

STATE OF NEW YORK

837--B

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 -- 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

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 here-
2 by finds and declares as follows:
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

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

LBD01985-07-2

1 youth, their particular mental health, or a protective order. Such illegal guns are often used to threaten, maim and kill New Yorkers.

2 2. There is a thriving underground market for illegal guns, which is
3 leading to shootings that are disproportionately impacting under-re-
4 sourced Black and brown communities. A highly efficient and continuous
5 business practice exists in which guns are moved from legal manufacture
6 and sale to prohibited purchasers, making them illegal guns. According
7 to a recent report of the New York state attorney general, 52,915 crime
8 guns were recovered by law enforcement in New York between 2010-2015
9 (Target on Trafficking, New York Crime Gun Analysis, October 2016, here-
10 inafter the "2016 AG Report"). Of these crime guns, 13,188 or 25% were
11 long guns. Outside New York City, long guns are sold without a permit.
12 The 2016 AG Report further found that 90% of the crime guns recovered
13 were recovered in seven distinct markets: New York City, the lower
14 Hudson Valley (including the cities of Yonkers, White Plains, Newburgh
15 and Poughkeepsie), the Capital Region (including Albany, Troy and Sche-
16 nectady), Syracuse, Rochester and Buffalo. Although 74% of the crime
17 guns recovered statewide were from out of state, a significant portion
18 of guns involved in crimes upstate originate within the state. For exam-
19 ple, according to the 2016 AG Report, 41% of crime guns in the Buffalo
20 area and 56% of crime guns in the Rochester area originated within New
21 York state.

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

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

46 5. Although most gun dealers operate their businesses legally and
47 responsibly, some gun dealers who are corrupt or maintain shoddy record-
48 keeping practices flood the streets with illegal guns as a result of
49 their unrestricted access to new gun inventory and the unwillingness of
50 gun manufacturers to terminate their supply to these rogue dealers.
51 Current federal and state regulation has not curbed the business prac-
52 tice of illegal gun dealers. According to a 2004 study by Americans for
53 Gun Safety, of the 120 worst gun dealers in the country, namely those
54 dealers with an average of 500 crime guns traced to them, 96 were still
55 in operation.

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

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

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

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

10 § 875-b. Reasonable measures to prevent unlawful sales and transfers
11 to individuals who are prohibited from purchasing or possessing
12 firearms, rifles, and shotguns. Every dealer shall adopt reasonable
13 measures to prevent firearms, rifles, and shotguns from being diverted
14 from the legal stream of commerce, intentionally or otherwise, for later
15 sale, transfer, or disposal to individuals not legally entitled to
16 purchase or possess such weapons. Such measures shall include, but need
17 not be limited to, programs to eliminate sales to straw purchasers and
18 to otherwise thwart illegal gun trafficking. The superintendent shall
19 develop programs designed to eliminate sales to straw purchasers and to
20 otherwise thwart illegal gun trafficking. Within six months of the
21 effective date of this article, the superintendent shall submit a report
22 to the legislature detailing such programs, including establishing mini-
23 mum requirements for such programs.

24 § 875-c. Security. 1. Every dealer shall implement a security plan
25 for securing firearms, rifles and shotguns, including firearms, rifles
26 and shotguns in shipment. The plan must satisfy at least the following
27 requirements:

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

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

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

38 2. (a) The permitted business location shall be secured by an alarm
39 system that is installed and maintained by an alarm company operator
40 properly licensed pursuant to state law. The alarm system must be moni-
41 tored by a central station listed by Underwriters Laboratories, Inc.,
42 and covered by an active Underwriters Laboratories, Inc. alarm system
43 certificate with a #3 extent of protection. The permitted business
44 shall be equipped with a video recording device at each point of sale
45 and entrance and exits to the premises, which shall be recorded from
46 both the indoor and outdoor vantage point and shall maintain such
47 recordings for a period of not less than two years.

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

1 § 875-d. Access to firearms, rifles, and shotguns. Every retail dealer
2 shall exclude all persons under eighteen years of age from those
3 portions of its premises where firearms, rifles, shotguns, or ammunition
4 are stocked or sold, unless such person is accompanied by a parent or
5 guardian.

6 § 875-e. Location of firearm, rifle, and shotgun sales. Every dealer
7 shall sell or otherwise dispose of firearms, rifles, and shotguns only
8 at the location listed on the dealer's federal firearms license or at
9 gun shows.

10 § 875-f. Employee training. 1. Every dealer shall annually provide
11 the training outlined by the superintendent pursuant to subdivision two
12 of this section to all new and current employees and other personnel
13 engaged in the retail sale of firearms, rifles, and shotguns. Dealers
14 shall keep a record of the completion of this training which may be
15 requested as part of the certification process outlined in paragraph (b)
16 of subdivision one of section eight hundred seventy-five-h of this arti-
17 cle.

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

21 (a) Federal and state laws governing firearm, rifle, and shotgun
22 transfers.

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

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

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

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

33 (f) Such other topics the superintendent deems necessary and appropri-
34 ate.

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

41 § 875-g. Maintenance of records. Every dealer shall establish and
42 maintain a book, or if the dealer should choose, electronic-based record
43 of such purchase, sale, inventory, and other records at the dealer's
44 place of business in such form and for such period as the superintendent
45 shall require, and shall submit a copy of such records to the New York
46 state police every April and October. Such records shall at a minimum
47 include the following:

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

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

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

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

14 § 875-h. Internal compliance and certification. 1. Every dealer shall:

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

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

23 2. The superintendent shall promulgate regulations establishing peri-
24 odic inspections of not less than one inspection of every dealer every
25 three years, during regular and usual business hours, by the division of
26 state police of the premises of every dealer to determine compliance by
27 such dealer with the requirements of this article. Every dealer shall
28 provide the division of state police with full access to such dealer's
29 premises for such inspections.

30 § 875-i. 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-j. 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 § 3. Subdivision 1 of section 400.00 of the penal law, as amended by
38 chapter 1 of the laws of 2013, paragraph (c) as amended by chapter 60 of
39 the laws of 2018, is amended to read as follows:

40 1. Eligibility. No license shall be issued or renewed pursuant to this
41 section except by the licensing officer, and then only after investi-
42 gation and finding that all statements in a proper application for a
43 license are true. No license shall be issued or renewed except for an
44 applicant (a) twenty-one years of age or older, provided, however, that
45 where such applicant has been honorably discharged from the United
46 States army, navy, marine corps, air force or coast guard, or the
47 national guard of the state of New York, no such age restriction shall
48 apply; (b) of good moral character; (c) who has not been convicted
49 anywhere of a felony or a serious offense or who is not the subject of
50 an outstanding warrant of arrest issued upon the alleged commission of a
51 felony or serious offense; (d) who is not a fugitive from justice; (e)
52 who is not an unlawful user of or addicted to any controlled substance
53 as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not
54 illegally or unlawfully in the United States or (ii) has not been admit-
55 ted to the United States under a nonimmigrant visa subject to the excep-
56 tion in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the

1 Armed Forces under dishonorable conditions; (h) who, having been a citi-
2 zen of the United States, has not renounced his or her citizenship; (i)
3 who has stated whether he or she has ever suffered any mental illness;
4 (j) who has not been involuntarily committed to a facility under the
5 jurisdiction of an office of the department of mental hygiene pursuant
6 to article nine or fifteen of the mental hygiene law, article seven
7 hundred thirty or section 330.20 of the criminal procedure law, section
8 four hundred two or five hundred eight of the correction law, section
9 322.2 or 353.4 of the family court act, or has not been civilly confined
10 in a secure treatment facility pursuant to article ten of the mental
11 hygiene law; (k) who has not had a license revoked or who is not under a
12 suspension or ineligibility order issued pursuant to the provisions of
13 section 530.14 of the criminal procedure law or section eight hundred
14 forty-two-a of the family court act; (l) in the county of Westchester,
15 who has successfully completed a firearms safety course and test as
16 evidenced by a certificate of completion issued in his or her name and
17 endorsed and affirmed under the penalties of perjury by a duly author-
18 ized instructor, except that: (i) persons who are honorably discharged
19 from the United States army, navy, marine corps or coast guard, or of
20 the national guard of the state of New York, and produce evidence of
21 official qualification in firearms during the term of service are not
22 required to have completed those hours of a firearms safety course
23 pertaining to the safe use, carrying, possession, maintenance and stor-
24 age of a firearm; and (ii) persons who were licensed to possess a pistol
25 or revolver prior to the effective date of this paragraph are not
26 required to have completed a firearms safety course and test; (m) who
27 has not had a guardian appointed for him or her pursuant to any
28 provision of state law, based on a determination that as a result of
29 marked subnormal intelligence, mental illness, incapacity, condition or
30 disease, he or she lacks the mental capacity to contract or manage his
31 or her own affairs; and (n) concerning whom no good cause exists for the
32 denial of the license. No person shall engage in the business of
33 gunsmith or dealer in firearms unless licensed pursuant to this section,
34 and no person shall engage in the business of dealer in firearms unless
35 such person complies with the provisions of article thirty-nine-BB of
36 the general business law. An applicant to engage in such business shall
37 also be a citizen of the United States, more than twenty-one years of
38 age and maintain a place of business in the city or county where the
39 license is issued. For such business, if the applicant is a firm or
40 partnership, each member thereof shall comply with all of the require-
41 ments set forth in this subdivision and if the applicant is a corpo-
42 ration, each officer thereof shall so comply.

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

47 11. License: revocation and suspension. (a) The conviction of a licen-
48 see anywhere of a felony or serious offense or a licensee at any time
49 becoming ineligible to obtain a license under this section shall operate
50 as a revocation of the license. A license may be revoked or suspended as
51 provided for in section 530.14 of the criminal procedure law or section
52 eight hundred forty-two-a of the family court act. Except for a license
53 issued pursuant to section 400.01 of this article, a license may be
54 revoked and cancelled at any time in the city of New York, and in the
55 counties of Nassau and Suffolk, by the licensing officer, and elsewhere
56 than in the city of New York by any judge or justice of a court of

record; a license issued pursuant to section 400.01 of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. A license to engage in the business of dealer may be revoked or suspended for any violation of the provisions of article thirty-nine-BB of the general business law. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality.

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

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

12. Records required of gunsmiths and dealers in firearms. ~~[Any]~~ In addition to the requirements set forth in article thirty-nine-BB of the general business law, any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as an exempt person pursuant to section 265.20 of this chapter and either (a) the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the licensee, or (b) thirty calendar days have elapsed since the date the licensee contacted NICS to initiate a national instant criminal background check and NICS has not notified the licensee that the transfer of the firearm to such person should be denied. In addition, before delivering a firearm to a peace officer, the licensee shall verify that person's status as a peace officer with the division of state police. After completing the foregoing, the licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department, unit or agency, in the case of an exempt person. The original transaction report shall be forwarded to the division of state police within ten days of delivering a firearm to any person, and a duplicate copy shall be kept by the licensee. The superintendent of state police may designate that

1 such record shall be completed and transmitted in electronic form. A
2 dealer may be granted a waiver from transmitting such records in elec-
3 tronic form if the superintendent determines that such dealer is incapa-
4 ble of such transmission due to technological limitations that are not
5 reasonably within the control of the dealer, or other exceptional
6 circumstances demonstrated by the dealer, pursuant to a process estab-
7 lished in regulation, and at the discretion of the superintendent.
8 Records assembled or collected for purposes of inclusion in the database
9 created pursuant to section 400.02 of this article shall not be subject
10 to disclosure pursuant to article six of the public officers law. The
11 record book shall be maintained on the premises mentioned and described
12 in the license and shall be open at all reasonable hours for inspection
13 by any peace officer, acting pursuant to his special duties, or police
14 officer. In the event of cancellation or revocation of the license for
15 gunsmith or dealer in firearms, or discontinuance of business by a
16 licensee, such record book shall be immediately surrendered to the
17 licensing officer in the city of New York, and in the counties of Nassau
18 and Suffolk, and elsewhere in the state to the executive department,
19 division of state police.

20 § 5. Severability. If any clause, sentence, paragraph, section or part
21 of this act shall be adjudged by any court of competent jurisdiction to
22 be invalid, such judgment shall not affect, impair or invalidate the
23 remainder thereof, but shall be confined in its operation to the clause,
24 sentence, paragraph, section or part thereof directly involved in the
25 controversy in which such judgment shall have been rendered.

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