

# Shooters Committee on Political Education

## Position Paper



A 3280 Paulin  
A 3364 Kavanagh

Same as S 41 Peralta  
Same as S 574 Gianaris

**Provides for the imposition of restrictive business practices and additional record keeping on firearms dealers**

### PURPOSE

---

In an effort to reduce illegal trafficking in firearms, the proposed legislation would impose extensive new requirements on dealers for the storage, display, and sale of firearms. In addition, the state police would be given the power to issue additional requirements without legislative approval. New business practices would be mandated for staffing, training, and record keeping. It is the contention of the sponsors that there exist such poor business practices or intentional evasion of the law by “rogue dealers” as to constitute a threat to the public

### POSITION

---

SCOPE strongly opposes these proposals. There is no justification for their implementation. New York’s handgun licensing laws virtually eliminate “straw man” purchases of handguns, usually the primary concern when addressing diversion. There is absolutely no evidence that any of the requirements mandated by this proposal would have any impact on the availability of weapons to ineligible individuals or the trafficking in illegal weapons. With the current level of regulation, the term “rogue dealer” is a fiction in this state.

If the real purpose of the proposed legislation is to reduce trafficking in illegal guns and make it more difficult for criminals to obtain firearms, rifles, and shotguns from legitimate dealers, these bills are focused on the wrong part of the supply chain. This is clearly a situation where the sponsors of the legislation have no real understanding of the firearms business or of the regulatory practices already in place at both the state and federal levels.

The result is an example of the pointless creation of costs, the imposition of “annoyance mandates,” and the fabrication of bureaucratic overhead with no comprehensible relationship to achieving a legitimate state objective. This legislation has the potential for imposing huge costs on dealers, and ultimately consumers, while providing no discernible benefit. It appears to be designed for the purpose of shutting down gun dealers.

#### **Many of the requirements duplicate existing practices.**

Many of the “new” mandates are redundant with existing state and federal law or long established industry practices. This proposal would duplicate existing Federal procedural and record-keeping requirements and would impose restrictions with no demonstrable potential for preventing harm or injury that would substantiate a legitimate State interest. Some of these appear designed solely to require costly duplication by imposing a slightly different form or report.

All of the information specified in the proposal (and then some) is included either in the dealer's file of completed Firearms Transaction Record forms (ATF Form 4473) or ATFE "bound book."<sup>1</sup> Form 4473 must be retained for 20 years, and the bound book for the life of the business and surrendered to the ATFE if the dealer's license is surrendered. The requirements of this section are completely redundant with the requirements of federal law.

**Nothing in this proposal addresses the illegal underground market, the primary source of crime guns.**

Nothing in this proposal addresses the illegal underground market, the primary source of crime guns. Even the Attorney General's election platform included a statement that over 90% of the recovered firearms used in criminal activity were sourced from the other states. The majority of the remainder were stolen.

**The proposed legislation creates obstructions to the lawful operation of gun dealers and presents pointless obstacles to their customers.**

The proposed legislation would require that all firearms, rifles, and shotguns be kept in locked cases and only removed singly for customer examination. Outside of business hours, all firearms, rifles, and shotguns are to be kept in a vault. Ammunition would be stored separately and made inaccessible to customers. This proposal presumes that dealers currently have no regard for the security of their inventory and no concern for their own or their customers' safety.

**Adds nothing to the safeguards against the transfer to ineligible persons.**

This legislation is purportedly directed at developing measures to prevent sales and transfers to criminals. The transfer of handguns is already tightly restricted by the licensing system making the so-called "straw purchase" of handguns virtually unknown in New York. Thus, this is presumably directed at the transfer of rifles and shotguns through straw purchases.

As sales of this type have been the target of both public advertising and dealer-directed training programs developed by the Bureau of Alcohol, Firearms, and Explosives (ATFE) and the National Shooting Sports Foundation (NSSF) since 2000, this seems redundant. A straw purchase is already a felony under the Gun Control Act of 1968<sup>2</sup>. This proposal adds nothing of substance to existing efforts.

**Allegations of vast numbers of "missing guns" are patently false.**

It has been contended by the sponsors that ATFE examinations of dealers have uncovered thousands of "missing" firearms, rifles, and shotguns. In fact, the vast majority of these have been determined to be record-keeping errors. It must be remembered that until a few years ago, the federal regulations required handwritten records. Now that ATFE approved automated systems are available and are being installed, errors have been significantly reduced.

In comparison, a 2001 audit of the Federal Bureau of Investigation disclosed that 449 of the agency's 50,000 firearms had either been lost or stolen, including fully automatic weapons.<sup>3</sup> A dealer with this level of shrinkage would be bankrupt and out of business in a very short time without any regulatory action required.

<sup>1</sup> 27 C.F.R. 478.121 and 478.125

<sup>2</sup> 18 U.S.C. § 922(a)(6)

<sup>3</sup> FoxNews.Com (07/18/2001) *Senate Blasts FBI Loss of Computers, Weapons*

**Contrary to the sponsors' statement, the state will incur new costs.**

The sponsors purport that state and local governments will realize substantial savings due to anticipated reductions in firearms related crime. Since this proposal would have no effect on the criminal classes, it would, in fact, increase state expenses due to the establishment of redundant regulatory functions with no offsetting benefits.

**A3364/S574 requires dealers to obtain insurance that does not exist.**

Insurance products are designed under certain elemental principles one of which is that it is intended to cover losses due to unexpected events, not damage due to intentional behavior. Thus, no insurance underwriter is going to provide coverage for willful or illegal acts. Nor will they provide coverage for the actions of unrelated third parties. If the legislature were to mandate such coverage, the state would either have to convince insurers to offer such coverage or go into the business itself.

**Dealers are already required to provide information to law enforcement for investigative or regulatory compliance purposes.**

This section also includes a requirement that dealers assist law enforcement. Any dealer, regardless of legal requirements is going to assist law enforcement with legitimate investigative needs. It is not, however, the function of dealers to perform data analysis and trend tracking. They do not even have access to the information required for a meaningful analysis. Such an analysis is an ATFE function.

The requirement to report trace information to the manufacturer is completely superfluous, as the manufacturer is where the ATFE trace process starts. When a trace is requested by a law enforcement agency, the ATFE contacts the manufacturer to determine the distributor or dealer to whom the firearm was shipped.

**A3364/S574 would establish a whole new licensing system for handgun and ammunition dealers.**

This proposal would set up a completely new licensing system in the Division of Criminal Justice Services for licensing dealers in handguns and/or ammunition. Businesses dealing solely in rifles and shotguns would not require this new license. This is on top of the existing licensing system, administered by the counties, which is not repealed and would presumably remain in effect.

We do not see any purpose to this system as it is completely redundant with respect to handgun dealers and thus satisfies no additional regulatory requirement. Small rural retailers that sell small quantities of ammunition to local farmers and hunters would probably be forced to stop stacking ammunition – an inconvenience to local residents and no crimes prevented.