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I N   A S S E M B L Y

February 4, 2010

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Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to banning the sale, possession or use of 50-caliber weapons

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 that 50-caliber or larger weapons having the  
3 capacity for rapidly discharging ammunition have no acceptable purpose.  
4 The legislature additionally finds and declares that such weapons pose  
5 such an imminent threat and danger to the safety and security of the  
6 people of this state that it is necessary to ban the possession and use  
7 of such weapons.

8     S 2. Subdivisions 8 and 9 of section 265.00 of the penal law, as  
9 amended by chapter 189 of the laws of 2000, are amended to read as  
10 follows:

11     8. "Gunsmith" means any person, firm, partnership, corporation or  
12 company who engages in the business of repairing, altering, assembling,  
13 manufacturing, cleaning, polishing, engraving or trueing, or who  
14 performs any mechanical operation on, any firearm, large capacity ammu-  
15 nition feeding device, 50-CALIBER WEAPON or machine-gun.

16     9. "Dealer in firearms" means any person, firm, partnership, corpo-  
17 ration or company who engages in the business of purchasing, selling,  
18 keeping for sale, loaning, leasing, or in any manner disposing of, any  
19 assault weapon, large capacity ammunition feeding device, 50-CALIBER  
20 WEAPON, pistol or revolver.

21     S 3. Section 265.00 of the penal law is amended by adding a new subdi-  
22 vision 24 to read as follows:

23     24. "50-CALIBER WEAPON" MEANS A RIFLE CAPABLE OF FIRING A CENTER-FIRE  
24 CARTRIDGE IN 50-CALIBER OR LARGER, .50 BMG CALIBER OR LARGER, ANY OTHER  
25 VARIANT OF 50-CALIBER OR LARGER, OR ANY OTHER METRIC EQUIVALENT OF SUCH  
26 CALIBER, PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE  
27 CONSTRUED TO INCLUDE ANY MUZZLE LOADING RIFLE OR SHOTGUN WITH A RIFLED  
28 BORE.

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

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1 S 4. Subdivision 3 of section 265.02 of the penal law, as amended by  
2 chapter 764 of the laws of 2005, is amended to read as follows:

3 (3) Such person knowingly possesses a machine-gun, A 50-CALIBER WEAP-  
4 ON, firearm, rifle or shotgun which has been defaced for the purpose of  
5 concealment or prevention of the detection of a crime or misrepresenting  
6 the identity of such machine-gun, 50-CALIBER WEAPON, firearm, rifle or  
7 shotgun; or

8 S 5. Section 265.02 of the penal law is amended by adding a new subdi-  
9 vision 4 to read as follows:

10 (4) SUCH PERSON POSSESSES ANY 50-CALIBER WEAPON; OR

11 S 6. Section 265.03 of the penal law, as amended by chapter 742 of the  
12 laws of 2006 and subdivisions 1 and 3 as amended by chapter 745 of the  
13 laws of 2006, is amended to read as follows:

14 S 265.03 Criminal possession of a weapon in the second degree.

15 A person is guilty of criminal possession of a weapon in the second  
16 degree when SUCH PERSON:

17 (1) [with intent to use the same unlawfully against another, such  
18 person:

19 (a)] possesses a machine-gun; or

20 [(b)] (2) possesses a 50-CALIBER WEAPON OR A loaded firearm WITH  
21 INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER; or

22 [(c)] (3) possesses a disguised gun WITH INTENT TO USE THE SAME UNLAW-  
23 FULLY AGAINST ANOTHER; or

24 [(2) such person] (4) possesses five or more firearms; or

25 [(3)] (5) such person possesses any loaded firearm. Such possession  
26 shall not, except as provided in subdivision one or seven of section  
27 265.02 of this article, constitute a violation of this subdivision if  
28 such possession takes place in such person's home or place of business.

29 Criminal possession of a weapon in the second degree is a class C  
30 felony.

31 S 7. The penal law is amended by adding two new sections 265.45 and  
32 265.46 to read as follows:

33 S 265.45 CRIMINAL USE OF A 50-CALIBER WEAPON IN THE SECOND DEGREE.

34 1. A PERSON IS GUILTY OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE  
35 SECOND DEGREE WHEN HE COMMITS ANY CLASS C VIOLENT FELONY OFFENSE AS  
36 DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.02 OF THIS  
37 CHAPTER AND HE USES A 50-CALIBER WEAPON, AS DEFINED IN SUBDIVISION TWEN-  
38 TY-FOUR OF SECTION 265.00 OF THIS ARTICLE, IF THE 50-CALIBER WEAPON IS A  
39 LOADED 50-CALIBER WEAPON FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING  
40 DEATH OR OTHER SERIOUS INJURY MAY BE DISCHARGED.

41 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A  
42 PERSON IS CONVICTED OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE SECOND  
43 DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL  
44 IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF FIVE YEARS TO THE MINIMUM TERM  
45 OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE  
46 IMPOSED ON THE UNDERLYING CLASS C VIOLENT FELONY CONVICTION. NOTWITH-  
47 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGREGATE OF  
48 THE FIVE YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVISION AND  
49 THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE UNDERLYING  
50 CLASS C VIOLENT FELONY CONVICTION SHALL CONSTITUTE THE NEW AGGREGATE  
51 MINIMUM TERM OF IMPRISONMENT, AND A DEFENDANT SUBJECT TO SUCH TERM SHALL  
52 BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM TERM AND SHALL NOT BE  
53 ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRETIONARY RELEASE DURING  
54 SUCH TERM.

55 S 265.46 CRIMINAL USE OF A 50-CALIBER WEAPON IN THE FIRST DEGREE.

1 1. A PERSON IS GUILTY OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE  
2 FIRST DEGREE WHEN HE COMMITS ANY CLASS A FELONY OFFENSE CONSTITUTING  
3 MURDER, KIDNAPPING, ARSON, CONSPIRACY OR SALE OF A CONTROLLED SUBSTANCE  
4 OR ATTEMPTS TO COMMIT ANY SUCH CLASS A FELONY WHERE SUCH ATTEMPT ALSO  
5 CONSTITUTES A CLASS A FELONY, OR ANY CLASS B VIOLENT FELONY OFFENSE AS  
6 DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.02 OF THIS  
7 CHAPTER AND HE USES A 50-CALIBER WEAPON, AS DEFINED IN SUBDIVISION TWEN-  
8 TY-FOUR OF SECTION 265.00 OF THIS ARTICLE, IF THE 50-CALIBER WEAPON IS A  
9 LOADED 50-CALIBER WEAPON FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING  
10 DEATH OR OTHER SERIOUS INJURY MAY BE DISCHARGED.

11 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A  
12 PERSON IS CONVICTED OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE FIRST  
13 DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL  
14 IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF TEN YEARS TO THE MINIMUM TERM  
15 OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE  
16 IMPOSED ON THE UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION.  
17 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGRE-  
18 GATE OF THE TEN YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVI-  
19 SION AND THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE  
20 UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION SHALL CONSTITUTE  
21 THE NEW AGGREGATE MINIMUM TERM OF IMPRISONMENT, AND A DEFENDANT SUBJECT  
22 TO SUCH TERM SHALL BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM  
23 TERM AND SHALL NOT BE ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRE-  
24 TIONARY RELEASE DURING SUCH TERM.

25 S 8. Subdivision 2 of section 265.08 of the penal law, as added by  
26 chapter 233 of the laws of 1980, is amended to read as follows:

27 (2) displays what appears to be a pistol, revolver, rifle, shotgun,  
28 50-CALIBER WEAPON, machine gun or other firearm.

29 S 9. Paragraph (b) of subdivision 1 of section 265.09 of the penal  
30 law, as amended by chapter 650 of the laws of 1996, is amended to read  
31 as follows:

32 (b) displays what appears to be a pistol, revolver, rifle, shotgun,  
33 50-CALIBER WEAPON, machine gun or other firearm.

34 S 10. Subdivisions 2, 3 and 6 of section 265.10 of the penal law,  
35 subdivision 2 as amended by chapter 257 of the laws of 2008 and subdivi-  
36 sions 3 and 6 as amended by chapter 189 of the laws of 2000, are amended  
37 to read as follows:

38 2. Any person who transports or ships any machine-gun, 50-CALIBER  
39 WEAPON, firearm silencer, assault weapon or large capacity ammunition  
40 feeding device or disguised gun, or who transports or ships as merchan-  
41 dise five or more firearms, is guilty of a class D felony. Any person  
42 who transports or ships as merchandise any firearm, other than an  
43 assault weapon, switchblade knife, gravity knife, pilum ballistic knife,  
44 billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu  
45 star, chuka stick, sandbag or slungshot is guilty of a class A misdemea-  
46 nor.

47 3. Any person who disposes of any machine-gun, assault weapon, large  
48 capacity ammunition feeding device, 50-CALIBER WEAPON or firearm silenc-  
49 er is guilty of a class D felony. Any person who knowingly buys,  
50 receives, disposes of, or conceals a machine-gun, 50-CALIBER WEAPON,  
51 firearm, large capacity ammunition feeding device, rifle or shotgun  
52 which has been defaced for the purpose of concealment or prevention of  
53 the detection of a crime or misrepresenting the identity of such  
54 machine-gun, 50-CALIBER WEAPON, firearm, large capacity ammunition feed-  
55 ing device, rifle or shotgun is guilty of a class D felony.

6. Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device, 50-CALIBER WEAPON or firearm is guilty of a class D felony.

S 11. Subdivisions 1 and 5 of section 265.15 of the penal law, subdivision 5 as amended by chapter 695 of the laws of 1987, are amended to read as follows:

1. The presence in any room, dwelling, structure or vehicle of any machine-gun OR 50-CALIBER WEAPON is presumptive evidence of its unlawful possession by all persons occupying the place where such machine-gun OR 50-CALIBER WEAPON is found.

5. The possession by any person of a defaced machine-gun, 50-CALIBER WEAPON, firearm, rifle or shotgun is presumptive evidence that such person defaced the same.

S 12. Paragraph 2 of subdivision a of section 265.20 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

2. Possession of a machine-gun, large capacity ammunition feeding device, 50-CALIBER WEAPON, firearm, switchblade knife, gravity knife, pilum ballistic knife, billy or blackjack by a warden, superintendent, headkeeper or deputy of a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or detained as witnesses in criminal cases, in pursuit of official duty or when duly authorized by regulation or order to possess the same.

S 13. Paragraph 8 of subdivision a of section 265.20 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

8. The manufacturer of machine-guns, assault weapons, large capacity ammunition feeding devices, 50-CALIBER WEAPONS, disguised guns, pilum ballistic knives, switchblade or gravity knives, billies or blackjacks as merchandise and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States.

S 14. Section 265.20 of the penal law is amended by adding a new subdivision e to read as follows:

E. THE TERMS "PISTOL," "REVOLVER," "RIFLE," AND "SHOTGUN" AS USED IN PARAGRAPHS THREE THROUGH FIVE, SEVEN THROUGH SEVEN-B, TWELVE, THIRTEEN AND THIRTEEN-A OF SUBDIVISION A OF THIS SECTION SHALL NOT INCLUDE A 50-CALIBER WEAPON AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION 265.00 OF THIS ARTICLE.

S 15. Section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.11 Criminal sale of a firearm OR 50-CALIBER WEAPON in the third degree.

A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON in the third degree when such person is not authorized pursuant to law to possess a firearm OR 50-CALIBER WEAPON and such person unlawfully either:

(1) sells, exchanges, gives or disposes of a firearm [or], large capacity ammunition feeding device OR 50-CALIBER WEAPON to another person; or

1 (2) possesses a firearm OR 50-CALIBER WEAPON with the intent to sell  
2 it.

3 Criminal sale of a firearm OR 50-CALIBER WEAPON in the third degree is  
4 a class D felony.

5 S 16. Section 265.12 of the penal law, as amended by chapter 764 of  
6 the laws of 2005, is amended to read as follows:

7 S 265.12 Criminal sale of a firearm OR 50-CALIBER WEAPON in the second  
8 degree.

9 A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON  
10 in the second degree when such person:

11 (1) unlawfully sells, exchanges, gives or disposes of to another five  
12 or more firearms OR 50-CALIBER WEAPONS; or

13 (2) unlawfully sells, exchanges, gives or disposes of to another  
14 person or persons a total of five or more firearms OR 50-CALIBER WEAPONS  
15 in a period of not more than one year.

16 Criminal sale of a firearm OR 50-CALIBER WEAPON in the second degree  
17 is a class C felony.

18 S 17. Section 265.14 of the penal law, as added by chapter 175 of the  
19 laws of 1991 and the closing paragraph as amended by chapter 654 of the  
20 laws of 1998, is amended to read as follows:

21 S 265.14 Criminal sale of a firearm OR 50-CALIBER WEAPON with the aid of  
22 a minor.

23 A person over the age of eighteen years of age is guilty of criminal  
24 sale of a [weapon] FIREARM OR 50-CALIBER WEAPON with the aid of a minor  
25 when a person under sixteen years of age knowingly and unlawfully sells,  
26 exchanges, gives or disposes of a firearm OR 50-CALIBER WEAPON in  
27 violation of this article, and such person over the age of eighteen  
28 years of age, acting with the mental culpability required for the  
29 commission thereof, solicits, requests, commands, importunes or inten-  
30 tionally aids such person under sixteen years of age to engage in such  
31 conduct.

32 Criminal sale of a firearm OR 50-CALIBER WEAPON with the aid of a  
33 minor is a class C felony.

34 S 18. Section 265.13 of the penal law, as amended by chapter 764 of  
35 the laws of 2005, is amended to read as follows:

36 S 265.13 Criminal sale of a firearm OR 50-CALIBER WEAPON in the first  
37 degree.

38 A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON  
39 in the first degree when such person:

40 (1) unlawfully sells, exchanges, gives or disposes of to another ten  
41 or more firearms OR 50-CALIBER WEAPONS; or

42 (2) unlawfully sells, exchanges, gives or disposes of to another  
43 person or persons a total of ten or more firearms OR 50-CALIBER WEAPONS  
44 in a period of not more than one year.

45 Criminal sale of a firearm OR 50-CALIBER WEAPON in the first degree is  
46 a class B felony.

47 S 19. Section 265.16 of the penal law, as added by chapter 600 of the  
48 laws of 1992 and the closing paragraph as amended by chapter 654 of the  
49 laws of 1998, is amended to read as follows:

50 S 265.16 Criminal sale of a firearm OR 50-CALIBER WEAPON to a minor.

51 A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON  
52 to a minor when he is not authorized pursuant to law to possess a  
53 firearm OR 50-CALIBER WEAPON and he unlawfully sells, exchanges, gives  
54 or disposes of a firearm OR 50-CALIBER WEAPON to another person who is  
55 or reasonably appears to be less than nineteen years of age who is not  
56 licensed pursuant to law to possess a firearm OR 50-CALIBER WEAPON.

1 Criminal sale of a firearm OR 50-CALIBER WEAPON to a minor is a class  
2 C felony.

3 S 20. The opening paragraph of subdivision 1 of section 55.05 of the  
4 penal law, as amended by chapter 276 of the laws of 1973, is amended to  
5 read as follows:

6 [Felonies] EXCEPT FOR THE FELONIES DEFINED IN SECTIONS 265.45 AND  
7 265.46 OF THIS CHAPTER, FELONIES are classified, for the purpose of  
8 sentence, into five categories as follows:

9 S 21. Paragraph (a) of subdivision 1 of section 55.10 of the penal  
10 law, as amended by chapter 276 of the laws of 1973, is amended to read  
11 as follows:

12 (a) [The] EXCEPT FOR THE FELONIES DEFINED IN SECTIONS 265.45 AND  
13 265.46 OF THIS CHAPTER, THE particular classification or subclassifica-  
14 tion of each felony defined in this chapter is expressly designated in  
15 the section or article defining it.

16 S 22. The executive law is amended by adding a new section 231 to read  
17 as follows:

18 S 231. COMPLIANCE WITH THE BAN ON THE SALE, POSSESSION OR USE OF  
19 50-CALIBER WEAPONS. 1. FROM WITHIN AMOUNTS APPROPRIATED THEREFOR, THE  
20 DIVISION OF STATE POLICE SHALL TAKE SUCH ACTION AS IS NECESSARY TO  
21 IMPLEMENT A PROGRAM WHEREBY PERSONS, INCLUDING DEALERS OF FIREARMS, IN  
22 LAWFUL POSSESSION OF 50-CALIBER WEAPONS MAY BRING THEMSELVES INTO  
23 COMPLIANCE WITH THE PROVISIONS OF THE PENAL LAW WHICH BANS THE SALE,  
24 POSSESSION OR USE OF SUCH WEAPONS.

25 2. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, ANY  
26 LICENSED FIREARM DEALER WHO HAS IN HIS OR HER POSSESSION A NEW 50-CALI-  
27 BER WEAPON SHALL BE ENTITLED TO RETURN SUCH WEAPON TO THE DISTRIBUTOR OR  
28 MANUFACTURER, AND SHALL BE ENTITLED TO A FULL REFUND, OR CREDIT, IN AN  
29 AMOUNT EQUAL TO THE PURCHASE PRICE OF SUCH WEAPON. IN ANY CASE WHERE A  
30 DISTRIBUTOR OR MANUFACTURER FAILS OR REFUSES TO SO REFUND OR CREDIT SUCH  
31 DEALER, THE DEALER SHALL NOTIFY THE DIVISION OF STATE POLICE, AND IT  
32 SHALL IMMEDIATELY NOTIFY THE ATTORNEY GENERAL SO THAT HE OR SHE MAY  
33 INTERCEDE AND TAKE SUCH ACTIONS ON BEHALF OF THE DEALER TO SECURE SUCH  
34 REFUND OR CREDIT.

35 3. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, ANY  
36 PERSON, INCLUDING A LICENSED FIREARM DEALER, WHO HAS IN HIS OR HER LEGAL  
37 POSSESSION A USED 50-CALIBER WEAPON SHALL PERSONALLY DELIVER SUCH WEAPON  
38 TO THE DIVISION OF STATE POLICE, AND UPON TRANSFERRING OWNERSHIP AND  
39 POSSESSION TO A DULY DESIGNATED OFFICER THEREOF, SHALL BE ENTITLED TO  
40 RECEIVE PAYMENT IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF SUCH  
41 WEAPON, BUT NOT TO EXCEED EIGHT THOUSAND FIVE HUNDRED DOLLARS.

42 4. THE DIVISION OF STATE POLICE SHALL TAKE SUCH ACTION, INCLUDING A  
43 PUBLIC CAMPAIGN USING THE PRINT MEDIA, TELEVISION, RADIO OR OTHER MEANS  
44 TO NOTIFY PERSONS OF THE EXISTENCE OF THE PROGRAM ESTABLISHED IN THIS  
45 SECTION.

46 S 23. This act shall take effect immediately; provided, however, that  
47 sections one through twenty-one of this act shall take effect on the  
48 thirtieth day after this act shall have become a law; and provided,  
49 further, that those sections of this act which provide that it shall be  
50 unlawful to sell, exchange, give or dispose of a 50-caliber weapon shall  
51 take effect with respect to a gunsmith or dealer in firearms on the  
52 fifth day after this act shall have become a law.