

5844--B

Cal. No. 407

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

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, COLTON -- Multi-Sponsored by -- M. of A. BARRA, BOYLAND, BRENNAN, COOK, ENGLEBRIGHT, GALEF, GANTT, GOTTFRIED, HEASTIE, JACOBS, KOON, MAISEL, McENENY, PHEFFER, SCARBOROUGH, TOWNS -- read once and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

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.

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

LBD06818-05-0

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 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

1 RETRIEVE OR OTHERWISE REGAIN POSSESSION OF SUCH WEAPON PRIOR TO ITS
2 DISCHARGE.

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

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

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

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

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

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

17 (F) SUCH WEAPON IS NEEDED FOR THE LAWFUL PURPOSE OF SELF DEFENSE.

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

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

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

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

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

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

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

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

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

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

46 (F) SUCH WEAPON IS NEEDED FOR THE LAWFUL PURPOSE OF SELF DEFENSE.

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

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

51 IF A PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.60 OR 265.65 OF
52 THIS ARTICLE IS THE PARENT OR GUARDIAN OF A CHILD WHO IS INJURED OR WHO
53 DIES AS THE RESULT OF SUCH VIOLATION, THE DISTRICT ATTORNEY SHALL
54 CONSIDER, AMONG OTHER FACTORS, THE IMPACT OF THE INJURY OR DEATH ON THE
55 PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.60 OR 265.65 OF THIS

1 ARTICLE WHEN DECIDING WHETHER OR NOT TO PROSECUTE SUCH PERSON FOR SUCH
2 CRIME.

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

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

7 (2) Every person, firm or corporation engaged in the retail business
8 of selling rifles, shotguns or firearms, as such terms are defined in
9 section 265.00 of the penal law, shall, in the place where such rifles,
10 shotguns or firearms are displayed or transferred to the purchaser, post
11 a notice conspicuously stating in bold print that: "The use of a GUN
12 locking device or [safety lock] A LOCKED BOX is only one aspect of
13 responsible firearm storage. For increased safety firearms should be
14 stored unloaded and locked in a location that is both separate from
15 their ammunition and inaccessible to children and any other unauthorized
16 person. LEAVING RIFLES, SHOTGUNS, AND FIREARMS ACCESSIBLE TO A PERSON
17 UNDER EIGHTEEN IS A CRIME IN NEW YORK STATE."

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

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

35 S 7. If any word, phrase, clause, sentence, paragraph, section, or
36 part of this act shall be adjudged by any court of competent jurisdic-
37 tion to be invalid, such judgment shall not affect, impair, or invali-
38 date the remainder thereof, but shall be confined in its operation to
39 the words, phrase, clause, sentence, paragraph, section, or part thereof
40 directly involved in the controversy in which such judgment shall have
41 been rendered.

42 S 8. This act shall take effect on the first of November next succeed-
43 ing the date on which it shall have become a law, provided, however,
44 that sections three and four of this act shall take effect May 1, 2011;
45 provided, further, that section five of this act shall take effect March
46 1, 2011 except that any rule or regulation necessary for the timely
47 implementation of section five of this act may be promulgated on or
48 before such date.