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

555

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the penal law, the general business law and the education law, in relation to criminally negligent storage of a weapon, locked boxes for weapons and weapons safety programs for children

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

Section 1. This act shall be known and may be cited as the "gun free kids law".

S 2. Legislative findings and intent. The legislature finds that a tragically large number of children have been accidentally killed or seriously injured by negligently stored firearms; that placing firearms within the reach or easy access of children is irresponsible, encourages such accidents, and should be prohibited, and that legislative action is necessary to protect the safety of our children.

Nothing in this act shall be construed to reduce or limit any right to purchase and own firearms, or to provide authority to any state or local agency to infringe upon the privacy of any family, home, or business, except by lawful means.

S 3. Section 265.00 of the penal law is amended by adding five new subdivisions 24, 25, 26, 27 and 28 to read as follows:

24. "WEAPON" MEANS A "RIFLE", "SHOTGUN", OR "FIREARM" AS OTHERWISE DEFINED IN SUBDIVISION THREE OF THIS SECTION.

25. "LOCKED BOX" MEANS A SAFE, CASE OR CONTAINER WHICH, WHEN LOCKED, IS INCAPABLE OF BEING OPENED WITHOUT THE KEY, COMBINATION, OR OTHER UNLOCKING MECHANISM AND IS RESISTANT TO TAMPERING BY AN UNAUTHORIZED PERSON ATTEMPTING TO OBTAIN ACCESS TO AND POSSESSION OF THE WEAPON OR AMMUNITION CONTAINED THEREIN. THE DIVISION OF STATE POLICE SHALL DEVELOP AND PROMULGATE RULES AND REGULATIONS SETTING FORTH THE SPECIFIC DEVICES

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

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OR THE MINIMUM STANDARDS AND CRITERIA THEREFOR WHICH CONSTITUTE AN EFFECTIVE LOCKED BOX.

26. "GUN LOCKING DEVICE" MEANS AN INTEGRATED DESIGN FEATURE OR AN ATTACHABLE ACCESSORY THAT IS RESISTANT TO TAMPERING AND IS EFFECTIVE IN PREVENTING THE DISCHARGE OF A WEAPON BY A PERSON WHO DOES NOT HAVE ACCESS TO THE KEY, COMBINATION OR OTHER MECHANISM USED TO DISENGAGE THE DEVICE.

27. "LOADED RIFLE" MEANS ANY RIFLE LOADED WITH AMMUNITION OR ANY RIFLE WHICH IS POSSESSED BY ONE WHO, AT THE SAME TIME, POSSESSES A QUANTITY OF AMMUNITION WHICH MAY BE USED TO DISCHARGE SUCH RIFLE.

28. "LOADED SHOTGUN" MEANS ANY SHOTGUN LOADED WITH AMMUNITION OR ANY SHOTGUN WHICH IS POSSESSED BY ONE WHO, AT THE SAME TIME, POSSESSES A QUANTITY OF AMMUNITION WHICH MAY BE USED TO DISCHARGE SUCH SHOTGUN.

S 4. The penal law is amended by adding six new sections 265.45, 265.50, 265.55, 265.60, 265.65 and 265.70 to read as follows:

S 265.45 FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE.

A PERSON IS GUILTY OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE WHEN HE OR SHE STORES OR OTHERWISE LEAVES A WEAPON OUT OF HIS OR HER IMMEDIATE POSSESSION OR CONTROL WITHOUT HAVING FIRST SECURELY LOCKED SUCH WEAPON IN AN APPROPRIATE LOCKED BOX OR RENDERED IT INCAPABLE OF BEING FIRED BY THE USE OF A GUN LOCKING DEVICE APPROPRIATE TO THAT WEAPON.

FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE IS A VIOLATION.

S 265.50 FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE.

A PERSON IS GUILTY OF FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.45 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED OF THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.45 OF THIS ARTICLE WITHIN THE PRECEDING FIVE YEARS.

FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE IS A CLASS B MISDEMEANOR.

S 265.55 AGGRAVATED FAILURE TO STORE A WEAPON SAFELY.

A PERSON IS GUILTY OF AGGRAVATED FAILURE TO STORE A WEAPON SAFELY WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.45 OF THIS ARTICLE AND SUCH WEAPON IS REMOVED FROM THE PREMISES OR DISCHARGED BY ANOTHER PERSON UNDER THE AGE OF EIGHTEEN.

AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IS A CLASS A MISDEMEANOR.

S 265.60 CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE SECOND DEGREE WHEN WITH CRIMINAL NEGLIGENCE, HE OR SHE STORES OR LEAVES A LOADED RIFLE, LOADED SHOTGUN OR LOADED FIREARM IN ANY LOCATION WHERE SUCH WEAPON IS ACCESSIBLE TO A PERSON UNDER THE AGE OF EIGHTEEN AND SUCH WEAPON IS DISCHARGED BY SUCH PERSON UNDER THE AGE OF EIGHTEEN, WHICH CAUSES SERIOUS PHYSICAL INJURY TO SUCH PERSON UNDER THE AGE OF EIGHTEEN OR ANY OTHER PERSON.

2. IN ANY PROSECUTION UNDER THIS SECTION IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT ACTIVELY PURSUED ALL REASONABLE EFFORTS TO RETRIEVE OR OTHERWISE REGAIN POSSESSION OF SUCH WEAPON PRIOR TO ITS DISCHARGE.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF:

(A) SUCH PERSON UNDER THE AGE OF EIGHTEEN GAINS ACCESS TO SUCH WEAPON AS A RESULT OF AN UNLAWFUL ENTRY TO ANY PREMISES BY ANY PERSON;

(B) SUCH WEAPON IS STORED IN A SECURELY LOCKED BOX WHICH PREVENTS ACCESS TO THE WEAPON AND ANY AMMUNITION WHICH MAY BE USED TO DISCHARGE

SUCH WEAPON IS STORED IN A SEPARATE, SECURELY LOCKED BOX WHICH PREVENTS ACCESS TO SUCH AMMUNITION;

(C) SUCH WEAPON IS SECURED WITH A GUN LOCKING DEVICE WHICH PREVENTS THE WEAPON FROM DISCHARGING;

(D) SUCH PERSON UNDER THE AGE OF EIGHTEEN POSSESSED THE LOADED SHOTGUN OR LOADED RIFLE IN COMPLIANCE WITH A VALID HUNTING LICENSE ISSUED PURSUANT TO ARTICLE ELEVEN OF THE ENVIRONMENTAL CONSERVATION LAW; OR

(E) SUCH WEAPON IS IN THE POSSESSION OR CONTROL OF A POLICE OFFICER WHILE THE OFFICER IS ENGAGED IN OFFICIAL DUTIES.

CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE SECOND DEGREE IS A CLASS E FELONY.

S 265.65 CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE FIRST DEGREE.

1. A PERSON IS GUILTY OF CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE FIRST DEGREE WHEN WITH CRIMINAL NEGLIGENCE, HE OR SHE STORES OR LEAVES A LOADED RIFLE, LOADED SHOTGUN OR LOADED FIREARM IN ANY LOCATION WHERE SUCH WEAPON IS ACCESSIBLE TO A PERSON UNDER THE AGE OF EIGHTEEN AND SUCH WEAPON IS DISCHARGED BY SUCH PERSON UNDER THE AGE OF EIGHTEEN, WHICH CAUSES THE DEATH OF SUCH PERSON UNDER THE AGE OF EIGHTEEN OR ANY OTHER PERSON.

2. IN ANY PROSECUTION UNDER THIS SECTION IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT ACTIVELY PURSUED ALL REASONABLE EFFORTS TO RETRIEVE OR OTHERWISE REGAIN POSSESSION OF SUCH WEAPON PRIOR TO ITS DISCHARGE.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF:

(A) SUCH PERSON UNDER THE AGE OF EIGHTEEN GAINS ACCESS TO SUCH WEAPON AS A RESULT OF AN UNLAWFUL ENTRY TO ANY PREMISES BY ANY PERSON;

(B) SUCH WEAPON IS STORED IN A SECURELY LOCKED BOX WHICH PREVENTS ACCESS TO THE WEAPON AND ANY AMMUNITION WHICH MAY BE USED TO DISCHARGE SUCH WEAPON IS STORED IN A SEPARATE, SECURELY LOCKED BOX WHICH PREVENTS ACCESS TO THE WEAPON;

(C) THE WEAPON IS SECURED WITH A GUN LOCKING DEVICE WHICH PREVENTS THE WEAPON FROM DISCHARGING;

(D) SUCH PERSON UNDER THE AGE OF EIGHTEEN POSSESSED THE LOADED SHOTGUN OR LOADED RIFLE IN COMPLIANCE WITH A VALID HUNTING LICENSE ISSUED PURSUANT TO ARTICLE ELEVEN OF THE ENVIRONMENTAL CONSERVATION LAW; OR

(E) SUCH WEAPON IS IN THE POSSESSION OR CONTROL OF A POLICE OFFICER WHILE THE OFFICER IS ENGAGED IN OFFICIAL DUTIES.

CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE FIRST DEGREE IS A CLASS D FELONY.

S 265.70 CRIMINALLY NEGLIGENT STORAGE OF A WEAPON IN THE FIRST AND SECOND DEGREE; APPLICATION.

IF A PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.60 OR 265.65 OF THIS ARTICLE IS THE PARENT OR GUARDIAN OF A CHILD WHO IS INJURED OR WHO DIES AS THE RESULT OF SUCH VIOLATION, THE DISTRICT ATTORNEY SHALL CONSIDER, AMONG OTHER FACTORS, THE IMPACT OF THE INJURY OR DEATH ON THE PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.60 OR 265.65 OF THIS ARTICLE WHEN DECIDING WHETHER OR NOT TO PROSECUTE SUCH PERSON FOR SUCH CRIME.

S 5. The section heading and subdivision 2 of section 396-ee of the general business law, as added by chapter 189 of the laws of 2000, are amended to read as follows:

Sale of certain weapons; locking devices AND LOCKED BOXES therefor.

(2) Every person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms, as such terms are defined in section 265.00 of the penal law, shall, in the place where such rifles, shotguns or firearms are displayed or transferred to the purchaser, post

a notice conspicuously stating in bold print that: "The use of a GUN locking device or [safety lock] A LOCKED BOX is only one aspect of responsible firearm storage. For increased safety firearms should be stored unloaded and locked in a location that is both separate from their ammunition and inaccessible to children and any other unauthorized person. LEAVING RIFLES, SHOTGUNS, AND FIREARMS ACCESSIBLE TO A PERSON UNDER EIGHTEEN IS A CRIME IN NEW YORK STATE."

S 6. Section 305 of the education law is amended by adding a new subdivision 42 to read as follows:

42. THE COMMISSIONER SHALL IN COOPERATION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES DEVELOP A WEAPONS SAFETY PROGRAM DESIGNED TO PROTECT CHILDREN FROM THE RISK OF GUN-RELATED DEATH AND INJURY. SUCH PROGRAM SHALL BE DESIGNED TO TEACH CHILDREN TO FOLLOW AN EFFECTIVE SAFETY PROCEDURE WHEN THEY ARE EXPOSED TO A GUN, SHALL SPECIFICALLY WARN CHILDREN THAT CONTACT WITH GUNS CAN RESULT IN SERIOUS INJURY OR DEATH AND SHALL HAVE BEEN PROVEN TO BE EFFECTIVE TO PREVENT INJURY THROUGH FORMAL EVALUATION BY OBJECTIVE PUBLIC HEALTH AND EDUCATION PROFESSIONALS. SUCH PROGRAM MAY BE USED IN PUBLIC AND NONPUBLIC SCHOOLS AT THE DISCRETION OF THE LOCAL SCHOOL BOARD OF EDUCATION OR BOARD OF TRUSTEES, WHICHEVER IS APPLICABLE. THE COMMISSIONER SHALL SUBMIT AN EVALUATION REPORT ON THIS PROGRAM TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE CHAIR OF THE ASSEMBLY CODES COMMITTEE AND THE CHAIR OF THE SENATE CODES COMMITTEE NO LATER THAN JANUARY FIRST, TWO THOUSAND ELEVEN.

S 7. If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the words, phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law provided, however, that sections three and four of this act shall take effect on the first of May occurring at least 16 months after the date on which this act shall have become a law; provided, further, that section five of this act shall take effect on the first of March occurring at least 14 months after the date on which this act shall have become a law. Effective immediately, any rule or regulation necessary for the timely implementation of section five of this act may be promulgated on or before such date.