§ 228. National instant criminal background checks. 1. (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 and ammunition.

(b) Upon receiving a request from a licensed dealer pursuant to section eight hundred ninety-six or eight hundred ninety-eight of the general business law, the division shall initiate a background check by (i) contacting the National Instant Criminal Background Check System (NICS) or its successor to initiate a national instant criminal background check, and (ii) consulting the statewide firearms license and records database established pursuant to subdivision three of this section, in order to determine if the purchaser is a person described in sections 400.00 and 400.03 of the penal law, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or ammunition.

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

(b) Information provided pursuant to this section shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state law regarding the purchase of firearms or ammunition.

(c) Any background check conducted by the division, or delegated authority, of any applicant for a permit, firearms identification card license, ammunition sale, or registration, in accordance with the requirements of section 400.00 of the penal law, shall not be considered a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such background check, including the applicant. Any application for a permit, firearms identification card, ammunition sale, or license, and any document reflecting the issuance or denial of such permit, firearms identification card, or license, and any permit, firearms identification card, license, certification, certificate, form of register, or

registration statement, maintained by any state or municipal governmental agency, shall not be considered a public record and shall not be disclosed to any person not authorized by law to have access to such documentation, including the applicant, except on the request of persons acting in their governmental capacities for purposes of the administration of justice.

3. The division shall create and maintain a statewide firearms license and records database which shall contain records held by the division and any records that it is authorized to request from the division of criminal justice services, office of court administration, New York state department of health, New York state office of mental health, and other local entities. Such database shall be used for the certification and recertification of firearm permits under section 400.02 of the penal law, assault weapon registration under subdivision sixteen-a of section 400.00 of the penal law, and ammunition sales under section 400.03 of the penal law. Such database shall also be used to initiate a national instant criminal background check pursuant to subdivision one of this section upon request from a licensed dealer. The division may create and maintain additional databases as needed to complete background checks pursuant to the requirements of this section.

4. The superintendent shall promulgate a plan to coordinate background checks for firearm and ammunition purchases pursuant to this section and to require any person, firm or corporation that sells, delivers or otherwise transfers any 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:

(a) The creation of a centralized bureau within the division to receive and process all background check requests, which shall include a contact center unit and 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 division shall employ and train such personnel to administer the provisions of this section.

(b) Procedures for carrying out the duties under this section, including hours of operation.

(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 requesting a background check in order to sell, deliver or otherwise transfer a firearm 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.

5. (a) Each licensed dealer that submits a request for a national instant criminal background check pursuant to this section shall pay a fee imposed by the bureau for performing such background check. Such fee shall be allocated to the background check fund established pursuant to section ninety-nine-pp 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 such background check.

(b) 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.

6. On January fifteenth of each calendar year, the bureau shall submit a report to the governor, the temporary president of the senate, and the speaker of the assembly 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;

b. the number of background check requests received and processed during the preceding calendar year, including the number of "proceed" responses and the number and reasons for denials;

c. the calculations used to determine the amount of the fee imposed pursuant to this paragraph.

7. Within sixty days of the effective date of this section, the superintendent shall notify each licensed dealer holding a permit to

sell firearms of the requirement to submit a request to the division to initiate a background check pursuant to this section 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 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 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.

8. Any potential buyer or transferee shall have thirty days to appeal the denial of a background check, using a form established by the superintendent. Upon receipt of an appeal, the division shall provide such applicant a reason for a denial within thirty days. Upon receipt of the reason for denial, the appellant may appeal to the attorney general.