

# STATE OF NEW YORK

837--D

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. PAULIN, RAMOS, ENGLEBRIGHT, L. ROSENTHAL, ABINANTI, COLTON, DINOWITZ, STECK, SEAWRIGHT, FAHY, CYMBROWITZ, ZEBROWSKI, CARROLL, BICHOTTE HERMELYN, GALEF, SIMON -- Multi-Sponsored by -- M. of A. GOTTFRIED, MAGNARELLI -- read once and referred to the Committee on Economic Development -- recommitted to the Committee on Economic Development in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the penal law, in relation to preventing the unlawful sale of firearms, rifles, and shotguns to individuals with a criminal record

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 39-BB to read as follows:

### ARTICLE 39-BB

### PREVENTING THE UNLAWFUL SALE OF FIREARMS, RIFLES, AND SHOTGUNS TO INDIVIDUALS WITH A CRIMINAL RECORD

#### Section 875-a. Definitions.

#### 875-b. Security.

#### 875-c. Access to firearms, rifles, and shotguns.

#### 875-d. Location of firearm, rifle, and shotgun sales.

#### 875-e. Employee training.

#### 875-f. Maintenance of records.

#### 875-g. Internal compliance and certification.

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

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875-h. Rules and regulations.

875-i. Violations.

§ 875-a. Definitions. For the purposes of this article:

1. "Dealer" means a gunsmith or dealers in firearms licensed pursuant to section 400.00 of the penal law.

2. "Dispose of" or "disposition of" means to give, give away, lease, lend, keep for sale, offer, offer for sale, sell, or transfer.

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

4. "Rifle" has the same meaning as that term is defined in subdivision eleven of section 265.00 of the penal law.

5. "Shotgun" has the same meaning as that term is defined in subdivision twelve of section 265.00 of the penal law.

6. "Straw purchase" means the purchase, or attempt to purchase, by a person of a firearm, rifle, shotgun or ammunition for, on behalf of, or for the use of another person known or unknown. The term shall not include a bona fide gift to a person who is not prohibited from possessing or receiving such a firearm. For purposes of the preceding sentence, a gift to a person is not a bona fide gift if the person has offered or given the purchaser a service or thing of value to acquire the firearm for the person.

7. "Superintendent" means the superintendent of state police.

§ 875-b. Security. 1. Every dealer shall implement a security plan for securing firearms, rifles and shotguns, including firearms, rifles and shotguns in shipment. The plan must satisfy at least the following requirements:

(a) display cases shall be locked at all times except when removing a single firearm, rifle or shotgun to show a customer, and customers shall handle firearms, rifles or shotguns only under the direct supervision of an employee;

(b) all firearms, rifles and shotguns shall be secured, other than during business hours, in a locked fireproof safe or vault in the licensee's business premises or in a similar secured and locked area; and

(c) ammunition shall be stored separately from firearms, rifles and shotguns and out of reach of customers.

2. (a) The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator properly licensed pursuant to state law. The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection. The permitted business shall be equipped with a video recording device at each point of sale and entrance and exits to the premises, which shall be recorded from both the indoor and outdoor vantage point and shall maintain such recordings for a period of not less than two years.

(b) Underwriters Laboratories, Inc. uses the term "extent of protection" to refer to the amount of alarm protection installed to protect a particular area, room or container. Systems with a #3 extent of protection include complete protection for all accessible openings, and partial motion and sound detection at certain other areas of the premises. More information may be found in: Central Station Alarm Association, A Practical Guide to Central Station Burglar Alarm Systems (3rd ed. 2005).

§ 875-c. Access to firearms, rifles, and shotguns. Every retail dealer shall exclude all persons under eighteen years of age from those

1 portions of its premises where firearms, rifles, shotguns, or ammunition  
2 are stocked or sold, unless such person is accompanied by a parent or  
3 guardian.

4 § 875-d. Location of firearm, rifle, and shotgun sales. Every dealer  
5 shall sell or otherwise dispose of firearms, rifles, and shotguns only  
6 at the location listed on the dealer's federal firearms license or at  
7 gun shows.

8 § 875-e. Employee training. 1. Every dealer shall annually provide  
9 the training outlined by the superintendent pursuant to subdivision two  
10 of this section to all new and current employees.

11 2. The superintendent shall develop and make available to each  
12 licensed dealer, a training course in the conduct of firearm, rifle, and  
13 shotgun transfers including at a minimum the following:

14 (a) Federal and state laws governing firearm, rifle, and shotgun  
15 transfers.

16 (b) How to recognize, identify, respond, and report straw purchases,  
17 illegal purchases, and fraudulent activity.

18 (c) How to recognize, identify, respond, and report an individual who  
19 intends to use a firearm, rifle, or shotgun for unlawful purposes,  
20 including self-harm.

21 (d) How to prevent, respond, and report theft or burglary of firearms,  
22 rifles, shotguns, and ammunition.

23 (e) How to educate customers on rules of gun safety, including but not  
24 limited to the safe handling and storage of firearms, rifles, and shot-  
25 guns.

26 (f) Such other topics the superintendent deems necessary and appropri-  
27 ate.

28 3. No employee or agent of any retail dealer shall participate in the  
29 sale or disposition of firearms, rifles, or shotguns unless such person  
30 is at least twenty-one years of age and has first received the training  
31 required by this section. The superintendent shall promulgate regu-  
32 lations setting forth minimum requirements for the maintenance of  
33 records of such training.

34 § 875-f. Maintenance of records. Every dealer shall establish and  
35 maintain a book, or if the dealer should choose, electronic-based record  
36 of such purchase, sale, inventory, and other records at the dealer's  
37 place of business in such form and for such period as the superintendent  
38 shall require, and shall submit a copy of such records to the New York  
39 state police every April and October. Such records shall at a minimum  
40 include the following:

41 1. the make, model, caliber or gauge, manufacturer's name, and serial  
42 number of all rifles and shotguns that are acquired or disposed of not  
43 later than one business day after their acquisition or disposition.  
44 Monthly backups of these records kept in a book shall be maintained in a  
45 secure container designed to prevent loss by fire, theft, or flood. If  
46 the dealer chooses to maintain an electronic-based record system, those  
47 records must be backed up on an external server or over the internet at  
48 the close of each business day;

49 2. all rifles and shotguns acquired but not yet disposed of must be  
50 accounted for through an inventory check prepared once each month and  
51 maintained in a secure location;

52 3. rifle and shotgun disposition information, including the serial  
53 numbers of rifles and shotguns sold, dates of sale, and identity of  
54 purchasers, shall be maintained and made available at any time to  
55 government law enforcement agencies and to the manufacturer of the weap-  
56 on or its designee; and

1 4. every dealer shall maintain records of criminal rifle and shotgun  
2 traces initiated by the federal bureau of alcohol, tobacco, firearms and  
3 explosives ("ATF"). All ATF Form 4473 transaction records shall be  
4 retained on the dealer's business premises in a secure container  
5 designed to prevent loss by fire, theft, or flood.

6 § 875-g. Internal compliance and certification. 1. Every dealer shall:  
7 (a) implement and maintain sufficient internal compliance procedures  
8 to ensure compliance with the requirements of this article; and

9 (b) annually certify to the superintendent that such dealer has  
10 complied with all of the requirements of this article. The superinten-  
11 dent shall by regulation determine the form and content of such annual  
12 certification.

13 2. The superintendent shall promulgate regulations establishing peri-  
14 odic inspections of not less than one inspection of every dealer every  
15 three years, during regular and usual business hours, by the division of  
16 state police of the premises of every dealer to determine compliance by  
17 such dealer with the requirements of this article. Every dealer shall  
18 provide the division of state police with full access to such dealer's  
19 premises for such inspections.

20 § 875-h. Rules and regulations. The superintendent may promulgate such  
21 additional rules and regulations as the superintendent shall deem neces-  
22 sary to prevent firearms, rifles, and shotguns from being diverted from  
23 the legal stream of commerce.

24 § 875-i. Violations. Any person, firm, or corporation who knowingly  
25 violates any provision of this article shall be guilty of a class A  
26 misdemeanor punishable as provided for in the penal law.

27 § 2. Subdivisions 11 and 12 of section 400.00 of the penal law, subdi-  
28 vision 11 as amended by chapter 1 of the laws of 2013 and subdivision 12  
29 as amended by chapter 129 of the laws of 2019, are amended to read as  
30 follows:

31 11. License: revocation and suspension. (a) The conviction of a licen-  
32 see anywhere of a felony or serious offense or a licensee at any time  
33 becoming ineligible to obtain a license under this section shall operate  
34 as a revocation of the license. A license may be revoked or suspended as  
35 provided for in section 530.14 of the criminal procedure law or section  
36 eight hundred forty-two-a of the family court act. Except for a license  
37 issued pursuant to section 400.01 of this article, a license may be  
38 revoked and cancelled at any time in the city of New York, and in the  
39 counties of Nassau and Suffolk, by the licensing officer, and elsewhere  
40 than in the city of New York by any judge or justice of a court of  
41 record; a license issued pursuant to section 400.01 of this article may  
42 be revoked and cancelled at any time by the licensing officer or any  
43 judge or justice of a court of record. A license to engage in the busi-  
44 ness of dealer may be revoked or suspended for any violation of the  
45 provisions of article thirty-nine-BB of the general business law. The  
46 official revoking a license shall give written notice thereof without  
47 unnecessary delay to the executive department, division of state police,  
48 Albany, and shall also notify immediately the duly constituted police  
49 authorities of the locality.

50 (b) Whenever the director of community services or his or her designee  
51 makes a report pursuant to section 9.46 of the mental hygiene law, the  
52 division of criminal justice services shall convey such information,  
53 whenever it determines that the person named in the report possesses a  
54 license issued pursuant to this section, to the appropriate licensing  
55 official, who shall issue an order suspending or revoking such license.

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

12. Records required of gunsmiths and dealers in firearms. ~~[Any]~~ 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 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 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

1 licensee, such record book shall be immediately surrendered to the  
2 licensing officer in the city of New York, and in the counties of Nassau  
3 and Suffolk, and elsewhere in the state to the executive department,  
4 division of state police.

5 § 3. Severability. If any clause, sentence, paragraph, section or part  
6 of this act shall be adjudged by any court of competent jurisdiction to  
7 be invalid, such judgment shall not affect, impair or invalidate the  
8 remainder thereof, but shall be confined in its operation to the clause,  
9 sentence, paragraph, section or part thereof directly involved in the  
10 controversy in which such judgment shall have been rendered.

11 § 4. This act shall take effect on the one hundred eightieth day after  
12 it shall have become a law. Effective immediately, the addition, amend-  
13 ment and/or repeal of any rule or regulation for the implementation of  
14 section two of this act on its effective date are authorized to be made  
15 on or before such effective date.