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

3211--A

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. EDDINGTON, BING, LIFTON, BRADLEY, RAMOS, ALESSI, KAVANAGH -- Multi-Sponsored by -- M. of A. DIAZ, DINOWITZ, ENGLEBRIGHT, GLICK, GOTTFRIED, HOYT, JOHN, KOON, ORTIZ, PAULIN, PEOPLES, PERRY, PHEFFER, SCARBOROUGH, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares that 50-caliber or larger weapons having the capacity for rapidly discharging ammunition have no acceptable purpose. The legislature additionally finds and declares that such weapons pose such an imminent threat and danger to the safety and security of the people of this state that it is necessary to ban the possession and use of such weapons.

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

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

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

S 3. Section 265.00 of the penal law is amended by adding a new subdivision 24 to read as follows:

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

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

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

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

S 5. Section 265.02 of the penal law is amended by adding a new subdivision 4 to read as follows:

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

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

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

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

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

(a)] possesses a machine-gun; or

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

[(c)] (3) possesses a disguised gun WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER; or

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

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

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

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

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

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

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A PERSON IS CONVICTED OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF FIVE YEARS TO THE MINIMUM TERM OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS C VIOLENT FELONY CONVICTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGREGATE OF THE FIVE YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVISION AND THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS C VIOLENT FELONY CONVICTION SHALL CONSTITUTE THE NEW AGGREGATE

MINIMUM TERM OF IMPRISONMENT, AND A DEFENDANT SUBJECT TO SUCH TERM SHALL BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM TERM AND SHALL NOT BE ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRETIONARY RELEASE DURING SUCH TERM.

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

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

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A PERSON IS CONVICTED OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE FIRST DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF TEN YEARS TO THE MINIMUM TERM OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGREGATE OF THE TEN YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVISION AND THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION SHALL CONSTITUTE THE NEW AGGREGATE MINIMUM TERM OF IMPRISONMENT, AND A DEFENDANT SUBJECT TO SUCH TERM SHALL BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM TERM AND SHALL NOT BE ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRETIONARY RELEASE DURING SUCH TERM.

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

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

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

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

S 10. Subdivisions 2, 3 and 6 of section 265.10 of the penal law, subdivision 2 as amended by chapter 257 of the laws of 2008 and subdivisions 3 and 6 as amended by chapter 189 of the laws of 2000, are amended to read as follows:

2. Any person who transports or ships any machine-gun, 50-CALIBER WEAPON, firearm silencer, assault weapon or large capacity ammunition feeding device or disguised gun, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a class A misdemeanor.

3. Any person who disposes of any machine-gun, assault weapon, large capacity ammunition feeding device, 50-CALIBER WEAPON or firearm silencer is guilty of a class D felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun, 50-CALIBER WEAPON, firearm, large capacity ammunition feeding device, rifle or shotgun

which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, 50-CALIBER WEAPON, firearm, large capacity ammunition feeding 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON to a minor when he is not authorized pursuant to law to possess a firearm OR 50-CALIBER WEAPON and he unlawfully sells, exchanges, gives

or disposes of a firearm OR 50-CALIBER WEAPON to another person who is or reasonably appears to be less than nineteen years of age who is not licensed pursuant to law to possess a firearm OR 50-CALIBER WEAPON.

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

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

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

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

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

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

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

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

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

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

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