

# STATE OF NEW YORK

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432--A

2017-2018 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2017

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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:

1 Section 1. Legislative findings and declaration. The legislature here-  
2 by finds and declares as follows:  
3 1. Firearms, rifles and shotguns are used to kill over 30,000 individ-  
4 uals in the United States every year, including 1,000 individuals in New  
5 York state alone. Additionally, there are 100,000 non-fatal injuries  
6 across the country. The federal government has largely ignored this  
7 public health crisis and has left it up to state and local governments  
8 to protect its citizens. Firearm violence also costs billions of dollars  
9 and causes incalculable emotional damage, devastating families and  
10 communities throughout the country. Therefore, the state of New York  
11 has a strong interest in reducing violence and crimes that involve the  
12 use of firearms and the illegal trafficking of firearms. Illegal guns  
13 obtained throughout the state end up in the hands of criminals, youth  
14 and violent individuals who use them to threaten, maim and kill.  
15 2. There is a thriving underground market for illegal firearms, large-  
16 ly driven by demand from drug gangs and other criminals. A highly effi-  
17 cient and continuous business practice exists in which firearms are  
18 moved from legal manufacture and sale to prohibited purchasers, making  
19 them illegal firearms. According to a recent report of the New York  
20 state attorney general, 52,915 crime guns were recovered by law enforce-  
21 ment in New York between 2010-2015. Target on Trafficking, New York  
22 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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1 guns, 13,188 or 24.9% were long guns. Outside New York City, long guns  
2 are sold without a permit. The 2016 AG Report further found that 90% of  
3 the crime guns recovered were recovered in seven distinct markets: New  
4 York City, the lower Hudson Valley (including the cities of Yonkers,  
5 White Plains, Newburgh and Poughkeepsie), the Capital Region (including  
6 Albany, Troy and Schenectady), Syracuse, Rochester and Buffalo. 74% of  
7 the crime guns recovered were from out of state. Yet a significant  
8 portion of guns involved in crimes upstate originate within the state.  
9 For example, according to the 2016 AG Report, 41% of crime guns in the  
10 Buffalo area and 56% of crime guns in the Rochester area originated  
11 within New York state.

12 3. Youth are particularly at risk of being killed with guns. Accord-  
13 ing to the Centers for Disease Control and Prevention, in 2010 alone,  
14 116 children and teens (under the age of 19) died from gun violence in  
15 New York state.

16 4. A substantial portion of illegal firearms are diverted to the ille-  
17 gal market through licensed gun dealers. Rogue gun dealers play a key  
18 role in this market. These rogue dealers funnel guns to the illegal  
19 market through a variety of channels. One of the most common means is to  
20 allow "straw purchases". A straw purchase occurs when a person purchases  
21 a gun on behalf of a prohibited person. In 2000, the Bureau of Alcohol,  
22 Tobacco, Firearms, and Explosives (ATF) conducted an investigation of  
23 gun trafficking from July 1996 to December 1998 and found that almost  
24 26,000 trafficked firearms were associated with investigations in which  
25 there was a straw purchaser. Almost 50% of all trafficking investi-  
26 gations involved straw purchasers, with an average of 37 firearms traf-  
27 ficked per investigation. Another issue, according to a 2008 report by  
28 Mayors Against Illegal Guns, *Inside Straw Purchasing: How Criminals Get*  
29 *Guns Illegally*, is that many traffickers return to the same store again  
30 and again once they have identified it as one in which they can make  
31 straw purchases easily. According to the ATF, 1% of gun dealers are the  
32 source of almost 60% of crime guns.

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

43 6. Moreover, this problem is not limited to unlicensed sellers, and  
44 clearly includes federal firearms licensees (FFLs). Indeed, although  
45 FFLs were involved in under 10% of the trafficking investigations under-  
46 taken by ATF, they were associated with the largest number of diverted  
47 firearms--over 40,000 guns, which is nearly half of the total number of  
48 trafficked firearms documented during the two-year period of the ATF's  
49 investigation. Additionally, a 2010 report by Mayors Against Illegal  
50 Guns indicated that several states which allow state authorities to  
51 supplement the federal ATF inspection with routine inspections provide  
52 law enforcement with more opportunities to uncover dealers in violation  
53 of the law. These inspections also help identify dealers who exercise  
54 lax oversight over their inventory and may lead to improved compliance  
55 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

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

11 § 875-c. Security. Every dealer shall implement a security plan for  
12 securing firearms, rifles and shotguns, including firearms, rifles and  
13 shotguns in shipment. The plan must satisfy at least the following  
14 requirements:

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

19 2. all firearms, rifles and shotguns shall be secured, other than  
20 during business hours, in a locked fireproof safe or vault in the  
21 licensee's business premises or in a similar secured and locked area;  
22 and

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

25 4. (a) The permitted business location shall be secured by an alarm  
26 system that is installed and maintained by an alarm company operator  
27 properly licensed pursuant to state law. The alarm system must be moni-  
28 tored by a central station listed by Underwriters Laboratories, Inc.,  
29 and covered by an active Underwriters Laboratories, Inc. alarm system  
30 certificate with a #3 extent of protection.

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

39 § 875-d. Access to firearms, rifles, and shotguns. Every retail dealer  
40 shall exclude all persons under eighteen years of age from those  
41 portions of its premises where firearms, rifles, shotguns, or ammunition  
42 are stocked or sold, unless such person is accompanied by a parent or  
43 guardian.

44 § 875-e. Location of firearm, rifle, and shotgun sales. Every dealer  
45 shall sell or otherwise dispose of firearms, rifles, and shotguns only  
46 at the location listed on the dealer's federal firearms license or at  
47 gun shows.

48 § 875-f. Employee training. Every retail dealer shall provide training  
49 to all employees and other personnel engaged in the retail sale of  
50 firearms, rifles, and shotguns relating to:

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

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

1 3. how to teach consumers rules of gun safety, including but not  
2 limited to the safe handling and storage of firearms, rifles, and shot-  
3 guns.

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

10 § 875-g. Maintenance of records. Every dealer shall establish and  
11 maintain such purchase, sale, inventory, and other records at the deal-  
12 er's place of business in such form and for such period as the super-  
13 intendent shall require, and shall submit such records to the New York  
14 state police every April and October. Such records shall at a minimum  
15 include the following:

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

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

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

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

33 § 875-h. Internal compliance and certification. 1. Every dealer shall:

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

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

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

48 § 875-i. Rules and regulations. The superintendent may promulgate such  
49 additional rules and regulations as the superintendent shall deem neces-  
50 sary to prevent firearms, rifles, and shotguns from being diverted from  
51 the legal stream of commerce.

52 § 875-j. Violations. Any person, firm, or corporation who knowingly  
53 violates any provision of this article shall be guilty of a class A  
54 misdemeanor punishable as provided for in the penal law, and shall be  
55 guilty of a class E felony for a second violation occurring within five

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

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

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

1 age and maintain a place of business in the city or county where the  
2 license is issued. For such business, if the applicant is a firm or  
3 partnership, each member thereof shall comply with all of the require-  
4 ments set forth in this subdivision and if the applicant is a corpo-  
5 ration, each officer thereof shall so comply.

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

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

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

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

45 12. Records required of gunsmiths and dealers in firearms. [~~Any~~] In  
46 addition to the requirements set forth in article thirty-nine-BB of the  
47 general business law, any person licensed as gunsmith or dealer in  
48 firearms shall keep a record book approved as to form, except in the  
49 city of New York, by the superintendent of state police. In the record  
50 book shall be entered at the time of every transaction involving a  
51 firearm the date, name, age, occupation and residence of any person from  
52 whom a firearm is received or to whom a firearm is delivered, and the  
53 calibre, make, model, manufacturer's name and serial number, or if none,  
54 any other distinguishing number or identification mark on such firearm.  
55 Before delivering a firearm to any person, the licensee shall require  
56 him to produce either a license valid under this section to carry or

1 possess the same, or proof of lawful authority as an exempt person  
2 pursuant to section 265.20 of this chapter. In addition, before deliver-  
3 ing a firearm to a peace officer, the licensee shall verify that  
4 person's status as a peace officer with the division of state police.  
5 After completing the foregoing, the licensee shall remove and retain the  
6 attached coupon and enter in the record book the date of such license,  
7 number, if any, and name of the licensing officer, in the case of the  
8 holder of a license to carry or possess, or the shield or other number,  
9 if any, assignment and department, unit or agency, in the case of an  
10 exempt person. The original transaction report shall be forwarded to the  
11 division of state police within ten days of delivering a firearm to any  
12 person, and a duplicate copy shall be kept by the licensee. The super-  
13 intendent of state police may designate that such record shall be  
14 completed and transmitted in electronic form. A dealer may be granted a  
15 waiver from transmitting such records in electronic form if the super-  
16 intendent determines that such dealer is incapable of such transmission  
17 due to technological limitations that are not reasonably within the  
18 control of the dealer, or other exceptional circumstances demonstrated  
19 by the dealer, pursuant to a process established in regulation, and at  
20 the discretion of the superintendent. Records assembled or collected for  
21 purposes of inclusion in the database created pursuant to section 400.02  
22 of this article shall not be subject to disclosure pursuant to article  
23 six of the public officers law. The record book shall be maintained on  
24 the premises mentioned and described in the license and shall be open at  
25 all reasonable hours for inspection by any peace officer, acting pursu-  
26 ant to his special duties, or police officer. In the event of cancella-  
27 tion or revocation of the license for gunsmith or dealer in firearms, or  
28 discontinuance of business by a licensee, such record book shall be  
29 immediately surrendered to the licensing officer in the city of New  
30 York, and in the counties of Nassau and Suffolk, and elsewhere in the  
31 state to the executive department, division of state police.

32 § 5. Severability. If any clause, sentence, paragraph, section or part  
33 of this act shall be adjudged by any court of competent jurisdiction to  
34 be invalid, such judgment shall not affect, impair or invalidate the  
35 remainder thereof, but shall be confined in its operation to the clause,  
36 sentence, paragraph, section or part thereof directly involved in the  
37 controversy in which such judgment shall have been rendered.

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