

5844

2009-2010 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. WEISENBERG, PAULIN, RAMOS, LIFTON, JOHN, CLARK, CARROZZA, V. LOPEZ, TITUS, KAVANAGH, WRIGHT, SCHIMEL, ALFANO, CASTRO, BARRON, LANCMAN, MILLMAN, TOWNSEND, DINOWITZ, ROBINSON, ROSENTHAL, MAYERSOHN, ESPAILLAT, WEINSTEIN -- Multi-Sponsored by -- M. of A. BARRA, BOYLAND, BRENNAN, COLTON, COOK, ENGLEBRIGHT, GALEF, GANTT, GOTTFRIED, HEASTIE, JACOBS, KOON, MAISEL, McENENY, PHEFFER, SCARBOROUGH, TOWNS -- 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 and weapons safety programs for children

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

1     Section 1. Short title; construction. 1. This act shall be known and  
2     may be cited as the "children's weapon accident prevention act."  
3     2. The provisions of this act shall not be construed to preempt or  
4     supersede any local law the provisions of which are no less stringent or  
5     restrictive than the provisions of this act.  
6     S 2. Legislative findings and intent. The legislature finds that a  
7     tragically large number of children have been accidentally killed or  
8     seriously injured by negligently stored weapons; that placing weapons  
9     within reach or easy access of children is irresponsible, encourages  
10    such accidents, and should be prohibited, and that legislative action is  
11    necessary to protect the safety of our children.  
12    S 3. Section 265.00 of the penal law is amended by adding five new  
13    subdivisions 24, 25, 26, 27 and 28 to read as follows:  
14    24. "WEAPON" MEANS A "RIFLE", "SHOTGUN", OR "FIREARM" AS OTHERWISE  
15    DEFINED IN SUBDIVISION THREE OF THIS SECTION.  
16    25. "LOCKED BOX" MEANS A SAFE, CASE OR CONTAINER WHICH, WHEN LOCKED,  
17    IS INCAPABLE OF BEING OPENED WITHOUT THE KEY, COMBINATION, OR OTHER  
18    UNLOCKING MECHANISM AND IS RESISTANT TO TAMPERING BY AN UNAUTHORIZED  
19    PERSON ATTEMPTING TO OBTAIN ACCESS TO AND POSSESSION OF THE WEAPON OR

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

1 AMMUNITION CONTAINED THEREIN. THE DIVISION OF STATE POLICE SHALL DEVELOP  
2 AND PROMULGATE RULES AND REGULATIONS SETTING FORTH THE SPECIFIC DEVICES  
3 OR THE MINIMUM STANDARDS AND CRITERIA THEREFOR WHICH CONSTITUTE AN  
4 EFFECTIVE LOCKED BOX.

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

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

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

16 S 4. The penal law is amended by adding six new sections 265.45,  
17 265.50, 265.55, 265.60, 265.65 and 265.70 to read as follows:

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

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

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

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

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

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

35 S 265.55 AGGRAVATED FAILURE TO STORE A WEAPON SAFELY.

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

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

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

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

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

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

55 (A) SUCH PERSON UNDER THE AGE OF EIGHTEEN GAINS ACCESS TO SUCH WEAPON  
56 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

1 section 265.00 of the penal law, shall, in the place where such rifles,  
2 shotguns or firearms are displayed or transferred to the purchaser, post  
3 a notice conspicuously stating in bold print that: "The use of a GUN  
4 locking device or [safety lock] A LOCKED BOX is only one aspect of  
5 responsible firearm storage. For increased safety firearms should be  
6 stored unloaded and locked in a location that is both separate from  
7 their ammunition and inaccessible to children and any other unauthorized  
8 person. LEAVING RIFLES, SHOTGUNS, AND FIREARMS ACCESSIBLE TO A PERSON  
9 UNDER EIGHTEEN IS A CRIME IN NEW YORK STATE."

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

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

27 S 7. If any word, phrase, clause, sentence, paragraph, section, or  
28 part of this act shall be adjudged by any court of competent jurisdic-  
29 tion to be invalid, such judgment shall not affect, impair, or invali-  
30 date the remainder thereof, but shall be confined in its operation to  
31 the words, phrase, clause, sentence, paragraph, section, or part thereof  
32 directly involved in the controversy in which such judgment shall have  
33 been rendered.

34 S 8. This act shall take effect on the first of November next succeed-  
35 ing the date on which it shall have become a law, provided, however,  
36 that sections three and four of this act shall take effect May 1, 2010;  
37 provided, further, that section five of this act shall take effect March  
38 1, 2010 except that any rule or regulation necessary for the timely  
39 implementation of section five of this act may be promulgated on or  
40 before such date.