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

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I N A S S E M B L Y

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Introduced by M. of A. KOON, MARKEY -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to personalized gun safety

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

Section 1. The penal law is amended by adding a new article 401 to read as follows:

ARTICLE 401

PERSONALIZED GUN SAFETY

SECTION 401.00 DEFINITIONS.
401.05 TEMPORARY FIREARM SAFETY STANDARD COMMISSION.
401.10 SAFETY STANDARD TESTING.
401.15 ENFORCEMENT.
401.20 EXEMPTIONS.
401.25 PENALTIES.
401.30 LIABILITY.
401.35 SEVERABILITY.

S 401.00 DEFINITIONS.

FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, COMPANY, ASSOCIATION, FIRM, PARTNERSHIP, SOCIETY, JOINT STOCK COMPANY OR ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY.

2. "AUTHORIZED USER" MEANS THE PERSON WHO OWNS THE FIREARM, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER, OR A PERSON TO WHOM THE OWNER HAS GIVEN CONSENT TO USE THE FIREARM.

3. "COMMISSION" MEANS THE TEMPORARY FIREARM SAFETY STANDARD COMMISSION ESTABLISHED IN SECTION 401.05 OF THIS ARTICLE.

S 401.05 TEMPORARY FIREARM SAFETY STANDARD COMMISSION.

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

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1. THERE IS HEREBY CREATED A TEMPORARY FIREARM SAFETY STANDARD COMMISSION. SUCH COMMISSION SHALL BE ESTABLISHED WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, AND IT SHALL ADOPT A PERFORMANCE SAFETY STANDARD FOR FIREARMS, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER. THE COMMISSION SHALL EXPIRE ONE YEAR AFTER THE ISSUANCE OF SUCH STANDARD.

2. SUCH TEMPORARY STATE COMMISSION SHALL CONSIST OF NINE MEMBERS AS FOLLOWS: ONE SUCH MEMBER SHALL BE THE SUPERINTENDENT OF STATE POLICE OR HIS OR HER DESIGNEE; ONE SUCH MEMBER SHALL BE THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES OR HIS OR HER DESIGNEE; ONE SUCH MEMBER SHALL BE THE COMMISSIONER OF HEALTH OR HIS OR HER DESIGNEE; ONE SUCH MEMBER SHALL BE APPOINTED BY THE GOVERNOR; ONE MEMBER SHALL BE APPOINTED BY THE ATTORNEY GENERAL; TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; AND TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY.

3. THE GOVERNOR SHALL SELECT A CHAIRPERSON OF THE COMMISSION FROM AMONG THE MEMBERS, AND SUCH CHAIRPERSON SHALL SERVE AS SUCH AT THE PLEASURE OF THE GOVERNOR.

4. MEMBERS OF THE COMMISSION SHALL NOT BE COMPENSATED FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. NO MEMBER OF THE COMMISSION SHALL BE DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE OR EMPLOYMENT, NOR SHALL HE OR SHE FORFEIT ANY SUCH OFFICE OR EMPLOYMENT BY VIRTUE OF HIS OR HER APPOINTMENT HEREUNDER. THE DIVISION OF STATE POLICE SHALL FURNISH REASONABLE OFFICE SPACE AND DAY-TO-DAY STAFF SUPPORT TO THE COMMISSION.

5. THE COMMISSION SHALL, ON OR BEFORE ONE YEAR AFTER ITS CREATION, ADOPT A PRELIMINARY FIREARM SAFETY PERFORMANCE STANDARD FOR ALL FIREARMS MANUFACTURED, ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANSFERRED, SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED WITHIN THIS STATE. THE STANDARD SHALL REQUIRE, BUT NEED NOT BE LIMITED TO THE FOLLOWING:

(A) A FIREARM MUST BE PERSONALIZED SO THAT IT CAN BE FIRED ONLY WHEN OPERATED BY THAT FIREARM'S AUTHORIZED USER;

(B) THE TECHNOLOGY CREATING PERSONALIZED FIREARMS SHALL BE INCORPORATED INTO THE DESIGN OF THE FIREARM AND BE PART OF ITS ORIGINAL EQUIPMENT AND NOT AN ACCESSORY;

(C) PERSONALIZED FIREARMS SHALL NOT BE MANUFACTURED, ASSEMBLED, OR ALTERED SO AS TO PERMIT THE PERSONALIZED CHARACTERISTICS TO BE READILY DEACTIVATED.

6. THE COMMISSION SHALL FORMULATE THE NECESSARY TESTING PROCEDURE TO DETERMINE IF A FIREARM COMPLIES WITH THE COMMISSION'S STANDARD.

7. THE COMMISSION SHALL DESIGNATE ONE OR MORE INDEPENDENT LABORATORIES FOR DETERMINING WHETHER OR NOT FIREARMS COMPLY WITH THE COMMISSION'S STANDARD. THE LABORATORIES SHALL USE THE TEST METHOD FORMULATED BY THE COMMISSION TO DETERMINE COMPLIANCE.

8. THE COMMISSION IS AUTHORIZED:

(A) TO CALL UPON ANY AGENCY, DEPARTMENT, OFFICE, DIVISION, OR PUBLIC AUTHORITY OF THIS STATE TO SUPPLY IT WITH SUCH INFORMATION AS IT DEEMS NECESSARY TO DISCHARGE ITS RESPONSIBILITIES. EACH AGENCY, DEPARTMENT, OFFICE, DIVISION, AND PUBLIC AUTHORITY OF THIS STATE SHALL COOPERATE WITH THE COMMISSION AND FURNISH SUCH INFORMATION AND ASSISTANCE AS IS REASONABLY NECESSARY FOR THE COMMISSION TO ACCOMPLISH ITS PURPOSES;

(B) TO CONDUCT PUBLIC HEARINGS, HEAR THE TESTIMONY OF WITNESSES, AND REQUEST ANY DOCUMENTS THE COMMISSION DEEMS NECESSARY TO CARRY OUT THE COMMISSION'S RESPONSIBILITIES;

(C) TO CONTRACT WITH ANY STATE OR PRIVATE ENTITY FOR THE PROVISION OF SUCH SERVICES AS THE COMMISSION DETERMINES TO BE NECESSARY; AND

(D) TO TAKE SUCH OTHER ACTIONS NOT INCONSISTENT WITH THE PURPOSES OF THIS SECTION AS SHALL ENABLE THE COMMISSION TO CARRY OUT ITS FUNCTIONS.

9. THE COMMISSION, AFTER ADOPTION OF THE STANDARD AND PRIOR TO ITS EXPIRATION, SHALL CONSULT THE STATE POLICE IN REVIEWING AND EVALUATING THE IMPLEMENTATION OF THE SAFETY STANDARD.

10. THE COMMISSION SHALL ISSUE AN INTERIM REPORT TO THE GOVERNOR, ATTORNEY GENERAL, TEMPORARY PRESIDENT OF THE SENATE, AND SPEAKER OF THE ASSEMBLY ON OR ABOUT ONE YEAR AFTER THE CREATION OF THE COMMISSION AND SHALL ISSUE A FINAL REPORT ON OR ABOUT TWO YEARS AFTER THE CREATION OF THE COMMISSION; BOTH REPORTS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

S 401.10 SAFETY STANDARD TESTING.

1. IN ACCORDANCE WITH THE STANDARD ISSUED BY THE COMMISSION, ANY GUNSMITH, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER, WISHING TO MANUFACTURE, OFFER FOR SALE, SELL OR TRANSFER A FIREARM IN THIS STATE MUST SUBMIT A PROTOTYPE OF THE FIREARM MODEL FOR TESTING, AT THE COST OF THE GUNSMITH, TO ONE OF THE INDEPENDENT LABORATORIES DESIGNATED BY THE COMMISSION.

2. THE LABORATORY SHALL ISSUE A WRITTEN REPORT DIRECTLY TO THE SUPERINTENDENT OF STATE POLICE AND A COPY THEREOF TO THE GUNSMITH INDICATING WHETHER OR NOT THE SUBMITTED FIREARM MET THE SAFETY STANDARD. SHOULD THE FIREARM FAIL TO MEET SUCH STANDARD, THE REPORT SHALL DESCRIBE THE REASONS THEREFOR.

3. IF A FIREARM MODEL FAILS TO MEET THE SAFETY STANDARD, SUCH FIREARM SHALL NOT BE MANUFACTURED, ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANSFERRED, SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED BY ANY PERSON IN THIS STATE UNTIL SUCH FIREARM HAS BEEN MODIFIED TO MEET THE COMMISSION'S STANDARD AND HAS PASSED THE INDEPENDENT LABORATORY'S TEST ON RESUBMISSION.

4. IF THE FIREARM MODEL MEETS THE STANDARD, THE SUPERINTENDENT OF STATE POLICE SHALL ISSUE A CERTIFICATE STATING THAT THE FIREARM MODEL MEETS THE COMMISSION'S STANDARD, AND THE WORDS, "CERTIFIED PERSONALIZED FIREARM" OR AN EQUIVALENT LABEL, AS ESTABLISHED BY THE COMMISSION, SHALL BE IMPRINTED ON THE APPROVED FIREARM AT THE EXPENSE OF THE GUNSMITH, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER.

5. ONCE THE FIREARM MODEL IS DEEMED TO MEET THE STANDARD, THE GUNSMITH OR DEALER, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER, OR THE AUTHORIZED USER, AS DEFINED IN THIS ARTICLE, SHALL NOT ALTER THE DESIGN OF THE FIREARM IN ANY MANNER AFFECTING SUCH SAFETY STANDARD.

S 401.15 ENFORCEMENT.

1. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, FIREARMS THAT DO NOT MEET THE STANDARD PRESCRIBED BY THE COMMISSION PURSUANT TO THIS ARTICLE SHALL NOT BE MANUFACTURED, ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANSFERRED, SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED IN THIS STATE.

2. IF ANY LAW ENFORCEMENT OFFICER, DURING THE COURSE OF OFFICIAL DUTIES AND OPERATING WITHIN THE CONFINES OF THE LAW, DISCOVERS ANY FIREARM WHICH, UNDER THE PROVISIONS OF THIS ARTICLE, DOES NOT MEET THE COMMISSION'S STANDARD, THAT OFFICER SHALL TAKE POSSESSION OF SUCH FIREARM, AND THE DISPOSITION OF ANY SUCH FIREARM SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 400.05 OF THIS CHAPTER.

3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH

VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS.

S 401.20 EXEMPTIONS.

THE FOLLOWING FIREARMS ARE EXEMPT FROM THIS ARTICLE:

1. ANTIQUE FIREARMS, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER;

2. FIREARMS MANUFACTURED PRIOR TO FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S ORIGINAL STANDARD; PROVIDED, HOWEVER, THAT SUCH FIREARMS MAY NOT BE SOLD, OFFERED FOR SALE, TRADED, TRANSFERRED, SHIPPED, LEASED, OR DISTRIBUTED BY DEALERS, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER, AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S ORIGINAL STANDARD; AND

3. FIREARMS PURCHASED BY LAW ENFORCEMENT OFFICERS OR DEPARTMENTS OR AGENCIES AND MEMBERS OF THE ARMED FORCES.

S 401.25 PENALTIES.

1. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, ANY PERSON WHO MANUFACTURES OR CAUSES TO BE MANUFACTURED ANY FIREARM THAT HAS NOT BEEN CERTIFIED BY AN INDEPENDENT TESTING LABORATORY AS MEETING THE COMMISSION'S STANDARD AND THAT IS NOT EXEMPT PURSUANT TO SECTION 401.20 OF THIS ARTICLE IS GUILTY OF A CLASS D FELONY.

2. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, ANY PERSON WHO TRANSPORTS OR SHIPS ANY FIREARM THAT HAS NOT BEEN CERTIFIED BY AN INDEPENDENT TESTING LABORATORY AS MEETING THE COMMISSION'S STANDARD AND THAT IS NOT EXEMPT PURSUANT TO SECTION 401.20 OF THIS ARTICLE IS GUILTY OF A CLASS D FELONY.

3. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, ANY PERSON WHO DISPOSES OF ANY FIREARM THAT HAS NOT BEEN CERTIFIED BY AN INDEPENDENT TESTING LABORATORY AS MEETING THE COMMISSION'S STANDARD AND THAT IS NOT EXEMPT PURSUANT TO SECTION 401.20 OF THIS ARTICLE IS GUILTY OF A CLASS D FELONY.

4. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, ANY PERSON WHO WILLFULLY DEFACES ANY FIREARM BY ALTERING THE PERSONALIZED CHARACTERISTICS OF A FIREARM MANUFACTURED, ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANSFERRED, SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S ORIGINAL STANDARD IS GUILTY OF A CLASS D FELONY.

S 401.30 LIABILITY.

1. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, ANY PERSON WHO DISCHARGES A FIREARM THAT DOES NOT MEET THE COMMISSION'S STANDARD AND THAT THIS IS NOT EXEMPT PURSUANT TO SECTION 401.20 OF THIS ARTICLE IS LIABLE FOR ALL DIRECT AND CONSEQUENTIAL DAMAGES TO ANY PERSON INJURED IN PERSON, PROPERTY, OR MEANS OF SUPPORT.

2. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S STANDARD, ANY PERSON WHO OWNS A FIREARM THAT DOES NOT MEET THE COMMISSION'S STANDARD, THAT IS NOT EXEMPT PURSUANT TO SECTION 401.20 OF THIS ARTICLE, AND WHICH IS DISCHARGED BY AN UNAUTHORIZED PERSON IS LIABLE FOR ALL DIRECT AND CONSEQUENTIAL DAMAGES TO ANY PERSON INJURED IN PERSON, PROPERTY, OR MEANS OF SUPPORT.

3. THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL NOT APPLY WHEN THE DISCHARGE WAS BY A LAW ENFORCEMENT OFFICER IN THE LINE OF DUTY OR WHEN THE DISCHARGE WAS MADE WITH JUSTIFICATION, AS DEFINED IN ARTICLE THIRTY-FIVE OF THIS CHAPTER.

4. COMPLIANCE WITH ANY STANDARD ISSUED UNDER THIS ARTICLE DOES NOT EXEMPT ANY PERSON FROM LIABILITY UNDER THE COMMON LAW.

S 401.35 SEVERABILITY.

IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION OF SUCH PROVISION IN CERTAIN CIRCUMSTANCES IS HELD INVALID, THE VALIDITY OF THE REMAINDER OF THIS ARTICLE AND ITS APPLICABILITY TO OTHER CIRCUMSTANCES SHALL NOT BE AFFECTED.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.