S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. PERALTA, BRESLIN, DIAZ, ESPAILLAT, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, RIVERA, SERRANO, SQUADRON, STAVISKY -- 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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to requiring semiautomatic pistols manufactured or delivered to any licensed dealer in this state to be capable of microstamping ammunition

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "crime gun identification act of 2012".

S 2. Legislative findings and intent. The legislature finds that in 2005, the national clearance rate for homicide cases was approximately 60% and over 3,000 gun homicide cases went unsolved; that in approximately half of gun homicide investigations a spent cartridge casing, but not a firearm, is recovered at the crime scene; that currently deployed national ballistic identification systems cannot identify the serial number of a gun unless the gun itself has been recovered; that firearm microstamping is a revolutionary forensic technology that produces an identifiable alpha-numeric and geometric code onto the rear of the cartridge casing each time a semiautomatic pistol is fired; that the alpha-numeric and geometric code on an expended cartridge casing will provide an initial lead for law enforcement by enabling law enforcement to match the cartridge casing found at a crime to the original owner of the firearm; that information from completed crime gun tracing is an important element utilized by COMPSTAT and other crime analysis systems

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

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to target illegal firearms trafficking; that microstamping technology continues to produce identifiable markings onto expended cartridge casings even after thousands of rounds of testing; that this additional tool will help law enforcement investigate illegal gun trafficking, close firearm-related criminal cases and protect the public; and that legislative action is necessary to require all new semiautomatic pistols sold after January 1, 2014 to be microstamp-ready.

S 3. Section 265.00 of the penal law is amended by adding two new subdivisions 24 and 25 to read as follows:

24. "MICROSTAMP-READY", WHEN USED WITH REFERENCE TO A SEMIAUTOMATIC PISTOL, MEANS THAT SUCH PISTOL IS MANUFACTURED TO PRODUCE A UNIQUE ALPHA-NUMERIC OR GEOMETRIC CODE ON AT LEAST TWO LOCATIONS ON EACH EXPENDED CARTRIDGE CASE THAT IDENTIFIES THE MAKE, MODEL AND SERIAL NUMBER OF THE PISTOL.

25. "MICROSTAMPING COMPONENT OR MECHANISM", WHEN USED WITH REFERENCE TO A SEMIAUTOMATIC PISTOL, MEANS A COMPONENT OR MECHANISM OF SUCH PISTOL DESIGNED AND INTENDED TO PRODUCE A UNIQUE ALPHA-NUMERIC OR GEOMETRIC CODE ON AN EXPENDED CARTRIDGE THAT IDENTIFIES THE MAKE, MODEL AND SERIAL NUMBER OF THE PISTOL.

S 4. Subdivision 6 of section 265.10 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

6. (A) Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm, INCLUDING DEFACING A MICROSTAMPING COMPONENT OR MECHANISM OF A SEMIAUTOMATIC PISTOL, is guilty of a class D felony.

(B) ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00 OF THIS CHAPTER WHO SELLS, OFFERS FOR SALE, EXCHANGES, GIVES, TRANSFERS OR DELIVERS A SEMIAUTOMATIC PISTOL, KNOWING THAT A MICROSTAMPING COMPONENT OR MECHANISM OF SUCH PISTOL HAS BEEN DEFACED, IS GUILTY OF A CLASS A MISDEMEANOR.

FOR PURPOSES OF THIS SUBDIVISION, DEFACING A SEMIAUTOMATIC PISTOL DOES NOT INCLUDE (1) MODIFYING A SEMIAUTOMATIC PISTOL TO RENDER IT MICROSTAMP-READY, OR (2) REPLACING THE FIRING PIN OF A SEMIAUTOMATIC PISTOL THAT IS MICROSTAMP-READY WHEN SUCH PIN IS DAMAGED OR IN NEED OF REPLACEMENT FOR THE SAFE USE OF SUCH PISTOL OR REPLACING SUCH PIN FOR A LEGITIMATE SPORTING PURPOSE.

S 5. The penal law is amended by adding two new sections 265.38 and 265.39 to read as follows:

S 265.38 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; PENALTIES.

IT SHALL BE UNLAWFUL:

1. FOR ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00 OF THIS CHAPTER, TO SELL, OFFER FOR SALE, EXCHANGE, GIVE, TRANSFER OR DELIVER A SEMIAUTOMATIC PISTOL MANUFACTURED ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN TO ANY PERSON OTHER THAN A DEALER IN FIREARMS, UNLESS SUCH PISTOL IS MICROSTAMP-READY; OR

2. FOR ANY MANUFACTURER OR WHOLESALE DEALER TO DELIVER OR CAUSE TO BE DELIVERED TO ANY PERSON IN THIS STATE, A SEMIAUTOMATIC PISTOL MANUFACTURED AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, UNLESS THE MANUFACTURER CERTIFIES TO SUCH PERSON AT THE TIME OF SUCH DELIVERY, IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE, THAT SUCH PISTOL IS MICROSTAMP-READY. SUCH RULES AND REGULATIONS SHALL INCLUDE A REQUIREMENT THAT, AS PART OF THE CERTIFICATION, THE MANUFACTURER SHALL PROVIDE THE MAKE, MODEL AND SERIAL NUMBER OF THE PISTOL.

A VIOLATION OF ANY PROVISION OF THIS SECTION IS A CLASS B MISDEMEANOR; PROVIDED, HOWEVER, THAT A PERSON, INCLUDING A DEALER IN FIREARMS, WHOLESALE DEALER OR A MANUFACTURER, WHO VIOLATES ANY PROVISION OF THIS

SECTION AFTER HAVING PREVIOUSLY BEEN CONVICTED OF VIOLATING ANY PROVISION OF THIS SECTION IS GUILTY OF A CLASS A MISDEMEANOR.

S 265.39 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; AFFIRMATIVE DEFENSE.

IN ANY PROSECUTION UNDER SUBDIVISION ONE OF SECTION 265.38 OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEALER IN FIREARMS, AT THE TIME OF SALE, OFFER FOR SALE, EXCHANGE, GIVING, TRANSFER OR DELIVERY OF THE SEMIAUTOMATIC PISTOL, WAS IN POSSESSION OF:

1. A CERTIFICATION FROM THE MANUFACTURER OF SUCH PISTOL DELIVERED PURSUANT TO SUBDIVISION TWO OF SECTION 265.38 OF THIS ARTICLE, THAT SUCH PISTOL IS MICROSTAMP-READY; OR

2. AN EXACT COPY OF SUCH CERTIFICATION OBTAINED BY THE DEALER IN FIREARMS FROM SUCH MANUFACTURER IN ACCORDANCE WITH APPLICABLE RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE.

THE DIVISION OF STATE POLICE SHALL PROMULGATE RULES AND REGULATIONS GOVERNING PROCEDURES AND STANDARDS FOR EXACT COPIES OF CERTIFICATIONS AND THE OBTAINING OF SUCH COPIES BY A DEALER IN FIREARMS FROM A MANUFACTURER FOR PURPOSES OF THIS SECTION.

S 6. Subdivision 5 of section 265.15 of the penal law, as amended by chapter 695 of the laws of 1987, is amended to read as follows:

5. The possession by any person of a defaced machine-gun, firearm, rifle or shotgun is presumptive evidence that such person defaced the same; PROVIDED, HOWEVER, THAT THIS SUBDIVISION SHALL NOT APPLY TO THE POSSESSION OF A SEMI-AUTOMATIC PISTOL WHERE THE DEFACEMENT ALLEGED CONSISTS OF DEFACING A MICROSTAMPING COMPONENT OR MECHANISM OF SUCH PISTOL.

S 7. This act shall take effect January 1, 2014, or at such time that the superintendent of the state police has received written notice from one or more microstamp job shops that such shop or shops are willing and prepared to produce microstamp structures on two internal surfaces of a semiautomatic pistol in accordance with subdivision 24 of section 265.00 of the penal law, as added by section three of this act, for a price of twelve dollars or less at a production level of one thousand semiautomatic pistols per batch, whichever occurs later; provided that the division of state police shall notify the legislative bill drafting commission upon the occurrence of the receipt of the written notice provided for in this section in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of this act, and provided further, that effective immediately the superintendent of the state police shall promulgate rules and regulations necessary for the implementation of this act.