



New York Proposes a “Voluntary Waiver” of the Right to Purchase Firearms: Legal and Constitutional Implications

Overview of Proposed Legislation

During the 2025-2026 legislative session, New York lawmakers have advanced companion bills - Senate Bill S.1026 (as amended) and Assembly Bill A.198 - that would establish a statutory mechanism allowing individuals to voluntarily waive or surrender their right to purchase firearms, rifles, or shotguns.

The proposed legislation would amend the Executive Law by adding a new § 221-e. Under the bills' core provisions, any individual could submit a waiver to the New York State Division of State Police, after which the individual would be treated as a prohibited purchaser under state law. The State Police would be required to (i) verify the individual's identity, (ii) maintain a confidential statewide record of waivers and revocations, and (iii) enter the waiver into the National Instant Criminal Background Check System (“NICS”) within 24 hours.

The legislation also permits revocation of a waiver through a separate filing, subject to administrative processing, and specifies that a waiver cannot be required as a condition of employment, benefits, or services. Knowingly submitting false information would expose the filer to criminal liability for offering a false instrument for filing.

Although S.1026 passed the New York State Senate, the Assembly companion has stalled in committee as of early 2026, leaving the proposal active but unenacted.

Legislative Purpose and Policy Rationale

Senate Sponsors Brian Kavanaugh and Patricia Fahy, as well as Assembly Sponsors Amy Paulin, Jeffrey Dinowitz, Donna Lupardo, Rebecca Seawright and Steven Otis, have characterized the proposal as a self-directed harm-prevention measure, enabling individuals - particularly those experiencing mental health crises - to proactively restrict their own access to firearms without requiring judicial intervention or mental health adjudications. Supporters emphasize that the waiver system is entirely voluntary; revocable at the filer's discretion; and confidential, with statutory safeguards against external misuse.

Critics, however, argue that once placed into NICS, even a “voluntary” waiver becomes functionally indistinguishable from a government-imposed disability.

Second Amendment Framework

The Second Amendment to the United States Constitution provides that “the right of the people to keep and bear Arms, shall not be infringed.” The Supreme Court has recognized this right as individual, fundamental, and fully applicable to the states through the Fourteenth Amendment. See *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

More recently, *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022) rejected means-end scrutiny and held that modern firearm regulations must be consistent with the Nation’s historical tradition of firearm regulation.

Within that framework, courts have traditionally treated Second Amendment rights similarly to other fundamental constitutional rights - such as speech or due process - by recognizing that individuals may decline to exercise them, but the government generally may not condition, coerce, or permanently extinguish them absent due process.

Can an “Inalienable” Right Be Waived?

The concept of inalienable rights predates the Constitution and is rooted in natural-law theory, most famously articulated in the Declaration of Independence. In this tradition, inalienable rights are understood as rights inherent in human existence - not granted by government and not subject to permanent transfer, forfeiture, or divestment even with individual consent. Thus, a central constitutional tension raised by this legislation is whether a right traditionally understood as inalienable - that is, inherent and not granted by the state - may nonetheless be voluntarily waived.

From a doctrinal perspective, courts have long recognized that individuals may temporarily waive the exercise of constitutional rights in specific contexts and under stringent conditions (for example, plea allocutions, consent to searches, or contractual forum-selection clauses). Such waivers are closely scrutinized and must be: (i) knowing, (ii) intelligent; (iii) voluntary, and (iv) revocable or limited in scope absent extraordinary circumstances.

An inalienable right may be non-exercised (ie. choosing not to speak, not to vote or not to own a firearm), but may not be permanently alienated, transferred to the state, or transformed into a disabling status absent due process. Philosophical and legal scholarship emphasizes that treating inalienable rights as fully waivable risks collapsing the distinction between consent and forfeiture, allowing the state to enforce what began as a personal choice as though it were a lawful deprivation. Notably, enumerated rights - such as those in the Bill of Rights - occupy a heightened position. Although courts allow individuals to waive procedural incidents of such rights, the underlying right itself remains intact and cannot be eliminated by agreement. As scholarship notes, even where waiver is theoretically permissible, courts must assess whether the waiver undermines: the integrity of the constitutional order; the historical understanding of the right; or the government’s obligation to protect the right regardless of individual preference.

Therefore, a framework that converts a personal decision into a state-enforced prohibition, particularly one integrated into federal or statewide enforcement systems, risks exceeding the permissible bounds of waiver doctrine.

The New York proposal seeks to situate itself within this tradition by framing the waiver as elective rather than compulsory, while allowing unilateral revocation; and avoiding any formal adjudication of unfitness. However, the mechanism differs from traditional waivers in one critical respect: it converts a private decision into a state-enforced prohibition that is transmitted through federal background check systems. Once entered into NICS, the waiver operates as a legal disability with real-world consequences extending beyond the filer's immediate intent.

Opponents argue that this transformation raises serious constitutional concerns, particularly if revocation is delayed, bureaucratically constrained, or functionally discouraged. In that scenario, the waiver could resemble an indirect forfeiture of an enumerated right rather than a mere postponement of its exercise.

Potential Litigation Risks

If enacted, the voluntary waiver statute could face challenges under several theories:

1. Second Amendment: Alleging that the law creates a historically unsupported category of prohibited persons inconsistent with *Bruen*
2. Due Process: Challenging delays or administrative barriers to revocation.
3. Unconstitutional Conditions: Arguing that "voluntary" frameworks may become coercive in practice, particularly in interaction with employers, healthcare providers, or courts.

Notably, no clear historical analogue exists for state-run registries of citizens who self-disarm through recorded waivers, which may complicate the State's burden under the *Bruen* historical-tradition test.

Practical Implications for Gun Owners and Federal Firearms Licensees (FFLs)

Although framed as a voluntary measure, the proposed waiver legislation would have immediate, real-world consequences for both individual gun owners and licensed dealers if enacted.

Implications for Individual Gun Owners

For individuals, the most significant practical effect is that filing a waiver would create an enforceable legal disability, not merely a personal expression of intent.

A. Immediate Purchase Prohibition

Once accepted by the Division of State Police, the waiver would prohibit the individual from purchasing firearms, rifles, or shotguns, and the waiver would be entered into NICS and related law-enforcement databases within 24 hours. Any attempted purchase during that period would be automatically denied, regardless of the individual's eligibility under federal or state law.

B. Revocation Is Not Instantaneous

Although the statute permits revocation, it does not guarantee immediate restoration of purchasing ability. Administrative processing time - which may include verification and database updates - creates a window during which a gun owner remains legally barred from purchasing firearms even after revocation is filed. Practically, this may create problems for individuals who file waivers during short-term crises but later need to exercise their rights promptly. From a risk-management perspective, individuals should be advised that a “voluntary” waiver is closer to a self-imposed legal restraint than a symbolic or informal decision. Individuals considering a waiver must consider that changing circumstances or bureaucratic delay could make reversal slower than expected and could functionally result in unintended permanence.

C. Collateral Effects and Records

While the bills contain confidentiality provisions and prohibit conditioning employment or benefits on a waiver, the waiver nonetheless becomes part of law-enforcement systems used to determine prohibited-person status. Gun owners should assume that, functionally, a waiver is treated like other disqualifying records for background-check purposes.

Implications for FFLs and Firearms Businesses

For FFLs, the legislation would alter background-check outcomes without providing additional discretion or guidance to licensees.

A. No Discretion to Override Denials

An FFL who receives a NICS denial based on a voluntary waiver would have no authority to question or override the denial, even if the customer asserts that the waiver was filed in error or has been revoked but not yet processed. The waiver operates identically to other prohibiting records at the point of sale.

B. Increased Customer Disputes

Dealers should anticipate an increase in customer confusion and disputes, particularly where purchasers are unaware that they previously filed a waiver or believe revocation should be instantaneous. As with other denials, the FFL's role would be limited to providing standard NICS appeal information.

C. Compliance and Recordkeeping

The bills do not impose new affirmative recordkeeping duties on FFLs, but they do heighten the importance of strict adherence to denial procedures. Any deviation - such as proceeding with a transfer before a formal resolution - is likely to be scrutinized given the politically sensitive nature of the waiver system.

D. Training and Risk Mitigation

Firearms businesses may need to update staff training materials to explain voluntary waivers, emphasizing that: (i) waivers are legally binding once entered; (ii) dealers cannot advise customers on how to revoke them; and (iii) denials tied to waivers are treated the same as other statutory prohibitions.

Key Takeaways and Conclusion

New York has proposed - but not yet enacted - a statutory framework allowing individuals to file a voluntary waiver of their right to purchase firearms. While framed as a mental-health and safety measure, the proposal raises novel constitutional questions under the Second Amendment. Constitutional law only permits limited, carefully controlled waivers of certain fundamental rights, but does not allow individuals to permanently surrender inalienable rights or to authorize the state to enforce that surrender as a legal disability detached from ongoing consent.

Any statutory scheme that treats a voluntary waiver as equivalent to a disqualifying status - especially one lacking historical analogue - raises serious constitutional concerns. Such schemes blur the line between personal restraint and state deprivation, a distinction that lies at the heart of American constitutional liberty.

If adopted, the legislation is likely to face prompt constitutional scrutiny.

We will continue to monitor the status of S.1026 / A.198 and related litigation developments.

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