

GOVERNOR'S PROGRAM BILL 2018
MEMORANDUM

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

Purpose of the Bill:

This bill would establish a ten-day waiting period before a licensed gun dealer may deliver a firearm, shotgun or rifle to a purchaser when the sale has not been approved or denied by the National Instant Criminal Background Check System (NICS).

Summary of Provisions of the Bill:

Section one of the bill would amend Penal Law §400.00(12) to provide that a firearm dealer may not deliver a pistol or revolver to a licensed or exempt purchaser unless NICS has issued a proceed notification, or, if neither a proceed nor a denial notification has been issued by NICS, at least ten business days have elapsed.

Section two of the bill would add a new section 400.20 to the Penal Law to provide for a ten-day waiting period whenever a national instant criminal background check is required for a sale unless NICS has issued a proceed notification earlier.

Section three of the bill would amend General Business Law §897(1) to provide that no person may sell or transfer a firearm at a gun show unless NICS has issued a proceed notification, or, if neither a proceed nor a denial notification has been issued by NICS, at least ten business days have elapsed.

Section four of the bill would amend General Business Law §898 to provide that a licensed firearm dealer may not sell, exchange or dispose of a firearm unless NICS has issued a proceed notification, or, if neither a proceed nor a denial notification has been issued by NICS, at least ten business days have elapsed. This section would also require that a licensed firearms dealer consenting to perform a national instant criminal background check to facilitate a private sale of a firearm may not allow the private sale to proceed unless NICS has issued a proceed notification, or, if neither a proceed nor a denial notification has been issued by NICS, at least ten business days has elapsed.

Section five of the bill provides for an effective date forty-five days following enactment.

Statement in Support:

In April 2015, Dylann Roof was allowed to purchase a pistol at a gun store in Charleston, South Carolina despite confessing to drug possession a month earlier. The NICS background check was delayed and assigned to an FBI official in West Virginia who failed to discover the confession for drug possession before three-day window had elapsed. The confession, which should have disqualified Dylann Roof from firearms possession was not discovered in time to prevent the completion of the sale. A longer waiting period could have prevented the purchase of the gun used to murder nine people at Emanuel African Methodist Episcopal Church on June 17, 2015.

Most firearm, rifle and shotgun sales in New York require a background check through the NICS. When a background check is requested, a firearms dealer will receive one of three responses from NICS. Either the sale may proceed, be denied, or be delayed. If a sale is delayed and three business days have elapsed without a response from NICS, current law permits the firearms transfer to proceed. According to the Federal Bureau of Investigation, nationwide, in 92% of cases, a dealer requesting a NICS background check receives an immediate determination. In 5% of cases, when a delay is issued, the case is finalized, resulting in deny or proceed status, within the three-day window. Approximately 3% of checks remain open past the three-day window.

NICS may be unable to complete a background check immediately when the search finds a record that requires more research to determine whether the prospective transferee is disqualified from possessing a firearm by federal or State law. In some cases, NICS must contact a court or law enforcement agency for further information. For example, federal law prohibits the purchase or possession of firearms by an individual convicted of a misdemeanor crime of domestic violence. When a purchaser's criminal history indicates a conviction for certain misdemeanors, NICS staff must contact the police or court to determine whether the victim was a family or household member, resulting in a delay that may result in a sale to a prohibited person.

Expanding the time that NICS officials have to perform an investigation to ten days would assist in ensuring that firearms sales will not be made to persons prohibited from possessing a firearm without unduly burdening legitimate sales.

Budget Implications:

None.