

6468--A

Cal. No. 402

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, ALFANO -- Multi-Sponsored by -- M. of A. BING, COLTON, COOK, GLICK, GOTTFRIED, HEASTIE, HOOPER, JACOBS, JEFFRIES, MAISEL, McENENY, McKEVITT, NOLAN, PEOPLES, PHEFFER, ROBINSON, SALADINO, SCARBOROUGH, TOWNS, WEISENBERG -- read once and referred to the Committee on Codes -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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

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

LBD02827-10-9

1 the firearm; that information from completed crime gun tracing is an
2 important element utilized by COMPSTAT and other crime analysis systems
3 to target illegal firearms trafficking; that microstamping technology
4 continues to produce identifiable markings onto expended cartridge
5 casings even after thousands of rounds of testing; that this additional
6 tool will help law enforcement investigate illegal gun trafficking,
7 close firearm-related criminal cases and protect the public; and that
8 legislative action is necessary to require all new semiautomatic pistols
9 manufactured or sold after January 1, 2011 to be microstamp-ready.

10 S 3. Section 265.00 of the penal law is amended by adding two new
11 subdivisions 24 and 25 to read as follows:

12 24. "MICROSTAMP-READY," WHEN USED WITH REFERENCE TO A SEMIAUTOMATIC
13 PISTOL, MEANS THAT SUCH PISTOL IS MANUFACTURED TO PRODUCE A UNIQUE
14 ALPHA-NUMERIC OR GEOMETRIC CODE ON AT LEAST TWO LOCATIONS ON EACH
15 EXPENDED CARTRIDGE CASE THAT IDENTIFIES THE MAKE, MODEL, AND SERIAL
16 NUMBER OF THE PISTOL.

17 25. "MICROSTAMPING COMPONENT OR MECHANISM," WHEN USED WITH REFERENCE
18 TO A SEMIAUTOMATIC PISTOL, MEANS A COMPONENT OR MECHANISM OF SUCH PISTOL
19 DESIGNED AND INTENDED TO PRODUCE A UNIQUE ALPHA-NUMERIC OR GEOMETRIC
20 CODE ON AN EXPENDED CARTRIDGE THAT IDENTIFIES THE MAKE, MODEL, AND SERI-
21 AL NUMBER OF THE PISTOL.

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

24 6. (A) Any person who wilfully defaces any machine-gun, large capacity
25 ammunition feeding device or firearm, INCLUDING DEFACING A MICROSTAMPING
26 COMPONENT OR MECHANISM OF A SEMIAUTOMATIC PISTOL AS DESCRIBED IN SUBDI-
27 VISION TWENTY-FIVE OF SECTION 265.00 OF THIS ARTICLE, is guilty of a
28 class D felony. (B) ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00
29 OF THIS CHAPTER WHO SELLS, OFFERS FOR SALE, EXCHANGES, GIVES, TRANSFERS
30 OR DELIVERS A SEMIAUTOMATIC PISTOL, KNOWING THAT A MICROSTAMPING COMPO-
31 NENT OR MECHANISM OF SUCH PISTOL AS DESCRIBED IN SUBDIVISION TWENTY-FIVE
32 OF SECTION 265.00 OF THIS ARTICLE HAS BEEN DEFACED, IS GUILTY OF A CLASS
33 A MISDEMEANOR. FOR PURPOSES OF THIS SUBDIVISION, DEFACING A SEMIAUTOMAT-
34 IC PISTOL DOES NOT INCLUDE (1) MODIFYING A SEMIAUTOMATIC PISTOL TO
35 RENDER IT MICROSTAMP-READY IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVI-
36 SION TWENTY-FOUR OF SECTION 265.00 OF THIS ARTICLE OR (2) REPLACING THE
37 FIRING PIN OF A SEMIAUTOMATIC PISTOL THAT IS MICROSTAMP-READY WHEN SUCH
38 PIN IS DAMAGED OR IN NEED OF REPLACEMENT FOR THE SAFE USE OF SUCH
39 PISTOL, OR REPLACING SUCH PIN FOR A LEGITIMATE SPORTING PURPOSE.

40 S 5. The penal law is amended by adding two new sections 265.38 and
41 265.39 to read as follows:

42 S 265.38 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; PENALTIES.

43 IT SHALL BE UNLAWFUL:

44 1. FOR ANY PERSON, ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, TO
45 MANUFACTURE OR CAUSE TO BE MANUFACTURED IN THIS STATE A SEMIAUTOMATIC
46 PISTOL, UNLESS SUCH PISTOL IS MICROSTAMP-READY;

47 2. FOR ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00 OF THIS
48 CHAPTER, TO SELL, OFFER FOR SALE, EXCHANGE, GIVE, TRANSFER OR DELIVER A
49 SEMIAUTOMATIC PISTOL MANUFACTURED ON OR AFTER JANUARY FIRST, TWO THOU-
50 SAND ELEVEN TO ANY PERSON OTHER THAN A DEALER IN FIREARMS, UNLESS SUCH
51 PISTOL IS MICROSTAMP-READY; OR

52 3. FOR ANY MANUFACTURER OR WHOLESALE DEALER TO DELIVER OR CAUSE TO BE
53 DELIVERED TO ANY PERSON IN THIS STATE, A SEMIAUTOMATIC PISTOL MANUFAC-
54 TURED AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, UNLESS THE MANUFACTURER
55 CERTIFIES TO SUCH PERSON AT THE TIME OF SUCH DELIVERY, IN ACCORDANCE
56 WITH RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE,

1 THAT SUCH PISTOL IS MICROSTAMP-READY. SUCH RULES AND REGULATIONS SHALL
2 INCLUDE A REQUIREMENT THAT, AS PART OF THE CERTIFICATION, THE MANUFAC-
3 Turer SHALL PROVIDE THE MAKE, MODEL AND SERIAL NUMBER OF THE PISTOL.

4 A VIOLATION OF ANY PROVISION OF THIS SECTION IS A CLASS B MISDEMEANOR;
5 PROVIDED, HOWEVER, THAT A PERSON, INCLUDING A DEALER IN FIREARMS, WHOLE-
6 SALE DEALER OR A MANUFACTURER, WHO VIOLATES ANY PROVISION OF THIS
7 SECTION AFTER HAVING PREVIOUSLY BEEN CONVICTED OF VIOLATING ANY
8 PROVISION OF THIS SECTION IS GUILTY OF A CLASS A MISDEMEANOR.

9 S 265.39 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; AFFIRMATIVE DEFENSE.

10 IN ANY PROSECUTION UNDER SUBDIVISION TWO OF SECTION 265.38 OF THIS
11 ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEALER IN FIREARMS, AT
12 THE TIME OF SALE, OFFER FOR SALE, EXCHANGE, GIVING, TRANSFER OR DELIVERY
13 OF THE SEMIAUTOMATIC PISTOL, WAS IN POSSESSION OF:

14 1. A CERTIFICATION FROM THE MANUFACTURER OF SUCH PISTOL DELIVERED
15 PURSUANT TO SUBDIVISION THREE OF SECTION 265.38 OF THIS ARTICLE, THAT
16 SUCH PISTOL IS MICROSTAMP-READY; OR

17 2. AN EXACT COPY OF SUCH CERTIFICATION OBTAINED BY THE DEALER IN
18 FIREARMS FROM SUCH MANUFACTURER IN ACCORDANCE WITH APPLICABLE RULES AND
19 REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE.

20 THE DIVISION OF STATE POLICE SHALL PROMULGATE RULES AND REGULATIONS
21 GOVERNING PROCEDURES AND STANDARDS FOR EXACT COPIES OF CERTIFICATIONS
22 AND THE OBTAINING OF SUCH COPIES BY A DEALER IN FIREARMS FROM A MANUFAC-
23 Turer FOR PURPOSES OF THIS SECTION.

24 S 6. Subdivision 5 of section 265.15 of the penal law, as added by
25 chapter 695 of the laws of 1987, is amended to read as follows:

26 5. The possession by any person of a defaced machine-gun, firearm,
27 rifle or shotgun is presumptive evidence that such person defaced the
28 same, PROVIDED, HOWEVER, THAT THIS SUBDIVISION SHALL NOT APPLY TO
29 POSSESSION OF A SEMI-AUTOMATIC PISTOL WHERE THE SOLE DEFACEMENT ALLEGED
30 CONSISTS OF DEFACING A MICROSTAMPING COMPONENT OR MECHANISM OF SUCH
31 PISTOL.

32 S 7. This act shall take effect January 1, 2011, or at such time that
33 the superintendent of the state police has received written notice from
34 one or more microstamp job shops that such shop or shops are willing and
35 prepared to produce microstamp structures on two internal surfaces of a
36 semiautomatic pistol in accordance with subdivision 24 of section 265.00
37 of the penal law for a price of twelve dollars or less at a production
38 level of one thousand semiautomatic pistols per batch, whichever occurs
39 first; provided that the division of state police shall notify the
40 legislative bill drafting commission upon the occurrence of the receipt
41 of the written notice provided for in this section in order that the
42 commission may maintain an accurate and timely effective data base of
43 the official text of the laws of the state of New York in furtherance of
44 effectuating the provisions of this act, and provided further, that
45 effective immediately the superintendent of the state police shall
46 promulgate rules and regulations necessary for the implementation of
47 this act.