

STATE OF NEW YORK

8780

IN SENATE

April 14, 2022

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

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

2
3 1. Guns--including firearms, rifles and shotguns--are used to kill
4 almost 40,000 individuals in the United States every year, including 800
5 individuals in New York state alone. Additionally, there are 115,000
6 non-fatal injuries across the country. Gun violence also costs billions
7 of dollars and causes incalculable emotional damage, devastating
8 families and communities throughout the country. In spite of the efforts
9 of many individual federal officials, the federal government has been
10 unwilling to enact legislation to address this public health crisis and
11 has left it up to state and local governments to do so. The state of New
12 York has a strong interest in reducing violence and crimes that involve
13 the use of guns and the illegal trafficking of guns. Illegal guns
14 obtained throughout the state end up in the hands of individuals who are
15 prohibited from possessing them because of their criminal record, their
16 youth, their particular mental health, or a protective order. Such illegal
17 guns are often used to threaten, maim and kill New Yorkers.

18 2. There is a thriving underground market for illegal guns, which is
19 leading to shootings that are disproportionately impacting under-resourced
20 Black and brown communities. A highly efficient and continuous
21 business practice exists in which guns are moved from legal manufacture
22 and sale to prohibited purchasers, making them illegal guns. According
23 to a recent report of the New York state attorney general, 52,915 crime
24 guns were recovered by law enforcement in New York between 2010-2015
25 (Target on Trafficking, New York Crime Gun Analysis, October 2016, hereinafter the "2016 AG Report"). Of these crime guns, 13,188 or 25% were
26 long guns. Outside New York City, long guns are sold without a permit.
27

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

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1 The 2016 AG Report further found that 90% of the crime guns recovered
2 were recovered in seven distinct markets: New York City, the lower
3 Hudson Valley (including the cities of Yonkers, White Plains, Newburgh
4 and Poughkeepsie), the Capital Region (including Albany, Troy and Sche-
5 nectady), Syracuse, Rochester and Buffalo. Although 74% of the crime
6 guns recovered statewide were from out of state, a significant portion
7 of guns involved in crimes upstate originate within the state. For exam-
8 ple, according to the 2016 AG Report, 41% of crime guns in the Buffalo
9 area and 56% of crime guns in the Rochester area originated within New
10 York state.

11 3. Youth are particularly at risk of being killed with guns. Accord-
12 ing to the Centers for Disease Control and Prevention, in 2019 alone, 40
13 children and teens (under the age of 19) died from gun violence in New
14 York state.

15 4. A substantial portion of illegal guns are diverted to the illegal
16 market through licensed gun dealers. Rogue gun dealers play a key role
17 in this market. These rogue dealers funnel guns to the illegal market
18 through a variety of channels. One of the most common means is to allow
19 "straw purchases". A straw purchase occurs when a person purchases a gun
20 on behalf of a prohibited person. In 2000, the Bureau of Alcohol,
21 Tobacco, Firearms, and Explosives (ATF) conducted an investigation of
22 gun trafficking from July 1996 to December 1998 and found that almost
23 26,000 trafficked guns were associated with investigations in which
24 there was a straw purchaser. Almost 50% of all trafficking investi-
25 gations involved straw purchasers, with an average of 37 guns trafficked
26 per investigation. Another issue, according to a 2008 report by Mayors
27 Against Illegal Guns, Inside Straw Purchasing: How Criminals Get Guns
28 Illegally, is that many traffickers return to the same store again and
29 again once they have identified it as one in which they can make straw
30 purchases easily. According to the ATF, 1% of gun dealers are the
31 source of almost 60% of crime guns. Although ATF has not since released
32 an updated report on straw purchases, a 2019 University of Chicago study
33 found that of those incarcerated for a gun-related crime, 58% acquired
34 their gun from a friend or acquaintance.

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

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

7. Current state law governing gun dealers is inadequate to prevent the diversion of guns to the illegal marketplace. Additional protections that are needed include better gun dealer internal compliance procedures, programs to eliminate straw purchases, improved security measures, reduced 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 stop gun violence and criminal activity in New York.

§ 2. 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. Reasonable measures to prevent unlawful sales and transfers to individuals who are prohibited from purchasing or possessing firearms, rifles, and shotguns.

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

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

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

7. "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 the preceding sentence, a gift to a person is not 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.

8. "Straw purchaser" means a person who purchases or attempts to purchase a firearm, rifle, shotgun or ammunition for, on behalf of, or for the use of such other person known or unknown, other than as a bona fide gift.

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

§ 875-b. Reasonable measures to prevent unlawful sales and transfers to individuals who are prohibited from purchasing or possessing firearms, rifles, and shotguns. Every dealer shall adopt reasonable

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

12 § 875-c. Security. 1. Every dealer shall implement a security plan
13 for securing firearms, rifles and shotguns, including firearms, rifles
14 and shotguns in shipment. The plan must satisfy at least the following
15 requirements:

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

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

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

26 2. (a) The permitted business location shall be secured by an alarm
27 system that is installed and maintained by an alarm company operator
28 properly licensed pursuant to state law. The alarm system must be moni-
29 tored by a central station listed by Underwriters Laboratories, Inc.,
30 and covered by an active Underwriters Laboratories, Inc. alarm system
31 certificate with a #3 extent of protection. The permitted business
32 shall be equipped with a video recording device at each point of sale
33 and entrance and exits to the premises, which shall be recorded from
34 both the indoor and outdoor vantage point and shall maintain such
35 recordings for a period of not less than two years.

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

44 § 875-d. Access to firearms, rifles, and shotguns. Every retail dealer
45 shall exclude all persons under eighteen years of age from those
46 portions of its premises where firearms, rifles, shotguns, or ammunition
47 are stocked or sold, unless such person is accompanied by a parent or
48 guardian.

49 § 875-e. Location of firearm, rifle, and shotgun sales. Every dealer
50 shall sell or otherwise dispose of firearms, rifles, and shotguns only
51 at the location listed on the dealer's federal firearms license or at
52 gun shows.

53 § 875-f. Employee training. 1. Every dealer shall annually provide
54 the training outlined by the superintendent pursuant to subdivision two
55 of this section to all new and current employees and other personnel
56 engaged in the retail sale of firearms, rifles, and shotguns. Dealers

1 shall keep a record of the completion of this training which may be
2 requested as part of the certification process outlined in paragraph (b)
3 of subdivision one of section eight hundred seventy-five-h of this arti-
4 cle.

5 2. The superintendent shall develop and make available to each
6 licensed dealer, a training course in the conduct of firearm, rifle, and
7 shotgun transfers including at a minimum the following:

8 (a) Federal and state laws governing firearm, rifle, and shotgun
9 transfers.

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

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

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

17 (e) How to educate customers on rules of gun safety, including but not
18 limited to the safe handling and storage of firearms, rifles, and shot-
19 guns.

20 (f) Such other topics the superintendent deems necessary and appropri-
21 ate.

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

28 § 875-g. Maintenance of records. Every dealer shall establish and
29 maintain a book, or if the dealer should choose, electronic-based record
30 of such purchase, sale, inventory, and other records at the dealer's
31 place of business in such form and for such period as the superintendent
32 shall require, and shall submit a copy of such records to the New York
33 state police every April and October. Such records shall at a minimum
34 include the following:

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

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

46 3. rifle and shotgun disposition information, including the serial
47 numbers of rifles and shotguns sold, dates of sale, and identity of
48 purchasers, shall be maintained and made available at any time to
49 government law enforcement agencies and to the manufacturer of the weap-
50 on or its designee; and

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

56 § 875-h. Internal compliance and certification. 1. Every dealer shall:

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

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

9 2. The superintendent shall promulgate regulations establishing peri-
10 odic inspections of not less than one inspection of every dealer every
11 three years, during regular and usual business hours, by the division of
12 state police of the premises of every dealer to determine compliance by
13 such dealer with the requirements of this article. Every dealer shall
14 provide the division of state police with full access to such dealer's
15 premises for such inspections.

16 § 875-i. Rules and regulations. The superintendent may promulgate such
17 additional rules and regulations as the superintendent shall deem neces-
18 sary to prevent firearms, rifles, and shotguns from being diverted from
19 the legal stream of commerce.

20 § 875-j. Violations. Any person, firm, or corporation who knowingly
21 violates any provision of this article shall be guilty of a class A
22 misdemeanor punishable as provided for in the penal law.

23 § 3. Subdivision 1 of section 400.00 of the penal law, as amended by
24 chapter 1 of the laws of 2013, paragraph (c) as amended by chapter 60 of
25 the laws of 2018, is amended to read as follows:

26 1. Eligibility. No license shall be issued or renewed pursuant to this
27 section except by the licensing officer, and then only after investi-
28 gation and finding that all statements in a proper application for a
29 license are true. No license shall be issued or renewed except for an
30 applicant (a) twenty-one years of age or older, provided, however, that
31 where such applicant has been honorably discharged from the United
32 States army, navy, marine corps, air force or coast guard, or the
33 national guard of the state of New York, no such age restriction shall
34 apply; (b) of good moral character; (c) who has not been convicted
35 anywhere of a felony or a serious offense or who is not the subject of
36 an outstanding warrant of arrest issued upon the alleged commission of a
37 felony or serious offense; (d) who is not a fugitive from justice; (e)
38 who is not an unlawful user of or addicted to any controlled substance
39 as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not
40 illegally or unlawfully in the United States or (ii) has not been admit-
41 ted to the United States under a nonimmigrant visa subject to the excep-
42 tion in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the
43 Armed Forces under dishonorable conditions; (h) who, having been a citi-
44 zen of the United States, has not renounced his or her citizenship; (i)
45 who has stated whether he or she has ever suffered any mental illness;
46 (j) who has not been involuntarily committed to a facility under the
47 jurisdiction of an office of the department of mental hygiene pursuant
48 to article nine or fifteen of the mental hygiene law, article seven
49 hundred thirty or section 330.20 of the criminal procedure law, section
50 four hundred two or five hundred eight of the correction law, section
51 322.2 or 353.4 of the family court act, or has not been civilly confined
52 in a secure treatment facility pursuant to article ten of the mental
53 hygiene law; (k) who has not had a license revoked or who is not under a
54 suspension or ineligibility order issued pursuant to the provisions of
55 section 530.14 of the criminal procedure law or section eight hundred
56 forty-two-a of the family court act; (l) in the county of Westchester,

1 who has successfully completed a firearms safety course and test as
2 evidenced by a certificate of completion issued in his or her name and
3 endorsed and affirmed under the penalties of perjury by a duly author-
4 ized instructor, except that: (i) persons who are honorably discharged
5 from the United States army, navy, marine corps or coast guard, or of
6 the national guard of the state of New York, and produce evidence of
7 official qualification in firearms during the term of service are not
8 required to have completed those hours of a firearms safety course
9 pertaining to the safe use, carrying, possession, maintenance and stor-
10 age of a firearm; and (ii) persons who were licensed to possess a pistol
11 or revolver prior to the effective date of this paragraph are not
12 required to have completed a firearms safety course and test; (m) who
13 has not had a guardian appointed for him or her pursuant to any
14 provision of state law, based on a determination that as a result of
15 marked subnormal intelligence, mental illness, incapacity, condition or
16 disease, he or she lacks the mental capacity to contract or manage his
17 or her own affairs; and (n) concerning whom no good cause exists for the
18 denial of the license. No person shall engage in the business of
19 gunsmith or dealer in firearms unless licensed pursuant to this section,
20 and no person shall engage in the business of dealer in firearms unless
21 such person complies with the provisions of article thirty-nine-BB of
22 the general business law. An applicant to engage in such business shall
23 also be a citizen of the United States, more than twenty-one years of
24 age and maintain a place of business in the city or county where the
25 license is issued. For such business, if the applicant is a firm or
26 partnership, each member thereof shall comply with all of the require-
27 ments set forth in this subdivision and if the applicant is a corpo-
28 ration, each officer thereof shall so comply.

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

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

52 (b) Whenever the director of community services or his or her designee
53 makes a report pursuant to section 9.46 of the mental hygiene law, the
54 division of criminal justice services shall convey such information,
55 whenever it determines that the person named in the report possesses a

1 license issued pursuant to this section, to the appropriate licensing
2 official, who shall issue an order suspending or revoking such license.

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

14 12. Records required of gunsmiths and dealers in firearms. [~~Any~~] In
15 addition to the requirements set forth in article thirty-nine-BB of the
16 general business law, any person licensed as gunsmith or dealer in
17 firearms shall keep a record book approved as to form, except in the
18 city of New York, by the superintendent of state police. In the record
19 book shall be entered at the time of every transaction involving a
20 firearm the date, name, age, occupation and residence of any person from
21 whom a firearm is received or to whom a firearm is delivered, and the
22 calibre, make, model, manufacturer's name and serial number, or if none,
23 any other distinguishing number or identification mark on such firearm.
24 Before delivering a firearm to any person, the licensee shall require
25 him to produce either a license valid under this section to carry or
26 possess the same, or proof of lawful authority as an exempt person
27 pursuant to section 265.20 of this chapter and either (a) the National
28 Instant Criminal Background Check System (NICS) or its successor has
29 issued a "proceed" response to the licensee, or (b) thirty calendar days
30 have elapsed since the date the licensee contacted NICS to initiate a
31 national instant criminal background check and NICS has not notified the
32 licensee that the transfer of the firearm to such person should be
33 denied. In addition, before delivering a firearm to a peace officer, the
34 licensee shall verify that person's status as a peace officer with the
35 division of state police. After completing the foregoing, the licensee
36 shall remove and retain the attached coupon and enter in the record book
37 the date of such license, number, if any, and name of the licensing
38 officer, in the case of the holder of a license to carry or possess, or
39 the shield or other number, if any, assignment and department, unit or
40 agency, in the case of an exempt person. The original transaction report
41 shall be forwarded to the division of state police within ten days of
42 delivering a firearm to any person, and a duplicate copy shall be kept
43 by the licensee. The superintendent of state police may designate that
44 such record shall be completed and transmitted in electronic form. A
45 dealer may be granted a waiver from transmitting such records in elec-
46 tronic form if the superintendent determines that such dealer is incapa-
47 ble of such transmission due to technological limitations that are not
48 reasonably within the control of the dealer, or other exceptional
49 circumstances demonstrated by the dealer, pursuant to a process estab-
50 lished in regulation, and at the discretion of the superintendent.
51 Records assembled or collected for purposes of inclusion in the database
52 created pursuant to section 400.02 of this article shall not be subject
53 to disclosure pursuant to article six of the public officers law. The
54 record book shall be maintained on the premises mentioned and described
55 in the license and shall be open at all reasonable hours for inspection
56 by any peace officer, acting pursuant to his special duties, or police

1 officer. In the event of cancellation or revocation of the license for
2 gunsmith or dealer in firearms, or discontinuance of business by a
3 licensee, such record book shall be immediately surrendered to the
4 licensing officer in the city of New York, and in the counties of Nassau
5 and Suffolk, and elsewhere in the state to the executive department,
6 division of state police.

7 § 5. Severability. If any clause, sentence, paragraph, section or part
8 of this act shall be adjudged by any court of competent jurisdiction to
9 be invalid, such judgment shall not affect, impair or invalidate the
10 remainder thereof, but shall be confined in its operation to the clause,
11 sentence, paragraph, section or part thereof directly involved in the
12 controversy in which such judgment shall have been rendered.

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