STATE OF NEW YORK

9751

IN SENATE

May 28, 2024

Introduced by Sen. RYAN -- (at request of the Division of State Police) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the executive law and the general business law, in relation to background checks conducted by the division of state police

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~~] **shall have** issued a "proceed" response to the licensee[~~, or (b) thirty calendar days have elapsed since the date the licensee contacted NICS to initiate a national instant criminal background check and NICS has not notified the licensee that the transfer of the firearm to such person should be denied~~]. 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

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

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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 National Instant Criminal Background Check System (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~~] **shall have** issued a "proceed" response to the seller or transferor[~~, or (b) thirty calendar days shall have elapsed since the date the seller or transferor contacted NICS to initiate a national instant criminal background check and NICS has not notified the seller or transferor that the transfer of the rifle or shotgun to such person should be denied~~].

§ 3. Subdivision 1 of section 400.06 of the penal law, as added by chapter 371 of the laws of 2022, is amended to read as follows:

1. Any dealer in firearms **or federal firearms licensee** that sells, delivers or otherwise transfers any firearm**, rifle, shotgun, or antique firearm** shall contact the division of state police to conduct a national instant criminal background check pursuant to section two hundred twenty-eight of the executive law.

§ 4. Paragraph (a) of subdivision 1 of section 228 of the executive law, as added by chapter 371 of the laws of 2022, is amended to read as follows:

(a) 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 for the purchase of firearms**, rifles, shotguns, antique firearms,** and ammunition.

§ 5. The opening paragraph and paragraph (c) of subdivision 4 of section 228 of the executive law, as added by chapter 371 of the laws of 2022, are amended to read as follows:

The superintendent shall promulgate a plan to coordinate background checks for firearm**, rifle, shotgun, antique firearm,** and ammunition purchases pursuant to this section and to require any person, firm or corporation that sells, delivers or otherwise transfers any firearm**, rifle, shotgun, antique firearm** or ammunition to submit a request to the division in order to complete the background checks in compliance with federal and state law, including the National Instant Criminal Background Check System (NICS), in New York state. Such plan shall include, but shall not be limited to, the following features:

(c) An automated phone system and web-based application system, including a toll-free telephone number and/or web-based application option for any licensed dealer **or federal firearms licensee** requesting a background check in order to sell, deliver or otherwise transfer a firearm**, rifle, shotgun, antique firearm, or ammunition** which shall be operational every day that the bureau is open for business for the purpose of responding to requests in accordance with this section.

§ 6. Paragraphs i and ii of subdivision 7 of section 228 of the executive law, as added by chapter 371 of the laws of 2022, are amended to read as follows:

i. any person, firm or corporation that sells, delivers or otherwise transfers firearms**, rifles, or shotguns** shall 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 shall have inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

ii. it shall be unlawful for any person, in connection with the sale, acquisition or attempted acquisition of a firearm**, rifle, shotgun, antique firearm, or ammunition** 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**, rifle, shotgun, antique firearm, or ammunition** under federal or state law. Any person who violates the provisions of this subparagraph shall be guilty of a class A misdemeanor.

§ 7. Paragraph (c) of subdivision 1 of section 896 of the general business law, as amended by chapter 371 of the laws of 2022, is amended to read as follows:

(c) coordinate with the division of state police to provide access at the gun show to perform a national instant criminal background check prior to any firearm**, rifle, shotgun, or antique firearm** sale or transfer. Any firearm dealer **or federal firearms licensee** licensed under federal law who submits a request to 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 **or licensee** shall maintain such form and make such form available for inspection by law enforcement agencies for a period of ten years thereafter.

§ 8. 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, **antique 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, **antique firearm,** rifle or shotgun to any person[~~, either (a)~~] the National Instant Criminal Background Check System (NICS) or its successor [~~has~~] **shall have** issued a "proceed" response to the seller or transferor[~~, or (b) thirty calendar days shall have elapsed since the date the seller or transferor contacted NICS to initiate a national instant criminal background check and NICS has not notified the seller or transferor that the transfer of the firearm, rifle or shotgun to such person should be denied~~].

§ 9. 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, **antique 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, **antique firearm,** rifle or shotgun to any person[~~, either (a)~~] the National Instant Criminal Background Check System (NICS) or its successor [~~has~~] **shall have** issued a "proceed" response to the federal firearms licensee[~~, or (b) thirty calendar days shall have elapsed since the date the federal firearms licensee contacted NICS to initiate a national instant criminal background check and NICS has not notified the federal firearms licensee that the transfer of the firearm, rifle or shotgun to such person should be denied~~]. 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, **antique firearm,** rifle or shotgun to any person[~~, either (a)~~] NICS shall have issued a "proceed" response[~~, or (b) thirty calendar days shall have elapsed since the date the dealer submitted a request to the division of state police to contact the NICS to initiate a national instant criminal background check and NICS has not notified the division of state police that the transfer of the firearm, rifle or shotgun to such person should be denied~~].

§ 10. This act shall take effect immediately.