

4338

2009-2010 Regular Sessions

I N S E N A T E

April 22, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to personalized gun safety

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

1 Section 1. The penal law is amended by adding a new article 401 to
2 read as follows:

3 ARTICLE 401

4 PERSONALIZED GUN SAFETY

5 SECTION 401.00 DEFINITIONS.

6 401.05 TEMPORARY FIREARM SAFETY STANDARD COMMISSION.

7 401.10 SAFETY STANDARD TESTING.

8 401.15 ENFORCEMENT.

9 401.20 EXEMPTIONS.

10 401.25 PENALTIES.

11 401.30 LIABILITY.

12 401.35 SEVERABILITY.

13 S 401.00 DEFINITIONS.

14 FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE
15 FOLLOWING MEANINGS:

16 1. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, COMPANY, ASSOCIATION,
17 FIRM, PARTNERSHIP, SOCIETY, JOINT STOCK COMPANY OR ASSOCIATION, LIMITED
18 LIABILITY COMPANY, OR OTHER ENTITY.

19 2. "AUTHORIZED USER" MEANS THE PERSON WHO OWNS THE FIREARM, AS DEFINED
20 IN SECTION 265.00 OF THIS CHAPTER, OR A PERSON TO WHOM THE OWNER HAS
21 GIVEN CONSENT TO USE THE FIREARM.

22 3. "COMMISSION" MEANS THE TEMPORARY FIREARM SAFETY STANDARD COMMISSION
23 ESTABLISHED IN SECTION 401.05 OF THIS ARTICLE.

24 S 401.05 TEMPORARY FIREARM SAFETY STANDARD COMMISSION.

25 1. THERE IS HEREBY CREATED A TEMPORARY FIREARM SAFETY STANDARD COMMIS-
26 SION. SUCH COMMISSION SHALL BE ESTABLISHED WITHIN SIX MONTHS AFTER THE

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

LBD02503-01-9

1 EFFECTIVE DATE OF THIS ARTICLE, AND IT SHALL ADOPT A PERFORMANCE SAFETY
2 STANDARD FOR FIREARMS, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER. THE
3 COMMISSION SHALL EXPIRE ONE YEAR AFTER THE ISSUANCE OF SUCH STANDARD.

4 2. SUCH TEMPORARY STATE COMMISSION SHALL CONSIST OF NINE MEMBERS AS
5 FOLLOWS: ONE SUCH MEMBER SHALL BE THE SUPERINTENDENT OF STATE POLICE OR
6 HIS OR HER DESIGNEE; ONE SUCH MEMBER SHALL BE THE COMMISSIONER OF THE
7 DIVISION OF CRIMINAL JUSTICE SERVICES OR HIS OR HER DESIGNEE; ONE SUCH
8 MEMBER SHALL BE THE COMMISSIONER OF HEALTH OR HIS OR HER DESIGNEE; ONE
9 SUCH MEMBER SHALL BE APPOINTED BY THE GOVERNOR; ONE MEMBER SHALL BE
10 APPOINTED BY THE ATTORNEY GENERAL; TWO MEMBERS SHALL BE APPOINTED BY THE
11 TEMPORARY PRESIDENT OF THE SENATE; AND TWO MEMBERS SHALL BE APPOINTED BY
12 THE SPEAKER OF THE ASSEMBLY.

13 3. THE GOVERNOR SHALL SELECT A CHAIRPERSON OF THE COMMISSION FROM
14 AMONG THE MEMBERS, AND SUCH CHAIRPERSON SHALL SERVE AS SUCH AT THE PLEA-
15 SURE OF THE GOVERNOR.

16 4. MEMBERS OF THE COMMISSION SHALL NOT BE COMPENSATED FOR THEIR
17 SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES
18 INCURRED IN THE PERFORMANCE OF THEIR DUTIES. NO MEMBER OF THE COMMISSION
19 SHALL BE DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE OR EMPLOYMENT, NOR
20 SHALL HE OR SHE FORFEIT ANY SUCH OFFICE OR EMPLOYMENT BY VIRTUE OF HIS
21 OR HER APPOINTMENT HEREUNDER. THE DIVISION OF STATE POLICE SHALL FURNISH
22 REASONABLE OFFICE SPACE AND DAY-TO-DAY STAFF SUPPORT TO THE COMMISSION.

23 5. THE COMMISSION SHALL, ON OR BEFORE ONE YEAR AFTER ITS CREATION,
24 ADOPT A PRELIMINARY FIREARM SAFETY PERFORMANCE STANDARD FOR ALL FIREARMS
25 MANUFACTURED, ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANS-
26 FERRED, SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED WITHIN THIS
27 STATE. THE STANDARD SHALL REQUIRE, BUT NEED NOT BE LIMITED TO THE
28 FOLLOWING:

29 (A) A FIREARM MUST BE PERSONALIZED SO THAT IT CAN BE FIRED ONLY WHEN
30 OPERATED BY THAT FIREARM'S AUTHORIZED USER;

31 (B) THE TECHNOLOGY CREATING PERSONALIZED FIREARMS SHALL BE INCORPO-
32 RATED INTO THE DESIGN OF THE FIREARM AND BE PART OF ITS ORIGINAL EQUIP-
33 MENT AND NOT AN ACCESSORY;

34 (C) PERSONALIZED FIREARMS SHALL NOT BE MANUFACTURED, ASSEMBLED, OR
35 ALTERED SO AS TO PERMIT THE PERSONALIZED CHARACTERISTICS TO BE READILY
36 DEACTIVATED.

37 6. THE COMMISSION SHALL FORMULATE THE NECESSARY TESTING PROCEDURE TO
38 DETERMINE IF A FIREARM COMPLIES WITH THE COMMISSION'S STANDARD.

39 7. THE COMMISSION SHALL DESIGNATE ONE OR MORE INDEPENDENT LABORATORIES
40 FOR DETERMINING WHETHER OR NOT FIREARMS COMPLY WITH THE COMMISSION'S
41 STANDARD. THE LABORATORIES SHALL USE THE TEST METHOD FORMULATED BY THE
42 COMMISSION TO DETERMINE COMPLIANCE.

43 8. THE COMMISSION IS AUTHORIZED:

44 (A) TO CALL UPON ANY AGENCY, DEPARTMENT, OFFICE, DIVISION, OR PUBLIC
45 AUTHORITY OF THIS STATE TO SUPPLY IT WITH SUCH INFORMATION AS IT DEEMS
46 NECESSARY TO DISCHARGE ITS RESPONSIBILITIES. EACH AGENCY, DEPARTMENT,
47 OFFICE, DIVISION, AND PUBLIC AUTHORITY OF THIS STATE SHALL COOPERATE
48 WITH THE COMMISSION AND FURNISH SUCH INFORMATION AND ASSISTANCE AS IS
49 REASONABLY NECESSARY FOR THE COMMISSION TO ACCOMPLISH ITS PURPOSES;

50 (B) TO CONDUCT PUBLIC HEARINGS, HEAR THE TESTIMONY OF WITNESSES, AND
51 REQUEST ANY DOCUMENTS THE COMMISSION DEEMS NECESSARY TO CARRY OUT THE
52 COMMISSION'S RESPONSIBILITIES;

53 (C) TO CONTRACT WITH ANY STATE OR PRIVATE ENTITY FOR THE PROVISION OF
54 SUCH SERVICES AS THE COMMISSION DETERMINES TO BE NECESSARY; AND

55 (D) TO TAKE SUCH OTHER ACTIONS NOT INCONSISTENT WITH THE PURPOSES OF
56 THIS SECTION AS SHALL ENABLE THE COMMISSION TO CARRY OUT ITS FUNCTIONS.

1 9. THE COMMISSION, AFTER ADOPTION OF THE STANDARD AND PRIOR TO ITS
2 EXPIRATION, SHALL CONSULT THE STATE POLICE IN REVIEWING AND EVALUATING
3 THE IMPLEMENTATION OF THE SAFETY STANDARD.

4 10. THE COMMISSION SHALL ISSUE AN INTERIM REPORT TO THE GOVERNOR,
5 ATTORNEY GENERAL, TEMPORARY PRESIDENT OF THE SENATE, AND SPEAKER OF THE
6 ASSEMBLY ON OR ABOUT ONE YEAR AFTER THE CREATION OF THE COMMISSION AND
7 SHALL ISSUE A FINAL REPORT ON OR ABOUT TWO YEARS AFTER THE CREATION OF
8 THE COMMISSION; BOTH REPORTS SHALL BE IN ACCORDANCE WITH THE PROVISIONS
9 OF THIS SECTION.

10 S 401.10 SAFETY STANDARD TESTING.

11 1. IN ACCORDANCE WITH THE STANDARD ISSUED BY THE COMMISSION, ANY
12 GUNSMITH, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER, WISHING TO MANU-
13 FACTURE, OFFER FOR SALE, SELL OR TRANSFER A FIREARM IN THIS STATE MUST
14 SUBMIT A PROTOTYPE OF THE FIREARM MODEL FOR TESTING, AT THE COST OF THE
15 GUNSMITH, TO ONE OF THE INDEPENDENT LABORATORIES DESIGNATED BY THE
16 COMMISSION.

17 2. THE LABORATORY SHALL ISSUE A WRITTEN REPORT DIRECTLY TO THE SUPER-
18 INTENDENT OF STATE POLICE AND A COPY THEREOF TO THE GUNSMITH INDICATING
19 WHETHER OR NOT THE SUBMITTED FIREARM MET THE SAFETY STANDARD. SHOULD THE
20 FIREARM FAIL TO MEET SUCH STANDARD, THE REPORT SHALL DESCRIBE THE
21 REASONS THEREFOR.

22 3. IF A FIREARM MODEL FAILS TO MEET THE SAFETY STANDARD, SUCH FIREARM
23 SHALL NOT BE MANUFACTURED, ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD,
24 TRADED, TRANSFERRED, SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR
25 POSSESSED BY ANY PERSON IN THIS STATE UNTIL SUCH FIREARM HAS BEEN MODI-
26 FIED TO MEET THE COMMISSION'S STANDARD AND HAS PASSED THE INDEPENDENT
27 LABORATORY'S TEST ON RESUBMISSION.

28 4. IF THE FIREARM MODEL MEETS THE STANDARD, THE SUPERINTENDENT OF
29 STATE POLICE SHALL ISSUE A CERTIFICATE STATING THAT THE FIREARM MODEL
30 MEETS THE COMMISSION'S STANDARD, AND THE WORDS, "CERTIFIED PERSONALIZED
31 FIREARM" OR AN EQUIVALENT LABEL, AS ESTABLISHED BY THE COMMISSION, SHALL
32 BE IMPRINTED ON THE APPROVED FIREARM AT THE EXPENSE OF THE GUNSMITH, AS
33 DEFINED IN SECTION 265.00 OF THIS CHAPTER.

34 5. ONCE THE FIREARM MODEL IS DEEMED TO MEET THE STANDARD, THE GUNSMITH
35 OR DEALER, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER, OR THE AUTHOR-
36 IZED USER, AS DEFINED IN THIS ARTICLE, SHALL NOT ALTER THE DESIGN OF THE
37 FIREARM IN ANY MANNER AFFECTING SUCH SAFETY STANDARD.

38 S 401.15 ENFORCEMENT.

39 1. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE COMMIS-
40 SION'S STANDARD, FIREARMS THAT DO NOT MEET THE STANDARD PRESCRIBED BY
41 THE COMMISSION PURSUANT TO THIS ARTICLE SHALL NOT BE MANUFACTURED,
42 ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANSFERRED,
43 SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED IN THIS STATE.

44 2. IF ANY LAW ENFORCEMENT OFFICER, DURING THE COURSE OF OFFICIAL
45 DUTIES AND OPERATING WITHIN THE CONFINES OF THE LAW, DISCOVERS ANY
46 FIREARM WHICH, UNDER THE PROVISIONS OF THIS ARTICLE, DOES NOT MEET THE
47 COMMISSION'S STANDARD, THAT OFFICER SHALL TAKE POSSESSION OF SUCH
48 FIREARM, AND THE DISPOSITION OF ANY SUCH FIREARM SHALL BE IN ACCORDANCE
49 WITH THE PROVISIONS OF SECTION 400.05 OF THIS CHAPTER.

50 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
51 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
52 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
53 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
54 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
55 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
56 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN

1 INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND
2 RESTRAINING ANY FURTHER VIOLATIONS WITHOUT REQUIRING PROOF THAT ANY
3 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH
4 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO
5 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
6 SUBPOENAS.

7 S 401.20 EXEMPTIONS.

8 THE FOLLOWING FIREARMS ARE EXEMPT FROM THIS ARTICLE:

9 1. ANTIQUE FIREARMS, AS DEFINED IN SECTION 265.00 OF THIS CHAPTER;

10 2. FIREARMS MANUFACTURED PRIOR TO FOUR YEARS FROM THE DATE OF THE
11 ADOPTION OF THE COMMISSION'S ORIGINAL STANDARD; PROVIDED, HOWEVER, THAT
12 SUCH FIREARMS MAY NOT BE SOLD, OFFERED FOR SALE, TRADED, TRANSFERRED,
13 SHIPPED, LEASED, OR DISTRIBUTED BY DEALERS, AS DEFINED IN SECTION 265.00
14 OF THIS CHAPTER, AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
15 COMMISSION'S ORIGINAL STANDARD; AND

16 3. FIREARMS PURCHASED BY LAW ENFORCEMENT OFFICERS OR DEPARTMENTS OR
17 AGENCIES AND MEMBERS OF THE ARMED FORCES.

18 S 401.25 PENALTIES.

19 1. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
20 COMMISSION'S STANDARD, ANY PERSON WHO MANUFACTURES OR CAUSES TO BE MANU-
21 FACTURED ANY FIREARM THAT HAS NOT BEEN CERTIFIED BY AN INDEPENDENT TEST-
22 ING LABORATORY AS MEETING THE COMMISSION'S STANDARD AND THAT IS NOT
23 EXEMPT PURSUANT TO SECTION 401.20 OF THIS ARTICLE IS GUILTY OF A CLASS D
24 FELONY.

25 2. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
26 COMMISSION'S STANDARD, ANY PERSON WHO TRANSPORTS OR SHIPS ANY FIREARM
27 THAT HAS NOT BEEN CERTIFIED BY AN INDEPENDENT TESTING LABORATORY AS
28 MEETING THE COMMISSION'S STANDARD AND THAT IS NOT EXEMPT PURSUANT TO
29 SECTION 401.20 OF THIS ARTICLE IS GUILTY OF A CLASS D FELONY.

30 3. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
31 COMMISSION'S STANDARD, ANY PERSON WHO DISPOSES OF ANY FIREARM THAT HAS
32 NOT BEEN CERTIFIED BY AN INDEPENDENT TESTING LABORATORY AS MEETING THE
33 COMMISSION'S STANDARD AND THAT IS NOT EXEMPT PURSUANT TO SECTION 401.20
34 OF THIS ARTICLE IS GUILTY OF A CLASS D FELONY.

35 4. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
36 COMMISSION'S STANDARD, ANY PERSON WHO WILLFULLY DEFACES ANY FIREARM BY
37 ALTERING THE PERSONALIZED CHARACTERISTICS OF A FIREARM MANUFACTURED,
38 ASSEMBLED, ALTERED, OFFERED FOR SALE, SOLD, TRADED, TRANSFERRED,
39 SHIPPED, LEASED, DISTRIBUTED, ACQUIRED, OR POSSESSED AFTER FOUR YEARS
40 FROM THE DATE OF THE ADOPTION OF THE COMMISSION'S ORIGINAL STANDARD IS
41 GUILTY OF A CLASS D FELONY.

42 S 401.30 LIABILITY.

43 1. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
44 COMMISSION'S STANDARD, ANY PERSON WHO DISCHARGES A FIREARM THAT DOES NOT
45 MEET THE COMMISSION'S STANDARD AND THAT THIS IS NOT EXEMPT PURSUANT TO
46 SECTION 401.20 OF THIS ARTICLE IS LIABLE FOR ALL DIRECT AND CONSEQUEN-
47 TIAL DAMAGES TO ANY PERSON INJURED IN PERSON, PROPERTY, OR MEANS OF
48 SUPPORT.

49 2. ON OR AFTER FOUR YEARS FROM THE DATE OF THE ADOPTION OF THE
50 COMMISSION'S STANDARD, ANY PERSON WHO OWNS A FIREARM THAT DOES NOT MEET
51 THE COMMISSION'S STANDARD, THAT IS NOT EXEMPT PURSUANT TO SECTION 401.20
52 OF THIS ARTICLE, AND WHICH IS DISCHARGED BY AN UNAUTHORIZED PERSON IS
53 LIABLE FOR ALL DIRECT AND CONSEQUENTIAL DAMAGES TO ANY PERSON INJURED IN
54 PERSON, PROPERTY, OR MEANS OF SUPPORT.

55 3. THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL
56 NOT APPLY WHEN THE DISCHARGE WAS BY A LAW ENFORCEMENT OFFICER IN THE

1 LINE OF DUTY OR WHEN THE DISCHARGE WAS MADE WITH JUSTIFICATION, AS
2 DEFINED IN ARTICLE THIRTY-FIVE OF THIS CHAPTER.
3 4. COMPLIANCE WITH ANY STANDARD ISSUED UNDER THIS ARTICLE DOES NOT
4 EXEMPT ANY PERSON FROM LIABILITY UNDER THE COMMON LAW.
5 S 401.35 SEVERABILITY.
6 IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION OF SUCH PROVISION
7 IN CERTAIN CIRCUMSTANCES IS HELD INVALID, THE VALIDITY OF THE REMAINDER
8 OF THIS ARTICLE AND ITS APPLICABILITY TO OTHER CIRCUMSTANCES SHALL NOT
9 BE AFFECTED.
10 S 2. This act shall take effect on the first of November next succeed-
11 ing the date on which it shall have become a law.