

STATE OF NEW YORK

837

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 -- Multi-Sponsored by -- M. of A. GOTTFRIED, MAGNARELLI -- read once and referred to the Committee on Economic Development

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 hereby finds and declares as follows:

2
3 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.

15 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.

LBD01985-01-1

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, 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.

§ 3. Subdivision 1 of section 400.00 of the penal law, as amended by chapter 1 of the laws of 2013, paragraph (c) as amended by chapter 60 of the laws of 2018, 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 or who is not the subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or 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

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

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

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

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

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

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

1 Before delivering a firearm to any person, the licensee shall require
2 him to produce either a license valid under this section to carry or
3 possess the same, or proof of lawful authority as an exempt person
4 pursuant to section 265.20 of this chapter and either (a) the National
5 Instant Criminal Background Check System (NICS) or its successor has
6 issued a "proceed" response to the licensee, or (b) thirty calendar days
7 have elapsed since the date the licensee contacted NICS to initiate a
8 national instant criminal background check and NICS has not notified the
9 licensee that the transfer of the firearm to such person should be
10 denied. In addition, before delivering a firearm to a peace officer, the
11 licensee shall verify that person's status as a peace officer with the
12 division of state police. After completing the foregoing, the licensee
13 shall remove and retain the attached coupon and enter in the record book
14 the date of such license, number, if any, and name of the licensing
15 officer, in the case of the holder of a license to carry or possess, or
16 the shield or other number, if any, assignment and department, unit or
17 agency, in the case of an exempt person. The original transaction report
18 shall be forwarded to the division of state police within ten days of
19 delivering a firearm to any person, and a duplicate copy shall be kept
20 by the licensee. The superintendent of state police may designate that
21 such record shall be completed and transmitted in electronic form. A
22 dealer may be granted a waiver from transmitting such records in elec-
23 tronic form if the superintendent determines that such dealer is incapa-
24 ble of such transmission due to technological limitations that are not
25 reasonably within the control of the dealer, or other exceptional
26 circumstances demonstrated by the dealer, pursuant to a process estab-
27 lished in regulation, and at the discretion of the superintendent.
28 Records assembled or collected for purposes of inclusion in the database
29 created pursuant to section 400.02 of this article shall not be subject
30 to disclosure pursuant to article six of the public officers law. The
31 record book shall be maintained on the premises mentioned and described
32 in the license and shall be open at all reasonable hours for inspection
33 by any peace officer, acting pursuant to his special duties, or police
34 officer. In the event of cancellation or revocation of the license for
35 gunsmith or dealer in firearms, or discontinuance of business by a
36 licensee, such record book shall be immediately surrendered to the
37 licensing officer in the city of New York, and in the counties of Nassau
38 and Suffolk, and elsewhere in the state to the executive department,
39 division of state police.

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

46 § 6. This act shall take effect on the ninetieth day after it shall
47 have become a law. Effective immediately, the addition, amendment and/or
48 repeal of any rule or regulation for the implementation of section two
49 of this act on its effective date are authorized to be made on or before
50 such effective date.