the  
19 control of the dealer, or other exceptional circumstances demonstrated  
20 by the dealer, pursuant to a process established in regulation, and at  
21 the discretion of the superintendent. Records assembled or collected  
22 for purposes of inclusion in the database created pursuant to section  
23 400.02 of this article shall not be subject to disclosure pursuant to  
24 article six of the public officers law. The record book shall be main-  
25 tained on the premises mentioned and described in the license and shall  
26 be open at all reasonable hours for inspection by any peace officer,  
27 acting pursuant to his or her special duties, or police officer. In the  
28 event of cancellation or revocation of the license for gunsmith or deal-  
29 er in firearms, or discontinuance of business by a licensee, such record  
30 book shall be immediately surrendered to the licensing officer in the  
31 city of New York, and in the counties of Nassau and Suffolk, and else-  
32 where in the state to the executive department, division of state  
33 police.

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

36 § 400.20 Waiting period in connection with the sale or transfer of a  
37 rifle or shotgun.

38 When a national instant criminal background check is required pursuant  
39 to state or federal law to be conducted through the National Instant  
40 Criminal Background Check System (NICS) or its successor in connection  
41 with the sale or transfer of a rifle or shotgun to any person, before  
42 delivering a rifle or shotgun to such person, [~~either (a)~~ NICS has  
43 issued a "proceed" response to the seller or transferor, [~~or (b) thirty~~  
44 ~~calendar days shall have elapsed since the date the seller or transferor~~  
45 ~~contacted NICS to initiate a national instant criminal background check~~  
46 ~~and NICS has not notified the seller or transferor that the transfer of~~  
47 ~~the rifle or shotgun to such person should be denied] and ten days  
48 shall have elapsed from the date such dealer initiated the national  
49 instant criminal background check of the purchaser as required by 18  
50 U.S.C. § 922(t), after receiving a completed federal Firearms Trans-  
51 action Record, Form 4473, from the purchaser; and such dealer has  
52 received notice that the purchaser has passed all background checks  
53 required by federal, state and local law.~~

54 § 6. This act shall take effect on the first of January next succeed-  
55 ing the date on which it shall have become a law; provided, however,  
56 that if chapter 371 of the laws of 2022 shall not have taken effect on

1 or before such date then the amendments to subdivision 2 of section 898  
2 of the general business law, as made by section three of this act, shall  
3 take effect on the same date and in the same manner as such chapter of  
4 the laws of 2022 takes effect.