

# STATE OF NEW YORK

837--E

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

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

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

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

Section 1. The general business law is amended by adding a new article 39-BB to read as follows:

### ARTICLE 39-BB

#### PREVENTING THE UNLAWFUL SALE OF FIREARMS,

#### RIFLES, AND SHOTGUNS TO INDIVIDUALS WITH A CRIMINAL RECORD

#### Section 875-a. Definitions.

#### 875-b. Security.

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

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

#### 875-e. Employee training.

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

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875-f. Maintenance of records.

875-g. Internal compliance, certification, and reporting.

875-h. Rules and regulations.

875-i. Violations.

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

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

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

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

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

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

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

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

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

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

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

2. The dealer's business premises shall be secured by a security alarm system that is installed and maintained by a security alarm operator properly licensed pursuant to article six-D of this chapter. Standards for such security alarm systems shall be established by the superintendent in regulation. Such security alarm systems may be developed by a federal or state agency, a not-for-profit organization, or another entity specializing in security alarm standards approved by the superintendent for the purposes of this act. The security alarm system shall be capable of being monitored by a central station, and shall provide, at a minimum, complete protection and monitoring for all accessible openings, and partial motion and sound detection at certain other areas of the premises. The dealer location shall additionally be equipped with a video recording device at each point of sale and each entrance and exit to the premises, which shall be recorded from both the indoor and outdoor vantage point and shall maintain such recordings for a period of not less than two years.

§ 875-c. 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.

1     § 875-d. Location of firearm, rifle, and shotgun sales. Every dealer  
2 shall sell or otherwise dispose of firearms, rifles, and shotguns only  
3 at the location listed on the dealer's federal firearms license or at  
4 gun shows.

5     § 875-e. Employee training. 1. Every dealer shall provide the train-  
6 ing developed by the superintendent pursuant to subdivision two of this  
7 section to all new employees within thirty days of employment, to all  
8 existing employees within ninety days of the effective date of this  
9 section, and to all employees annually thereafter.

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

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

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

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

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

22     (e) How to educate customers on rules of gun safety, including but not  
23 limited to the safe handling and storage of firearms, rifles, shotguns  
24 and ammunition.

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

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

33     § 875-f. Maintenance of records. Every dealer shall establish and  
34 maintain a book, or if the dealer should choose, an electronic-based  
35 record of purchase, sale, inventory, and other records at the dealer's  
36 place of business in such form and for such period as the superintendent  
37 shall require, and shall submit a copy of such records to the New York  
38 state police every April and October. Such records shall at a minimum  
39 include the following:

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

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

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

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

6 § 875-g. Internal compliance, certification, and reporting. 1. Every  
7 dealer shall:

8 (a) implement and maintain sufficient internal compliance procedures  
9 to ensure compliance with the requirements of this article; and

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

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

21 (b) The superintendent shall prepare an annual report providing infor-  
22 mation on the number of dealers inspected annually, the number of deal-  
23 ers in compliance with the requirements of this article, the number of  
24 dealers failing to comply with the requirements of this article, and  
25 other information that the superintendent deems necessary and appropri-  
26 ate. The first report shall be delivered to the governor, the majority  
27 leader of the senate and the speaker of the assembly, and shall be made  
28 available to the public on the division of state police website, on or  
29 before January first, two thousand twenty-four and annually thereafter.

30 § 875-h. Rules and regulations. The superintendent may promulgate such  
31 additional rules and regulations as the superintendent shall deem neces-  
32 sary to prevent firearms, rifles, and shotguns from being diverted from  
33 the legal stream of commerce.

34 § 875-i. Violations. Any person, firm, or corporation who knowingly  
35 violates any provision of this article shall be guilty of a class A  
36 misdemeanor punishable as provided for in the penal law.

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

41 11. License: revocation and suspension. (a) The conviction of a licen-  
42 see anywhere of a felony or serious offense or a licensee at any time  
43 becoming ineligible to obtain a license under this section shall operate  
44 as a revocation of the license. A license may be revoked or suspended as  
45 provided for in section 530.14 of the criminal procedure law or section  
46 eight hundred forty-two-a of the family court act. Except for a license  
47 issued pursuant to section 400.01 of this article, a license may be  
48 revoked and cancelled at any time in the city of New York, and in the  
49 counties of Nassau and Suffolk, by the licensing officer, and elsewhere  
50 than in the city of New York by any judge or justice of a court of  
51 record; a license issued pursuant to section 400.01 of this article may  
52 be revoked and cancelled at any time by the licensing officer or any  
53 judge or justice of a court of record. A license to engage in the busi-  
54 ness of dealer may be revoked or suspended for any violation of the  
55 provisions of article thirty-nine-BB of the general business law. The  
56 official revoking a license shall give written notice thereof without

1 unnecessary delay to the executive department, division of state police,  
2 Albany, and shall also notify immediately the duly constituted police  
3 authorities of the locality.

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

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

21 12. Records required of gunsmiths and dealers in firearms. ~~[Any]~~ In  
22 addition to the requirements set forth in article thirty-nine-BB of the  
23 general business law, any person licensed as gunsmith or dealer in  
24 firearms shall keep a record book approved as to form, except in the  
25 city of New York, by the superintendent of state police. In the record  
26 book shall be entered at the time of every transaction involving a  
27 firearm the date, name, age, occupation and residence of any person from  
28 whom a firearm is received or to whom a firearm is delivered, and the  
29 calibre, make, model, manufacturer's name and serial number, or if none,  
30 any other distinguishing number or identification mark on such firearm.  
31 Before delivering a firearm to any person, the licensee shall require  
32 him to produce either a license valid under this section to carry or  
33 possess the same, or proof of lawful authority as an exempt person  
34 pursuant to section 265.20 of this chapter and either (a) the National  
35 Instant Criminal Background Check System (NICS) or its successor has  
36 issued a "proceed" response to the licensee, or (b) thirty calendar days  
37 have elapsed since the date the licensee contacted NICS to initiate a  
38 national instant criminal background check and NICS has not notified the  
39 licensee that the transfer of the firearm to such person should be  
40 denied. In addition, before delivering a firearm to a peace officer, the  
41 licensee shall verify that person's status as a peace officer with the  
42 division of state police. After completing the foregoing, the licensee  
43 shall remove and retain the attached coupon and enter in the record book  
44 the date of such license, number, if any, and name of the licensing  
45 officer, in the case of the holder of a license to carry or possess, or  
46 the shield or other number, if any, assignment and department, unit or  
47 agency, in the case of an exempt person. The original transaction report  
48 shall be forwarded to the division of state police within ten days of  
49 delivering a firearm to any person, and a duplicate copy shall be kept  
50 by the licensee. The superintendent of state police may designate that  
51 such record shall be completed and transmitted in electronic form. A  
52 dealer may be granted a waiver from transmitting such records in elec-  
53 tronic form if the superintendent determines that such dealer is incapa-  
54 ble of such transmission due to technological limitations that are not  
55 reasonably within the control of the dealer, or other exceptional  
56 circumstances demonstrated by the dealer, pursuant to a process estab-

1 lished in regulation, and at the discretion of the superintendent.  
2 Records assembled or collected for purposes of inclusion in the database  
3 created pursuant to section 400.02 of this article shall not be subject  
4 to disclosure pursuant to article six of the public officers law. The  
5 record book shall be maintained on the premises mentioned and described  
6 in the license and shall be open at all reasonable hours for inspection  
7 by any peace officer, acting pursuant to his special duties, or police  
8 officer. In the event of cancellation or revocation of the license for  
9 gunsmith or dealer in firearms, or discontinuance of business by a  
10 licensee, such record book shall be immediately surrendered to the  
11 licensing officer in the city of New York, and in the counties of Nassau  
12 and Suffolk, and elsewhere in the state to the executive department,  
13 division of state police.

14 § 3. Severability. If any clause, sentence, paragraph, section or part  
15 of this act shall be adjudged by any court of competent jurisdiction to  
16 be invalid, such judgment shall not affect, impair or invalidate the  
17 remainder thereof, but shall be confined in its operation to the clause,  
18 sentence, paragraph, section or part thereof directly involved in the  
19 controversy in which such judgment shall have been rendered.

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