

STATE OF NEW YORK

8780--A

IN SENATE

April 14, 2022

Introduced by Sens. KAVANAGH, GAUGHRAN, GOUNARDES, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- 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 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.

875-f. Maintenance of records.

875-g. Internal compliance and certification.

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

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

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1 include a bona fide gift to a person who is not prohibited from possess-
2 ing or receiving such a firearm. For purposes of the preceding sentence,
3 a gift to a person is not a bona fide gift if the person has offered or
4 given the purchaser a service or thing of value to acquire the firearm
5 for the person.

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

7 § 875-b. Security. 1. Every dealer shall implement a security plan
8 for securing firearms, rifles and shotguns, including firearms, rifles
9 and shotguns in shipment. The plan must satisfy at least the following
10 requirements:

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

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

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

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

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-c. 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-d. 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-e. Employee training. 1. Every dealer shall annually provide
49 the training outlined by the superintendent pursuant to subdivision two
50 of this section to all new and current employees.

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

54 (a) Federal and state laws governing firearm, rifle, and shotgun
55 transfers.

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

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

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

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

11 (f) Such other topics the superintendent deems necessary and appropri-
12 ate.

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

19 § 875-f. Maintenance of records. Every dealer shall establish and
20 maintain a book, or if the dealer should choose, electronic-based record
21 of such purchase, sale, inventory, and other records at the dealer's
22 place of business in such form and for such period as the superintendent
23 shall require, and shall submit a copy of such records to the New York
24 state police every April and October. Such records shall at a minimum
25 include the following:

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

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

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

42 4. every dealer shall maintain records of criminal rifle and shotgun
43 traces initiated by the federal bureau of alcohol, tobacco, firearms and
44 explosives ("ATF"). All ATF Form 4473 transaction records shall be
45 retained on the dealer's business premises in a secure container
46 designed to prevent loss by fire, theft, or flood.

47 § 875-g. Internal compliance and certification. 1. Every dealer shall:

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

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

54 2. The superintendent shall promulgate regulations establishing peri-
55 odic inspections of not less than one inspection of every dealer every
56 three years, during regular and usual business hours, by the division of

1 state police of the premises of every dealer to determine compliance by
2 such dealer with the requirements of this article. Every dealer shall
3 provide the division of state police with full access to such dealer's
4 premises for such inspections.

5 § 875-h. Rules and regulations. The superintendent may promulgate such
6 additional rules and regulations as the superintendent shall deem neces-
7 sary to prevent firearms, rifles, and shotguns from being diverted from
8 the legal stream of commerce.

9 § 875-i. Violations. Any person, firm, or corporation who knowingly
10 violates any provision of this article shall be guilty of a class A
11 misdemeanor punishable as provided for in the penal law.

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

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

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

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

52 12. Records required of gunsmiths and dealers in firearms. ~~[Any]~~ In
53 addition to the requirements set forth in article thirty-nine-BB of the
54 general business law, any person licensed as gunsmith or dealer in
55 firearms shall keep a record book approved as to form, except in the
56 city of New York, by the superintendent of state police. In the record

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

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

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