

Williamson Conservation and Sporting Club
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A concerned WCSC members Analysis of NY legislation: A3855 and S5763

A very comprehensive analysis of New York State's proposed legislation: Assembly Bill A3855 and its Senate equivalent S5763 was written by a concerned Williamson Conservation and Sporting Club member.

Don Smith, our SCOPE representative said that he has done a great job spelling out the need for gun owners to be concerned about the legislation coming out of Albany. Most believe these laws do not affect them and ignore them as well as the responsibility to vote to protect their rights.

Here is WCSC member's analysis:

First, let me say that my following remarks and concerns are my opinions and not based on any legal expertise. I could easily be wrong or incomplete about any of these topics. Nevertheless, I think these bills raise considerable concerns regarding the acquisition or acquiring or purchasing rifles or shotguns in New York State.

Some links:

[NY State Senate Bill 2023-S5763 \(nysenate.gov\)](https://nysenate.gov/legislation/bills/2023/S5763); [Find My Senator: NYSenate.gov](https://nysenate.gov/legislation/senators);

[Assembly Member Search: New York State Assembly \(nyassembly.gov\)](https://nyassembly.gov/members);

[https://nyassembly.gov/mem/search: 21 U.S. Code § 802 – Definitions: U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.uscode.gov/cfr/title-21/chapter-I/subchapter-B/part-802);

[Mental Illness - National Institute of Mental Health \(NIMH\) \(nih.gov\)](https://www.nimh.nih.gov/health/topics/mental-illness/)

Note that Senate Bill 5763 and Assembly Bill 3855 are the same wording.

The way I understand New York Gun laws, as of now, there is no requirement for a license or permit for a rifle or a shotgun other than submitting ATF form 4473 (Except for NYS's "Assault" weapon registration). This impending legislation would create the requirement for a license for the purchase of rifles and shotguns.

Here are some of the eligibilities for this license:

1. Be 21 years old or have honorably discharged from the US Military, be of good moral character (definition is included in the Bill text), not been convicted of a felony or serious offense (serious offense not defined), not the subject of an outstanding warrant, not a fugitive from justice, not an unlawful user of or addicted to controlled substance (as defined in section 21 U.S.C. 802) and has provided notarized proof of a passed drug test by a licensed physician.

Comment: What does a "passed" drug test mean? Does it mean only illegal drugs (Schedule 1 controlled substances) or does it mean the presence of any psychotropic medication or opioid pain medications lawfully prescribed? How about marijuana? Legal in NYS but illegal at the federal level.

According to the American Psychological Association at least one in ten Americans are prescribed psychotropic medications. Another 10% or so use opioid pain medications. Could these people lose their 2nd amendment rights?

And who would pay for these tests? Assuming your doctor would agree to doing the tests, your insurance may or not pay for it - I am not sure. And, importantly, what happens to the results of the test? It will be reviewed by the "issuing Law department officials" but then does it go into some sort of database? Is it available to other agencies and can it be used for other purposes? The impending legislation is mute on this issue.

2. "Who has stated he or she has ever suffered any mental illness and provided notarized proof of a passed mental health evaluation by a licensed physician."

Comment: *See the information provided by NIH in the above link. About 1 in 5 Americans have some sort of mental illness. But not all mental illnesses are alike. There is a huge difference between having a phobia or anxiety disorder that doesn't significantly impact your daily life as opposed to a major diagnosis such as schizophrenia. and again, who would pay for this evaluation? Also, as above, what happens to the results of this evaluation?*

3. You must complete a firearms safety course by a duly authorized instructor unless you have been honorably discharged from the military and produce evidence of official qualification in firearms during the term of service.

Comment: *Completing a firearms safety course doesn't sound unreasonable but, on the other hand, who among us, who are veterans could produce evidence of your firearms training in the military? My only experience in my 4 years in the Navy with firearms was shooting one mag out of a 1911 at a target. I don't think that record exists anyplace.*

4. Names and contact information of 4-character references who can attest to the applicant's good moral character.

Comment: *In my opinion an unnecessary impediment and it is unclear if you must do this each time you buy another rifle or shotgun.*

5. Provide a list of former and current social media accounts of the applicant from the past 3 years to confirm the applicant's character and conduct.

Comment: *An obvious invasion of privacy and who is to judge someone's "character" by what they watch online? I believe this may have already been rendered unconstitutional in other attempts. This also seems to imply that there is a relationship between what a person watches in social media and their conduct. It looks like there is a ton of research in this area but the conclusions seem to be inconclusive and more research needs to be done.*

6. A person who has successfully completed live firing instruction and a test with at least 90% accuracy at a shooting range using the type of firearm he or she anticipates purchasing, possessing or acquiring.

Comment: Since you won't have the firearm you want yet, this requirement would force you to borrow the type of firearm you are going to buy. This might be workable if you belong to gun club but may be difficult if you don't. And if you live in the New York City metropolitan area, good luck. And what is 90% accuracy? What if you are learning to shoot clays? That seems like a high skill level to me. Also what is considered 90% accuracy in target shooting? 9 out of 10 bullseyes? A certain score on an official target? It doesn't say.

7. Describes safe storage of the firearm.

Comment: I believe this law is already on the books so I won't comment on it except to say that one could argue that this decreases the ability for self protection. Also, the bill says, "a receipt of such purchase of a storage unit is necessary". I suppose that since new rifles or shotguns are sold with a trigger lock this isn't an issue - unless you buy used or from an individual.

8. Prior to the purchase of any rifle or shotgun, a person shall apply for a HUNTING LICENSE pursuant to Article Eleven of the environmental conservation law.

Comment: This just seems strange. What about people who don't hunt but enjoy competitive target shooting, clays or recreational target shooting? To get a NYS hunting license you have to take the hunting qualification course but probably the firearms safety course would suffice for that. A NYS hunting license costs \$22 annually and would be a waste of money for some. NYS hunting licenses are good from August 31st to September 1st. Does that mean that you have to renew your hunting license to satisfy the terms of this bill? It is unclear.

9. The records of the appropriate office of the Department/Office of Mental Hygiene (OMH) concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority.

Comment: I am not sure but it looks like OMH will only release the records with the issue of a subpoena or warrant. Who knows how long this would take? Granted that most people have never been served by OMH but of those that have does that mean they are eliminated from their purchase of a rifle or shotgun.? Does the investigating officer have the expertise to make that decision?

10. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is made.

Two copies of such fingerprints shall be taken on standard fingerprint cards, eight inches square, and one copy may be taken on a card supplied for that purpose by the Federal Bureau of Investigation. When completed, one standard card shall be forwarded to and retained by the Division of Criminal Justice services in the Executive Department in Albany.

A search of the files of such division and written notification of the results of the search to the investigating officer shall be made without unnecessary delay. Thereafter, such division shall notify the issuing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files.

A second standard card, or the one supplied by the Federal Bureau of Investigation, as the case may be, shall be forwarded to that bureau in Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority.

Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police in Albany within ten days after issuance of the license, and the other remain on file with the investigating police authority.

No such fingerprints may be inspected by any person other than a peace officer who is acting pursuant to his special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate.

Upon completion of the investigation, the police authority shall report the results to the issuing officer without unnecessary delay.

Comment: So, your background will have to be searched by the local police and the FBI to ascertain any criminal record. You will have to be fingerprinted. I assume this isn't a free service and, again, how long will this take? Even the ATF form 4473 doesn't require this and 4473 does provide for a criminal background check. I assume you will still need to fill out this form.

One last comment: If you fail any of these sections and you have other firearms, are they in jeopardy for confiscation?

I think I have covered most of the relevant parts of this proposal. I do realize that these bills are still in the committee process and really may never survive in the current form. And almost certainly wouldn't survive a constitutional challenge. Still, I feel it is important that those of us who use arms for legitimate purposes to be kept current with the latest potential governmental encroachments on the 2nd amendment.

Submitted by a Concerned WCSC member.