STATE OF NEW YORK

432--A

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, 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 sale of firearms, rifles, and shotguns to criminals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares as follows:

1. Firearms, rifles and shotguns are used to kill over 30,000 individuals in the United States every year, including 1,000 individuals in New York state alone. Additionally, there are 100,000 non-fatal injuries across the country. The federal government has largely ignored this public health crisis and has left it up to state and local governments to protect its citizens. Firearm violence also costs billions of dollars and causes incalculable emotional damage, devastating families and communities throughout the country. Therefore, the state of New York has a strong interest in reducing violence and crimes that involve the use of firearms and the illegal trafficking of firearms. Illegal guns obtained throughout the state end up in the hands of criminals, youth and violent individuals who use them to threaten, maim and kill.

2. There is a thriving underground market for illegal firearms, largely driven by demand from drug gangs and other criminals. A highly efficient and continuous business practice exists in which firearms are moved from legal manufacture and sale to prohibited purchasers, making them illegal firearms. According to a recent report of the New York state attorney general, 52,915 crime guns were recovered by law enforcement in New York between 2010-2015. Target on Trafficking, New York Crime Gun Analysis, October 2016 ("2016 AG Report"). Of these crime

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

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guns, 13,188 or 24.9% were long guns. Outside New York City, long guns are sold without a permit. The 2016 AG Report further found that 90% of the crime guns recovered were recovered in seven distinct markets: New York City, the lower Hudson Valley (including the cities of Yonkers, White Plains, Newburgh and Poughkeepsie), the Capital Region (including Albany, Troy and Schenectady), Syracuse, Rochester and Buffalo. 74% of the crime guns recovered were from out of state. Yet a significant portion of guns involved in crimes upstate originate within the state. For example, according to the 2016 AG Report, 41% of crime guns in the Buffalo area and 56% of crime guns in the Rochester area originated within New York state.

3. Youth are particularly at risk of being killed with guns. According to the Centers for Disease Control and Prevention, in 2010 alone, 116 children and teens (under the age of 19) died from gun violence in New York state.

4. A substantial portion of illegal firearms are diverted to the illegal market through licensed gun dealers. Rogue gun dealers play a key role in this market. These rogue dealers funnel guns to the illegal market through a variety of channels. One of the most common means is to allow "straw purchases". A straw purchase occurs when a person purchases a gun on behalf of a prohibited person. In 2000, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) conducted an investigation of gun trafficking from July 1996 to December 1998 and found that almost 26,000 trafficked firearms were associated with investigations in which there was a straw purchaser. Almost 50% of all trafficking investigations involved straw purchasers, with an average of 37 firearms trafficked per investigation. Another issue, according to a 2008 report by Mayors Against Illegal Guns, Inside Straw Purchasing: How Criminals Get Guns Illegally, is that many traffickers return to the same store again and again once they have identified it as one in which they can make straw purchases easily. According to the ATF, 1% of gun dealers are the source of almost 60% of crime guns.

5. Although most gun dealers operate their businesses legally and responsibly, some gun dealers who are corrupt or maintain shoddy record-keeping practices flood the streets with illegal weapons as a result of their unrestricted access to new gun inventory and the unwillingness of gun manufacturers to terminate their supply to these rogue dealers. Current federal and state regulation has not curbed the business practice of illegal gun dealers. According to a 2004 study by Americans for Gun Safety, of the 120 worst gun dealers in the country, namely those dealers with an average of 500 crime guns traced to them, 96 were still in operation.

6. Moreover, this problem is not limited to unlicensed sellers, and clearly includes federal firearms licensees (FFLs). Indeed, although FFLs were involved in under 10% of the trafficking investigations undertaken by ATF, they were associated with the largest number of diverted firearms--over 40,000 guns, which is nearly half of the total number of trafficked firearms documented during the two-year period of the ATF's investigation. Additionally, a 2010 report by Mayors Against Illegal Guns indicated that several states which allow state authorities to supplement the federal ATF inspection with routine inspections provide law enforcement with more opportunities to uncover dealers in violation of the law. These inspections also help identify dealers who exercise lax oversight over their inventory and may lead to improved compliance with federal, state, and local laws.

7. Current state law governing firearm dealers is inadequate to prevent the diversion of firearms to the illegal marketplace. Additional protections that are needed include, but are not limited to, better gun dealer internal compliance procedures, programs to eliminate straw purchases, improved security measures, reducing youth access, and mandatory training for gun dealer employees. The additional protections set forth in this act will greatly enhance the state's efforts to reduce criminal activity in the state.

§ 2. The general business law is amended by adding a new article 39-BB to read as follows:

ARTICLE 39-BB

PREVENTING THE SALE OF FIREARMS, RIFLES, AND SHOTGUNS TO CRIMINALS

Section 875-a. Definitions.
875-b. Reasonable measures to prevent sales and transfers to criminals.
875-c. Security.
875-d. Access to firearms, rifles, and shotguns.
875-e. Location of firearm, rifle, and shotgun sales.
875-f. Employee training.
875-g. Maintenance of records.
875-h. Internal compliance and certification.
875-i. Rules and regulations.
875-j. Violations.

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

1. "Dealer" means any person, firm, partnership, corporation, or company who engages in the business of purchasing, selling, keeping for sale, lending, leasing, or in any manner disposing of, any firearm, rifle, or shotgun.

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

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

4. "Firearm exhibitor" means any person, firm, partnership, corporation, or company that exhibits, sells, offers for sale, transfers, or exchanges firearms, rifles, or shotguns at a gun show.

5. "Retail dealer" means any dealer engaged in the retail business of selling firearms, rifles, or shotguns.

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

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

8. "Straw purchase" means the purchase, or attempt to purchase, by a person of a firearm, rifle, or shotgun for, on behalf of, or for the use of another person, knowing that it would be unlawful for such other person to possess such firearm, rifle, or shotgun, or an attempt to make such a purchase.

9. "Straw purchaser" means a person who, knowing that it would be unlawful for another person to possess a firearm, rifle, or shotgun, purchases or attempts to purchase a firearm, rifle, or shotgun for, on behalf of, or for the use of such other person.

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

§ 875-b. Reasonable measures to prevent sales and transfers to criminals. Every dealer shall adopt reasonable measures to prevent firearms, rifles, and shotguns from being diverted from the legal stream of

commerce, intentionally or otherwise, for later sale, transfer, or disposal to individuals not legally entitled to purchase or possess such weapons. Such measures shall include, but need not be limited to, programs to eliminate sales to straw purchasers and to otherwise thwart illegal gun trafficking. The superintendent shall develop programs designed to eliminate sales to straw purchasers and to otherwise thwart illegal gun trafficking. Within six months of the effective date of this article, the superintendent shall submit a report to the legislature detailing such programs, including establishing minimum requirements for such programs.

§ 875-c. Security. 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:

1. 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;

2. 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

3. ammunition shall be stored separately from the firearms, rifles and shotguns and out of reach of the customers.

4. (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.

(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-d. Access to firearms, rifles, and shotguns. Every retail dealer shall exclude all persons under eighteen years of age from those portions of its premises where firearms, rifles, shotguns, or ammunition are stocked or sold, unless such person is accompanied by a parent or guardian.

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

§ 875-f. Employee training. Every retail dealer shall provide training to all employees and other personnel engaged in the retail sale of firearms, rifles, and shotguns relating to:

1. the law governing firearm, rifle, and shotgun transfers by federal firearms licensees and individuals;

2. how to recognize straw purchases and other attempts to purchase firearms, rifles, or shotguns illegally; and

3. how to teach consumers rules of gun safety, including but not limited to the safe handling and storage of firearms, rifles, and shotguns.

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

§ 875-g. Maintenance of records. Every dealer shall establish and maintain such purchase, sale, inventory, and other records at the dealer's place of business in such form and for such period as the superintendent shall require, and shall submit such records to the New York state police every April and October. Such records shall at a minimum include the following:

1. every dealer shall record the make, model, caliber or gauge, and serial number of all rifles and shotguns that are acquired or disposed of not later than one business day after their acquisition or disposition. Monthly backups of these records shall be maintained in a secure container designed to prevent loss by fire, theft, or other mishap;

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

3. rifle and shotgun sales information, including the serial numbers of rifles and shotguns sold, dates of sale, and identity of purchasers, shall be maintained and made available to government law enforcement agencies and to the manufacturer of the weapon or its designee; and

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

§ 875-h. Internal compliance and certification. 1. Every dealer shall:

(a) implement and maintain sufficient internal compliance procedures to ensure compliance with the requirements of this article and all applicable federal, state, and local laws and regulations governing the sale, transfer, and disposal of firearms, rifles, and shotguns; and

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

2. The superintendent of state police shall promulgate regulations establishing periodic inspections, during regular and usual business hours, by the division of state police of the premises of every dealer to determine compliance by such dealer with the requirements of this article. Every dealer shall provide the division of state police with full access to such dealer's premises for such inspections.

§ 875-i. Rules and regulations. The superintendent may promulgate such additional rules and regulations as the superintendent shall deem necessary to prevent firearms, rifles, and shotguns from being diverted from the legal stream of commerce.

§ 875-j. Violations. Any person, firm, or corporation who knowingly violates any provision of this article shall be guilty of a class A misdemeanor punishable as provided for in the penal law, and shall be guilty of a class E felony for a second violation occurring within five

years of a prior conviction for a violation of any provision of this article.

§ 3. Subdivision 1 of section 400.00 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the United States army, navy, marine corps, air force or coast guard, or the national guard of the state of New York, no such age restriction shall apply; (b) of good moral character; (c) who has not been convicted anywhere of a felony or a serious offense; (d) who is not a fugitive from justice; (e) who is not an unlawful user of or addicted to any controlled substance as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not illegally or unlawfully in the United States or (ii) has not been admitted to the United States under a nonimmigrant visa subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the Armed Forces under dishonorable conditions; (h) who, having been a citizen of the United States, has not renounced his or her citizenship; (i) who has stated whether he or she has ever suffered any mental illness; (j) who has not been involuntarily committed to a facility under the jurisdiction of an office of the department of mental hygiene pursuant to article nine or fifteen of the mental hygiene law, article seven hundred thirty or section 330.20 of the criminal procedure law, section four hundred two or five hundred eight of the correction law, section 322.2 or 353.4 of the family court act, or has not been civilly confined in a secure treatment facility pursuant to article ten of the mental hygiene law; (k) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; (l) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; and (ii) persons who were licensed to possess a pistol or revolver prior to the effective date of this paragraph are not required to have completed a firearms safety course and test; (m) who has not had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs; and (n) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section**, and no person shall engage in the business of dealer in firearms unless such person complies with the provisions of article thirty-nine-BB of the general business law**. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of

age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

§ 4. Subdivisions 11 and 12 of section 400.00 of the penal law, as amended by chapter 1 of the laws of 2013, are amended to read as follows:

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

(b) Whenever the director of community services or his or her designee makes a report pursuant to section 9.46 of the mental hygiene law, the division of criminal justice services shall convey such information, whenever it determines that the person named in the report possesses a license issued pursuant to this section, to the appropriate licensing 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**. 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 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. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law; provided that the superintendent of the division of state police is authorized and directed to immediately adopt, amend, and promulgate such rules and regulations as may be necessary and desirable to effectuate the purposes of section two of this act.