

# STATE OF NEW YORK

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1054--A

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

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Introduced by M. of A. PAULIN, RAMOS, LIFTON, ENGLEBRIGHT, L. ROSENTHAL, ABINANTI, COLTON, DINOWITZ, JAFFEE, STECK, SEAWRIGHT, FAHY, SCHIMMING-ER, SIMOTAS -- Multi-Sponsored by -- M. of A. ARROYO, CRESPO, GOTTFRIED, MAGNARELLI -- read once and referred to the Committee on Economic Development -- 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

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

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

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

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

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

44 6. Moreover, this problem is not limited to unlicensed sellers, and  
45 clearly includes federal firearms licensees (FFLs). Indeed, although  
46 FFLs were involved in under 10% of the trafficking investigations under-  
47 taken by ATF, they were associated with the largest number of diverted  
48 firearms--over 40,000 guns, which is nearly half of the total number of  
49 trafficked firearms documented during the two-year period of the ATF's  
50 investigation. Additionally, a 2010 report by Mayors Against Illegal  
51 Guns indicated that several states which allow state authorities to  
52 supplement the federal ATF inspection with routine inspections provide  
53 law enforcement with more opportunities to uncover dealers in violation  
54 of the law. These inspections also help identify dealers who exercise  
55 lax oversight over their inventory and may lead to improved compliance  
56 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, shotgun or ammunition 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, shotgun or ammunition, 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, shotgun or ammunition, purchases or attempts to purchase a firearm, rifle, shotgun or ammunition 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. 1. Every dealer shall implement a security plan  
12 for securing firearms, rifles and shotguns, including firearms, rifles  
13 and shotguns in shipment. The plan must satisfy at least the following  
14 requirements:

15 (a) 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 (b) 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 (c) ammunition shall be stored separately from the firearms, rifles  
24 and shotguns and out of reach of the customers.

25 2. (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, shotguns or ammunition 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 shall promulgate regulations establishing peri-  
43 odic inspections, during regular and usual business hours, by the divi-  
44 sion of state police of the premises of every dealer to determine  
45 compliance by such dealer with the requirements of this article. Every  
46 dealer shall provide the division of state police with full access to  
47 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, paragraph (c) as amended by chapter 60 of  
5 the laws of 2018, is amended to read as follows:

6 1. Eligibility. No license shall be issued or renewed pursuant to this  
7 section except by the licensing officer, and then only after investi-  
8 gation and finding that all statements in a proper application for a  
9 license are true. No license shall be issued or renewed except for an

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

1 such person complies with the provisions of article thirty-nine-BB of  
2 the general business law. An applicant to engage in such business shall  
3 also be a citizen of the United States, more than twenty-one years of  
4 age and maintain a place of business in the city or county where the  
5 license is issued. For such business, if the applicant is a firm or  
6 partnership, each member thereof shall comply with all of the require-  
7 ments set forth in this subdivision and if the applicant is a corpo-  
8 ration, each officer thereof shall so comply.

9 § 4. Subdivisions 11 and 12 of section 400.00 of the penal law, subdi-  
10 vision 11 as amended by chapter 1 of the laws of 2013 and subdivision 12  
11 as amended by chapter 129 of the laws of 2019, are amended to read as  
12 follows:

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

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

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

49 12. Records required of gunsmiths and dealers in firearms. [~~Any~~] In  
50 addition to the requirements set forth in article thirty-nine-BB of the  
51 general business law, any person licensed as gunsmith or dealer in  
52 firearms shall keep a record book approved as to form, except in the  
53 city of New York, by the superintendent of state police. In the record  
54 book shall be entered at the time of every transaction involving a  
55 firearm the date, name, age, occupation and residence of any person from  
56 whom a firearm is received or to whom a firearm is delivered, and the

1 calibre, make, model, manufacturer's name and serial number, or if none,  
2 any other distinguishing number or identification mark on such firearm.  
3 Before delivering a firearm to any person, the licensee shall require  
4 him to produce either a license valid under this section to carry or  
5 possess the same, or proof of lawful authority as an exempt person  
6 pursuant to section 265.20 of this chapter and either (a) the National  
7 Instant Criminal Background Check System (NICS) or its successor has  
8 issued a "proceed" response to the licensee, or (b) thirty calendar days  
9 have elapsed since the date the licensee contacted NICS to initiate a  
10 national instant criminal background check and NICS has not notified the  
11 licensee that the transfer of the firearm to such person should be  
12 denied. In addition, before delivering a firearm to a peace officer, the  
13 licensee shall verify that person's status as a peace officer with the  
14 division of state police. After completing the foregoing, the licensee  
15 shall remove and retain the attached coupon and enter in the record book  
16 the date of such license, number, if any, and name of the licensing  
17 officer, in the case of the holder of a license to carry or possess, or  
18 the shield or other number, if any, assignment and department, unit or  
19 agency, in the case of an exempt person. The original transaction report  
20 shall be forwarded to the division of state police within ten days of  
21 delivering a firearm to any person, and a duplicate copy shall be kept  
22 by the licensee. The superintendent of state police may designate that  
23 such record shall be completed and transmitted in electronic form. A  
24 dealer may be granted a waiver from transmitting such records in elec-  
25 tronic form if the superintendent determines that such dealer is incapa-  
26 ble of such transmission due to technological limitations that are not  
27 reasonably within the control of the dealer, or other exceptional  
28 circumstances demonstrated by the dealer, pursuant to a process estab-  
29 lished in regulation, and at the discretion of the superintendent.  
30 Records assembled or collected for purposes of inclusion in the database  
31 created pursuant to section 400.02 of this article shall not be subject  
32 to disclosure pursuant to article six of the public officers law. The  
33 record book shall be maintained on the premises mentioned and described  
34 in the license and shall be open at all reasonable hours for inspection  
35 by any peace officer, acting pursuant to his special duties, or police  
36 officer. In the event of cancellation or revocation of the license for  
37 gunsmith or dealer in firearms, or discontinuance of business by a  
38 licensee, such record book shall be immediately surrendered to the  
39 licensing officer in the city of New York, and in the counties of Nassau  
40 and Suffolk, and elsewhere in the state to the executive department,  
41 division of state police.

42 § 5. Severability. If any clause, sentence, paragraph, section or part  
43 of this act shall be adjudged by any court of competent jurisdiction to  
44 be invalid, such judgment shall not affect, impair or invalidate the  
45 remainder thereof, but shall be confined in its operation to the clause,  
46 sentence, paragraph, section or part thereof directly involved in the  
47 controversy in which such judgment shall have been rendered.

48 § 6. This act shall take effect on the ninetieth day after it shall  
49 have become a law; provided that the amendments to subdivision 12 of  
50 section 400.00 of the penal law made by section four of this act shall  
51 take effect on the same date and in the same manner as chapter 129 of  
52 the laws of 2019, takes effect; and provided further that the super-  
53 intendent of the division of state police is authorized and directed to  
54 immediately adopt, amend, and promulgate such rules and regulations as  
55 may be necessary and desirable to effectuate the purposes of section two  
56 of this act.