



Legislation Text

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Int. No. 364

By The Speaker (Council Member Quinn) and Council Members Vallone Jr., Brewer, Clarke, Comrie, Felder, Fidler, Gonzalez, James, Koppell, Liu, Mark-Viverito, Martinez, Monserrate, Nelson, Palma, Recchia Jr., Sears, Stewart, Vann, Weprin, Mealy, Garodnick, McMahon, Gioia, Gennaro, Dilan, Foster, Jackson, Yassky, Katz, Gentile, Oddo and The Public Advocate (Ms. Gotbaum) (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to multiple purchases of firearms and the prevention of firearms trafficking.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. In local law number 9 for the year 2005, the Council addressed the problem of the diversion of rifles and shotguns to the illegal gun marketplace. The Council finds that the provisions of this local law must be strengthened and extended to address the problem of the proliferation of illegal handguns.

The illegal possession of handguns - by felons, juveniles, drug addicts, people subject to restraining orders for domestic violence, and others not legally entitled to possess handguns - is a deadly and ongoing threat to the people of New York City. The city, state, and federal government maintain extensive statutes and licensing schemes to prevent such people from acquiring handguns. Nonetheless, networks of illegal gun traffickers supply handguns to at a large profit to people who should not have them.

Approximately twenty percent of the city's robberies and the majority of its murders involve guns. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) traced 8,437 guns used in crime in New York City from August 1997 to July 1998. Of those guns, 278 were used in homicides and 618 were used by juveniles.

Although traffickers can obtain guns in many ways, they are often able to simply buy them from

federally licensed retailers. Rather than buy guns in their own names, illegal traffickers usually rely on “straw purchases,” i.e., having someone else purchase guns on their behalf. One ATF study concluded that more than half of the guns identified in urban trafficking investigations that involved juveniles had been trafficked by straw purchasers or straw purchasing rings.

ATF has found that purchases of multiple handguns at the same time are a strong indicator of straw purchases and, therefore, of illegal handgun trafficking. A loophole in existing federal and New York state law allows a purchaser, once approved, to buy as many guns at a time as he or she likes. Having a straw purchaser buy more than one handgun at a time allows traffickers to work quickly, efficiently, and without involving more criminal confederates than necessary.

Due to the importance in illegal gun sales of multiple purchases by straw purchasers, limiting or prohibiting multiple sales by licensed dealers inhibits gun crime and illegal gun trafficking. After South Carolina and Virginia enacted one-handgun-per-month laws, their significance as suppliers of crime guns to Northeastern states diminished sharply. In the year after Maryland passed a similar law, it experienced a fourteen percent drop in homicides. Moreover, the number of crime guns seized in the adjacent District of Columbia that had first been bought at retail in Maryland dropped from twenty to zero.

In order to fight illegal handgun trafficking and therefore the supply of handguns to people who, under existing law, should not have handguns, the city must limit multiple and closely consecutive purchases of handguns. Doing so will not only save lives, but will also reinforce the city’s position as a national leader against gun crime.

§2. Section 10-301 of the administrative code of the city of New York is amended by adding a new subdivision 20 to read as follows:

20. “Acquire.” To gain possession of or title to a weapon through purchase, gift, lease, loan, or otherwise.

§3. Section 10-302.1 of the administrative code of the city of New York, as added by local law

number 9 for the year 2005, is amended to read as follows:

§10-302.1 Preventing the diversion of firearms, rifles and shotguns to criminals. a. No dealer in firearms and no dealer in rifles and shotguns shall: (i) sell or otherwise dispose of more than one firearm or more than one rifle or shotgun to any individual as part of the same sales transaction; or (ii) sell or otherwise dispose of a rifle or shotgun to any individual if the dealer knows or should know that such individual has purchased a [firearm,] rifle or shotgun within the prior ninety days, or (iii) sell or otherwise dispose of a firearm to any individual if the dealer knows or should know that such individual has purchased a firearm within the prior ninety days.

b. No person shall acquire a firearm if such person has acquired a firearm within the previous ninety days. No person shall acquire a rifle or shotgun if such person has acquired a rifle or shotgun within the previous ninety days. For purposes of this subdivision when a firearm, rifle or shotgun is acquired by a corporation, partnership, or other entity, it shall be considered to have been acquired by each natural person who is an officer, director or other principal of such entity, unless the firearm, rifle or shotgun is acquired on behalf of such entity by a person who is licensed by the commissioner as gun custodian or special gun custodian, or acquired on behalf of an organization possessing an organization registration certificate, as those terms are used in title thirty-eight of the rules of the city of New York.

c. Before disposing of any firearm, rifle or shotgun to a person licensed by the commissioner to possess firearms, rifles or shotguns, any dealer in firearms, dealer in rifles and shotguns or other person shall contact the police department to ensure compliance with the requirements of this section.

d. Any dealer in firearms, dealer in rifles and shotguns or other person who disposes of any firearm, rifle or shotgun to a person licensed by an authority other than the commissioner to possess firearms, rifles or shotguns shall make reasonable efforts to contact such licensing authority and to ascertain the most recent date of acquisition by such licensee of a firearm, in the case of disposition of a firearm, or of a rifle or shotgun, in the case of disposition of a rifle or shotgun.

e. Any dealer in firearms or dealer in rifles or shotguns who disposes of any firearm, rifle or shotgun shall, before or at the time of disposing of such firearm, rifle or shotgun, record, in the record book required to be kept by subdivision n of section 10-302, the efforts made by such dealer to ensure compliance with the requirements of this section, any exception or exemption set forth in this section that such dealer reasonably believes would authorize the disposal of such firearm, rifle or shotgun, and the grounds for such dealer's belief that such exception or exemption applies.

f. Exceptions. The provisions of this section shall not apply to the sale of firearms, rifles or shotguns to (i) a police officer, as such term is defined in section 1.20 of the criminal procedure law, [or to] (ii) a federal law enforcement officer, as such term is defined in section 2.15 of the criminal procedure law, [or to] (iii) a public agency in furtherance of official business, (iv) persons in the military service of the state of New York, when duly authorized by regulations issued by the adjutant general to possess such weapons, (v) persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess such weapons, (vi) persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of such weapons is necessary for manufacture, transport, installation and testing under the requirements of such contract, (vii) peace officers as defined in section 2.10 of the criminal procedure law, provided that such peace officers are authorized pursuant to law or regulation of the state or city of New York to possess a firearm, rifle or shotgun within the city of New York without a license or permit therefor, and are authorized by their employer to possess such firearm, rifle or shotgun, (viii) persons licensed as dealers, manufacturers or importers of firearms pursuant to chapter 44 of title 18 of the United States Code, (ix) any motion picture, television or video production company or entertainment or theatrical company whose production involves the use of firearms, rifles or shotguns, provided that such weapons shall be properly registered and a special theatrical permit shall have been issued for such weapons pursuant to rules established by the commissioner, (x) with respect to the sale of firearms only, persons licensed by the commissioner as gun custodians or special gun custodians, as those terms are used in title thirty-eight of

the rules of the city of New York, and (xi) with respect to the sale of rifles and shotguns only, organizations possessing an organization registration certificate, as that term is used in title thirty-eight of the rules of the city of New York.

g. Exempt transactions. The requirements of this section shall not apply to: (i) any transaction in which a person acquires a firearm, rifle or shotgun by operation of law, or because of the death of another person for whom such person is an executor or administrator of an estate or a trustee of a trust created in a will, provided that within fifteen days such person surrenders such firearm, rifle or shotgun to the commissioner until it can be reacquired without violation of this section or other applicable law. If a firearm, rifle or shotgun is surrendered pursuant to this subdivision but no written request to reacquire it is received by the commissioner within two years of such surrender, the commissioner shall dispose of such firearm in accordance with the provisions of section 400.05 of the penal law;

(ii) the exchange of a firearm, rifle or shotgun by a dealer in firearms or a dealer in rifles and shotguns for another firearm, rifle or shotgun previously purchased from such dealer by the person requesting such exchange, provided that such exchange takes place within thirty days of such request;

(iii) the acquisition or disposal of an antique firearm, rifle or shotgun which is incapable of being fired or discharged or which does not fire fixed ammunition, or a firearm, rifle or shotgun manufactured prior to eighteen hundred ninety-four or whose design was patented and whose commercial manufacture commenced prior to eighteen hundred ninety-four and whose manufacture continued after such year without any substantial alteration in design or function, and for which cartridge ammunition is not commercially available and is possessed as a curiosity or ornament or for its historical significance and value;

(iv) the acquisition or disposal of a firearm at an indoor or outdoor pistol range when such acquisition or disposal begins a period of possession or use of the firearm that is authorized by paragraphs 7-a, 7-b, or 7-e of subdivision a of section 265.20 of the penal law;

(v) the sale of a firearm by a dealer in firearms to a person whose firearm is stolen or

irretrievably lost, provided that: (1) such person has complied with any legal requirement to report the loss or theft, including but not limited to the applicable provisions of title thirty-eight of the rules of the city of New York and section 400.10 of the penal law;

(2) such person provides to such dealer a copy of a police report of the loss or theft or of any report made pursuant to the applicable provisions of title thirty-eight of the rules of the city of New York and section 400.10 of the penal law, which copy the dealer shall attach to the record book required to be kept by subdivision n of section 10-302;

(3) the copy provided pursuant to subparagraph two of this paragraph contains the name and address of the regulated firearm owner, a description of the regulated firearm, the location of the loss or theft, if known, the date of the loss or theft, if known, and the date when the loss or theft was reported to the law enforcement agency; and

(4) such person's attempt to replace the regulated firearm occurs within thirty days of the loss or theft of such firearm, if known, or, if such date is not known, within thirty days of the date when the loss or theft was reported to the law enforcement agency, as reflected by the information recorded on the police report; and

(vi) any other transaction authorized in advance in writing by the commissioner.

h. Penalties. (i) In addition to the penalties specified in section 10-310, any act or omission that constitutes or would constitute a violation of this section or of rules and regulations issued by the commissioner pursuant thereto shall be grounds for the revocation of a license to deal in firearms, deal in rifles and shotguns, possess firearms, or possess a rifle or shotgun.

(ii) Any firearm disposed of or acquired in violation of this section shall be a nuisance subject to surrender and forfeiture in accordance with the procedures specified in section 400.05 of the penal law.

i. The commissioner may make and promulgate such rules and regulations as are necessary to

carry out the provisions of this section. Such rules and regulations may address, but need not be limited to:

- (i) procedures for implementation of this section by the commissioner;
- (ii) establishment of a database of firearm, rifle and shotgun purchases for the purpose of enforcing the requirements of this chapter; and
- (iii) the specification of reasonable efforts required to comply with subdivision d of this section.

§4. Section 10-310 of the administrative code of the city of New York, as amended by local law number 78 for the year 1991, is amended to read as follows:

§10-310 Violation. Except as is otherwise provided in sections 10-302 and 10-303.1, violation of sections 10-301 through 10-309 and of rules and regulations issued by the commissioner pursuant thereto shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year or both, provided that the first violation of such sections involving possession of an unregistered rifle or shotgun or rifle or shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition shall be an offense punishable by a fine of not more than three hundred dollars or imprisonment of not more than fifteen days, or both on condition that (a) the first violation of possession of an unregistered rifle and shotgun or rifle and shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition is not in conjunction with the commission of a crime and (b) the possessor has not been previously convicted of a felony or a serious offense and (c) the possessor has not previously applied for and been denied a permit for such possession.

§5. Subdivision b of section 10-311 of the administrative code of the city of New York, as amended by local law number 65 for the year 1999, is amended to read as follows:

b. It shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any weapon in the city of New York unless it is accompanied by the following warning, which shall

appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the weapon and on a separate sheet of paper included within the packaging enclosing the weapon: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS. NEW YORK CITY LAW PROHIBITS, WITH CERTAIN EXCEPTIONS, ANY PERSON FROM ACQUIRING MORE THAN ONE FIREARM, OR MORE THAN ONE RIFLE OR SHOTGUN, WITHIN A 90-DAY PERIOD."

§6. Severability. If any provision of this local law is for any reason found to be invalid, in whole or in part, by any court of competent jurisdiction, such finding shall not affect the validity of all remaining provisions of this local law, which shall continue in full force and effect.

§7. This local law shall take effect 120 days following its enactment into law, provided that, prior to such effective date, the police commissioner shall promulgate such rules and take such other actions as are necessary to its timely implementation.