

6468

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 4, 2009

---

Introduced by M. of A. SCHIMEL, ENGLEBRIGHT, EDDINGTON, PAULIN, BENEDETTO, DINOWITZ, LANCMAN, HOYT, CLARK, BOYLAND, JAFFEE, KELLNER, CARROZZA, BROOK-KRASNY, ROSENTHAL, O'DONNELL, ALESSI, ESPAILLAT, LAVINE, KAVANAGH, LIFTON, AUBRY, GREENE, ALFANO -- Multi-Sponsored by -- M. of A. BING, COLTON, COOK, DIAZ, GLICK, GOTTFRIED, HEASTIE, HOOPER, JACOBS, JEFFRIES, MAISEL, McENENY, McKEVITT, PEOPLES, PHEFFER, ROBINSON, SALADINO, SCARBOROUGH, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to requiring semiautomatic pistols manufactured or delivered to any licensed dealer in this state to be capable of microstamping ammunition

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "crime gun identification act of 2009".  
3     S 2. Legislative findings and intent. The legislature finds that in  
4     2005, the national clearance rate for homicide cases was approximately  
5     60% and over 3,000 gun homicide cases went unsolved; that in approxi-  
6     mately half of gun homicide investigations a spent cartridge casing, but  
7     not a firearm, is recovered at the crime scene; that currently deployed  
8     national ballistic identification systems cannot identify the serial  
9     number of a gun unless the gun itself has been recovered; that firearm  
10    microstamping is an evolutionary forensic technology that produces an  
11    identifiable alpha-numeric and geometric code onto the rear of the  
12    cartridge casing each time a semiautomatic pistol is fired; that the  
13    alpha-numeric and geometric code on an expended cartridge casing will  
14    provide an initial lead for law enforcement by enabling law enforcement  
15    to match the cartridge casing found at a crime to the original owner of  
16    the firearm; that information from completed crime gun tracing is an  
17    important element utilized by COMPSTAT and other crime analysis systems  
18    to target illegal firearms trafficking; that microstamping technology

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

LBD02827-04-9

continues to produce identifiable markings onto expended cartridge casings even after thousands of rounds of testing; that this additional tool will help law enforcement investigate illegal gun trafficking, close firearm-related criminal cases and protect the public; and that legislative action is necessary to require all new semiautomatic pistols manufactured or sold after January 1, 2011 to be microstamp-ready.

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

24. "FIREARMS DEALER" SHALL MEAN A PERSON OR ORGANIZATION POSSESSING A DEALER'S LICENSE TO SELL FIREARMS AT WHOLESALE OR AT RETAIL ISSUED PURSUANT TO THE PROVISIONS OF SECTION 400.00 OF THE PENAL LAW OR ISSUED UNDER FEDERAL LAW.

25. "MANUFACTURER" SHALL MEAN ANY PERSON, CORPORATION, PARTNERSHIP, FIRM, OR OTHER LEGAL ENTITY IN BUSINESS TO MANUFACTURE OR ASSEMBLE A FIREARM, FOR SALE OR DISTRIBUTION.

26. "MICROSTAMP-READY" SHALL MEAN A SEMIAUTOMATIC PISTOL THAT IS MANUFACTURED TO PRODUCE A UNIQUE ALPHA-NUMERIC OR GEOMETRIC CODE ON AT LEAST TWO LOCATIONS ON EACH EXPENDED CARTRIDGE CASE THAT IDENTIFIES THE MAKE, MODEL, AND SERIAL NUMBER OF THE PISTOL.

27. "SEMIAUTOMATIC PISTOL" SHALL MEAN A PISTOL CAPABLE OF UTILIZING A PORTION OF THE ENERGY OF A FIRING CARTRIDGE TO EXTRACT THE FIRED CARTRIDGE CASE AND AUTOMATICALLY CHAMBER THE NEXT ROUND, AND THAT REQUIRES A SEPARATE PULL OF THE TRIGGER TO FIRE EACH SUCCESSIVE ROUND.

S 4. Subdivision 6 of section 265.10 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

6. Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm is guilty of a class D felony. PROVIDED, HOWEVER, NO ACTION TAKEN IN AN EFFORT TO COMPLY WITH SECTION 265.38 OF THIS ARTICLE SHALL CONSTITUTE A VIOLATION OF THIS SUBDIVISION.

S 5. Subdivision 5 of section 265.15 of the penal law, as amended by chapter 695 of the laws of 1987, is amended to read as follows:

5. The possession by any person of a defaced machine-gun, firearm, rifle or shotgun is presumptive evidence that such person defaced the same. PROVIDED, HOWEVER, NO ACTION TAKEN IN AN EFFORT TO COMPLY WITH SECTION 265.38 OF THIS ARTICLE SHALL CONSTITUTE A VIOLATION OF THIS SUBDIVISION.

S 6. The penal law is amended by adding a new section 265.38 to read as follows:

S 265.38 MICROSTAMPING CAPABILITY OF SEMIAUTOMATIC PISTOLS REQUIRED.

1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, BEGINNING ON JANUARY FIRST, TWO THOUSAND ELEVEN, A SEMIAUTOMATIC PISTOL SHALL BE MICROSTAMP-READY IF IT IS:

(A) MANUFACTURED IN NEW YORK STATE;

(B) MANUFACTURED ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN AND DELIVERED OR CAUSED TO BE DELIVERED BY ANY MANUFACTURER OR FIREARMS DEALER TO A FIREARMS DEALER IN NEW YORK STATE; OR

(C) MANUFACTURED ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN AND SOLD, OFFERED FOR SALE, LOANED, GIVEN, OR TRANSFERRED BY A FIREARMS DEALER IN NEW YORK STATE.

2. (A) A SEMIAUTOMATIC PISTOL MANUFACTURED AFTER JANUARY FIRST, TWO THOUSAND ELEVEN THAT IS NOT MICROSTAMP-READY AND THAT WAS LAWFULLY ACQUIRED OUTSIDE OF NEW YORK STATE BY A NON-DEALER WHO WAS NOT A RESIDENT OF NEW YORK STATE AT THE TIME OF ACQUISITION BUT WHO SUBSEQUENTLY MOVED TO NEW YORK STATE MAY BE POSSESSED, SOLD, TRANSFERRED, OR GIVEN AWAY. IN SUCH INSTANCE THE PISTOL SHALL BE SOLD, TRANSFERRED, OR GIVEN

1 AWAY ONLY TO A FIREARMS DEALER WHO SUBSEQUENTLY CAN ONLY SELL, TRANSFER,  
2 OR GIVE AWAY SUCH PISTOL TO A FIREARMS DEALER OUTSIDE OF NEW YORK STATE.

3 (B) IF A FIREARMS DEALER LAWFULLY ACQUIRES A MICROSTAMP-READY SEMIAU-  
4 TOMATIC PISTOL THAT WAS ORIGINALLY PURCHASED BY A NON-DEALER RESIDENT OF  
5 NEW YORK STATE THE FIREARMS DEALER SHALL NOT SELL, OFFER FOR SALE, LOAN,  
6 GIVE, OR TRANSFER THAT PISTOL IF HE OR SHE KNOWS THAT THE PISTOL HAS  
7 BEEN DEFACED AS PRESCRIBED IN SUBDIVISION THREE OF THIS SECTION.

8 3. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION NO  
9 PERSON SHALL INTENTIONALLY DEFACE OR ALTER A MICROSTAMP-READY SEMIAUTO-  
10 MATIC PISTOL OR A PORTION OF THE PISTOL FOR THE PURPOSE OF PREVENTING  
11 LAW ENFORCEMENT FROM IDENTIFYING THE UNIQUE ALPHA-NUMERIC OR GEOMETRIC  
12 CODE ASSOCIATED WITH THAT PISTOL.

13 (B) REPLACING A FIRING PIN THAT HAS BEEN DAMAGED OR OTHERWISE IN NEED  
14 OF REPLACEMENT FOR THE SAFE USE OF THE SEMIAUTOMATIC PISTOL OR FOR A  
15 LEGITIMATE SPORTING PURPOSE SHALL NOT ALONE BE EVIDENCE THAT SOMEONE HAS  
16 VIOLATED THIS SUBDIVISION.

17 4. BEGINNING JANUARY FIRST, TWO THOUSAND ELEVEN, A MANUFACTURER OR  
18 FIREARMS DEALER THAT DELIVERS A SEMIAUTOMATIC PISTOL, OR CAUSES A SEMI-  
19 AUTOMATIC PISTOL TO BE DELIVERED, TO A FIREARMS DEALER FOR SALE IN NEW  
20 YORK STATE SHALL CERTIFY WHETHER THE PISTOL WAS MANUFACTURED ON OR AFTER  
21 JANUARY FIRST, TWO THOUSAND ELEVEN AND, IF IT WAS, THAT:

22 (A) THE SEMIAUTOMATIC PISTOL WILL PRODUCE A UNIQUE ALPHA-NUMERIC CODE  
23 OR A GEOMETRIC CODE ON EACH CARTRIDGE CASE THAT IDENTIFIES THE MAKE,  
24 MODEL, AND SERIAL NUMBER OF THE SEMIAUTOMATIC PISTOL THAT EXPENDED THE  
25 CARTRIDGE CASING; AND

26 (B) THE MANUFACTURER WILL SUPPLY THE SUPERINTENDENT OF THE STATE  
27 POLICE WITH THE MAKE, MODEL, AND SERIAL NUMBER OF THE SEMIAUTOMATIC  
28 PISTOL THAT EXPENDED THE CARTRIDGE CASE, WHEN PRESENTED WITH AN  
29 ALPHA-NUMERIC OR GEOMETRIC CODE FROM A CARTRIDGE CASE; PROVIDED, THAT  
30 THE CARTRIDGE CASE WAS RECOVERED AS PART OF A LEGITIMATE LAW ENFORCEMENT  
31 INVESTIGATION.

32 5. FOR PURPOSES OF SUBDIVISION ONE OF THIS SECTION, A SEMIAUTOMATIC  
33 PISTOL IS CAPABLE OF MICROSTAMPING AMMUNITION IF:

34 (A) A MICROSCOPIC ARRAY OF CHARACTERS THAT IDENTIFY THE MAKE, MODEL  
35 AND SERIAL NUMBER OF THE SEMIAUTOMATIC PISTOL IS ETCHED INTO THE FIRING  
36 PIN AND THE BREECH FACE OF THE SEMIAUTOMATIC PISTOL; AND

37 (B) WHEN AMMUNITION IS FIRED FROM THE SEMIAUTOMATIC PISTOL, THE CHAR-  
38 ACTERS ARE COPIED FROM THE FIRING PIN AND THE BREECH FACE ONTO THE  
39 CARTRIDGE CASE OF THE AMMUNITION.

40 6. (A) ANY MANUFACTURER OR FIREARMS DEALER WHO INTENTIONALLY FAILS TO  
41 COMPLY WITH SUBDIVISION ONE OF THIS SECTION BY DELIVERING OR CAUSING TO  
42 BE DELIVERED ANY SEMIAUTOMATIC PISTOL MANUFACTURED ON OR AFTER JANUARY  
43 FIRST, TWO THOUSAND ELEVEN THAT IS NOT MICROSTAMP-READY;

44 (B) ANY FIREARMS DEALER WHO INTENTIONALLY FAILS TO COMPLY WITH SUBDI-  
45 VISION ONE OF THIS SECTION BY SELLING ANY SEMIAUTOMATIC PISTOL MANUFAC-  
46 TURED ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN THAT IS NOT MICROS-  
47 TAMP-READY; OR

48 (C) ANY PERSON WHO INTENTIONALLY FAILS TO COMPLY WITH SUBDIVISION  
49 THREE OF THIS SECTION BY DEFACING OR ALTERING ANY MICROSTAMP-READY SEMI-  
50 AUTOMATIC PISTOL THAT WAS MANUFACTURED ON OR AFTER JANUARY FIRST, TWO  
51 THOUSAND ELEVEN,  
52 SHALL BE SUBJECT TO A FINE OF UP TO ONE THOUSAND DOLLARS FOR EACH  
53 VIOLATION. IN ADDITION TO ANY FINE IMPOSED PURSUANT TO THIS SECTION, A  
54 TERM OF IMPRISONMENT OF UP TO ONE YEAR MAY BE IMPOSED FOR EACH  
55 VIOLATION.

56 S 7. This act shall take effect January 1, 2011; provided, that:

1 (a) the superintendent of the state police has received a written  
2 notice from a microstamp job shop that is willing to produce the micro-  
3 stamp structures on two internal surfaces of a semiautomatic pistol such  
4 that the pistol is microstamp-ready for a price of twelve dollars or  
5 less at a production level of one thousand firearms per a batch; and  
6 (b) effective immediately, the superintendent of the state police  
7 shall issue rules and regulations necessary for the implementation of  
8 this act on its effective date.