STATE OF NEW YORK

5696

2023-2024 Regular Sessions

IN ASSEMBLY

March 22, 2023

Introduced by M. of A. LAVINE, SEAWRIGHT -- read once and referred 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:

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

ARTICLE 38-B
WAITING PERIOD FOR PURCHASE OF FIREARMS

Section 825. Definitions.
826. Waiting period.
827. Exemptions.
828. Penalty.

§ 825. Definitions. As used in this section:

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

2. "Firearm" has the same meaning as that term is defined in subdivision three of section 265.00 of the penal law.

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

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

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

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

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

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

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

3. any manufacturer, distributor or dealer of firearms when transferring weapons to a manufacturer, distributor or dealer;

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

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

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

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

§ 2. 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 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~~] and ten days shall have elapsed from the date such seller or transferor initiated the national instant criminal background check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and such seller or transferor has received notice that the purchaser has passed all background checks required by federal, state and local law.

§ 3. 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 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~~] and ten days shall have elapsed from the date such dealer initiated the national instant criminal background check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and such dealer has received notice that the purchaser has passed all background checks required by federal, state and local law. 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 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~~] and ten days shall have elapsed from the date such dealer initiated the national instant criminal background check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and such dealer has received notice that the purchaser has passed all background checks required by federal, state and local law.

§ 4. 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 or her 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 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~~] and ten days shall have elapsed from the date such dealer initiated the national instant criminal background check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and such dealer has received notice that the purchaser has passed all background checks required by federal, state and local law. 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 **or her** 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.

§ 5. 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 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~~] **and ten days shall have elapsed from the date such dealer initiated the national instant criminal background check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and such dealer has received notice that the purchaser has passed all background checks required by federal, state and local law**.

§ 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that if chapter 371 of the laws of 2022 shall not have taken effect on or before such date then the amendments to subdivision 2 of section 898 of the general business law, as made by section three of this act, shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect.