

4752

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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

AN ACT to amend the penal law and the executive law, in relation to
banning the sale, possession or use of 50-caliber weapons

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

1 Section 1. Legislative findings and declaration. The legislature here-
2 by finds and declares that 50-caliber or larger weapons having the
3 capacity for rapidly discharging ammunition have no acceptable purpose.
4 The legislature additionally finds and declares that such weapons pose
5 such an imminent threat and danger to the safety and security of the
6 people of this state that it is necessary to ban the possession and use
7 of such weapons.

8 S 2. Subdivisions 8 and 9 of section 265.00 of the penal law, as
9 amended by chapter 189 of the laws of 2000, are amended to read as
10 follows:

11 8. "Gunsmith" means any person, firm, partnership, corporation or
12 company who engages in the business of repairing, altering, assembling,
13 manufacturing, cleaning, polishing, engraving or trueing, or who
14 performs any mechanical operation on, any firearm, large capacity ammu-
15 nition feeding device, 50-CALIBER WEAPON or machine-gun.

16 9. "Dealer in firearms" means any person, firm, partnership, corpo-
17 ration or company who engages in the business of purchasing, selling,
18 keeping for sale, loaning, leasing, or in any manner disposing of, any
19 assault weapon, large capacity ammunition feeding device, 50-CALIBER
20 WEAPON, pistol or revolver.

21 S 3. Section 265.00 of the penal law is amended by adding a new subdi-
22 vision 24 to read as follows:

23 24. "50-CALIBER WEAPON" MEANS A RIFLE CAPABLE OF FIRING A CENTER-FIRE
24 CARTRIDGE IN 50-CALIBER OR LARGER, .50 BMG CALIBER OR LARGER, ANY OTHER
25 VARIANT OF 50-CALIBER OR LARGER, OR ANY OTHER METRIC EQUIVALENT OF SUCH

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

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CALIBER, PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO INCLUDE ANY MUZZLE LOADING RIFLE OR SHOTGUN WITH A RIFLED BORE.

S 4. Subdivision 3 of section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

(3) Such person knowingly possesses a machine-gun, A 50-CALIBER WEAPON, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, 50-CALIBER WEAPON, firearm, rifle or shotgun; or

S 5. Section 265.02 of the penal law is amended by adding a new subdivision 4 to read as follows:

(4) SUCH PERSON POSSESSES ANY 50-CALIBER WEAPON; OR

S 6. Section 265.03 of the penal law, as amended by chapter 742 of the laws of 2006 and subdivisions 1 and 3 as amended by chapter 745 of the laws of 2006, is amended to read as follows:

S 265.03 Criminal possession of a weapon in the second degree.

A person is guilty of criminal possession of a weapon in the second degree when SUCH PERSON:

(1) [with intent to use the same unlawfully against another, such person:

(a)] possesses a machine-gun; or

[(b)] (2) possesses a 50-CALIBER WEAPON OR A loaded firearm WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER; or

[(c)] (3) possesses a disguised gun WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER; or

[(2) such person] (4) possesses five or more firearms; or

[(3)] (5) such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business.

Criminal possession of a weapon in the second degree is a class C felony.

S 7. The penal law is amended by adding two new sections 265.45 and 265.46 to read as follows:

S 265.45 CRIMINAL USE OF A 50-CALIBER WEAPON IN THE SECOND DEGREE.

1. A PERSON IS GUILTY OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE SECOND DEGREE WHEN HE COMMITS ANY CLASS C VIOLENT FELONY OFFENSE AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION 70.02 OF THIS CHAPTER AND HE USES A 50-CALIBER WEAPON, AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION 265.00 OF THIS ARTICLE, IF THE 50-CALIBER WEAPON IS A LOADED 50-CALIBER WEAPON FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING DEATH OR OTHER SERIOUS INJURY MAY BE DISCHARGED.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A PERSON IS CONVICTED OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF FIVE YEARS TO THE MINIMUM TERM OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS C VIOLENT FELONY CONVICTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGREGATE OF THE FIVE YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVISION AND THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS C VIOLENT FELONY CONVICTION SHALL CONSTITUTE THE NEW AGGREGATE MINIMUM TERM OF IMPRISONMENT, AND A DEFENDANT SUBJECT TO SUCH TERM SHALL BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM TERM AND SHALL NOT BE

1 ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRETIONARY RELEASE DURING
2 SUCH TERM.

3 S 265.46 CRIMINAL USE OF A 50-CALIBER WEAPON IN THE FIRST DEGREE.

4 1. A PERSON IS GUILTY OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE
5 FIRST DEGREE WHEN HE COMMITS ANY CLASS A FELONY OFFENSE CONSTITUTING
6 MURDER, KIDNAPPING, ARSON, CONSPIRACY OR SALE OF A CONTROLLED SUBSTANCE
7 OR ATTEMPTS TO COMMIT ANY SUCH CLASS A FELONY WHERE SUCH ATTEMPT ALSO
8 CONSTITUTES A CLASS A FELONY, OR ANY CLASS B VIOLENT FELONY OFFENSE AS
9 DEFINED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 70.02 OF THIS
10 CHAPTER AND HE USES A 50-CALIBER WEAPON, AS DEFINED IN SUBDIVISION TWEN-
11 TY-FOUR OF SECTION 265.00 OF THIS ARTICLE, IF THE 50-CALIBER WEAPON IS A
12 LOADED 50-CALIBER WEAPON FROM WHICH A SHOT, READILY CAPABLE OF PRODUCING
13 DEATH OR OTHER SERIOUS INJURY MAY BE DISCHARGED.

14 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A
15 PERSON IS CONVICTED OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE FIRST
16 DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL
17 IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF TEN YEARS TO THE MINIMUM TERM
18 OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE
19 IMPOSED ON THE UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION.
20 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGRE-
21 GATE OF THE TEN YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVI-
22 SION AND THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE
23 UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION SHALL CONSTITUTE
24 THE NEW AGGREGATE MINIMUM TERM OF IMPRISONMENT, AND A DEFENDANT SUBJECT
25 TO SUCH TERM SHALL BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM
26 TERM AND SHALL NOT BE ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRE-
27 TIONARY RELEASE DURING SUCH TERM.

28 S 8. Subdivision 2 of section 265.08 of the penal law, as added by
29 chapter 233 of the laws of 1980, is amended to read as follows:

30 (2) displays what appears to be a pistol, revolver, rifle, shotgun,
31 50-CALIBER WEAPON, machine gun or other firearm.

32 S 9. Paragraph (b) of subdivision 1 of section 265.09 of the penal
33 law, as amended by chapter 650 of the laws of 1996, is amended to read
34 as follows:

35 (b) displays what appears to be a pistol, revolver, rifle, shotgun,
36 50-CALIBER WEAPON, machine gun or other firearm.

37 S 10. Subdivisions 2, 3 and 6 of section 265.10 of the penal law,
38 subdivision 2 as amended by chapter 257 of the laws of 2008 and subdivi-
39 sions 3 and 6 as amended by chapter 189 of the laws of 2000, are amended
40 to read as follows:

41 2. Any person who transports or ships any machine-gun, 50-CALIBER
42 WEAPON, firearm silencer, assault weapon or large capacity ammunition
43 feeding device or disguised gun, or who transports or ships as merchan-
44 dise five or more firearms, is guilty of a class D felony. Any person
45 who transports or ships as merchandise any firearm, other than an
46 assault weapon, switchblade knife, gravity knife, pilum ballistic knife,
47 billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu
48 star, chuka stick, sandbag or slungshot is guilty of a class A misdemea-
49 nor.

50 3. Any person who disposes of any machine-gun, assault weapon, large
51 capacity ammunition feeding device, 50-CALIBER WEAPON or firearm silenc-
52 er is guilty of a class D felony. Any person who knowingly buys,
53 receives, disposes of, or conceals a machine-gun, 50-CALIBER WEAPON,
54 firearm, large capacity ammunition feeding device, rifle or shotgun
55 which has been defaced for the purpose of concealment or prevention of
56 the detection of a crime or misrepresenting the identity of such

1 machine-gun, 50-CALIBER WEAPON, firearm, large capacity ammunition feed-
2 ing device, rifle or shotgun is guilty of a class D felony.

3 6. Any person who wilfully defaces any machine-gun, large capacity
4 ammunition feeding device, 50-CALIBER WEAPON or firearm is guilty of a
5 class D felony.

6 S 11. Subdivisions 1 and 5 of section 265.15 of the penal law, subdi-
7 vision 5 as amended by chapter 695 of the laws of 1987, are amended to
8 read as follows:

9 1. The presence in any room, dwelling, structure or vehicle of any
10 machine-gun OR 50-CALIBER WEAPON is presumptive evidence of its unlawful
11 possession by all persons occupying the place where such machine-gun OR
12 50-CALIBER WEAPON is found.

13 5. The possession by any person of a defaced machine-gun, 50-CALIBER
14 WEAPON, firearm, rifle or shotgun is presumptive evidence that such
15 person defaced the same.

16 S 12. Paragraph 2 of subdivision a of section 265.20 of the penal law,
17 as amended by chapter 189 of the laws of 2000, is amended to read as
18 follows:

19 2. Possession of a machine-gun, large capacity ammunition feeding
20 device, 50-CALIBER WEAPON, firearm, switchblade knife, gravity knife,
21 pilum ballistic knife, billy or blackjack by a warden, superintendent,
22 headkeeper or deputy of a state prison, penitentiary, workhouse, county
23 jail or other institution for the detention of persons convicted or
24 accused of crime or detained as witnesses in criminal cases, in pursuit
25 of official duty or when duly authorized by regulation or order to
26 possess the same.

27 S 13. Paragraph 8 of subdivision a of section 265.20 of the penal law,
28 as amended by chapter 189 of the laws of 2000, is amended to read as
29 follows:

30 8. The manufacturer of machine-guns, assault weapons, large capacity
31 ammunition feeding devices, 50-CALIBER WEAPONS, disguised guns, pilum
32 ballistic knives, switchblade or gravity knives, billies or blackjacks
33 as merchandise and the disposal and shipment thereof direct to a regu-
34 larly constituted or appointed state or municipal police department,
35 sheriff, policeman or other peace officer, or to a state prison, peni-
36 tentiary, workhouse, county jail or other institution for the detention
37 of persons convicted or accused of crime or held as witnesses in crimi-
38 nal cases, or to the military service of this state or of the United
39 States.

40 S 14. Section 265.20 of the penal law is amended by adding a new
41 subdivision e to read as follows:

42 E. THE TERMS "PISTOL," "REVOLVER," "RIFLE," AND "SHOTGUN" AS USED IN
43 PARAGRAPHS THREE THROUGH FIVE, SEVEN THROUGH SEVEN-B, TWELVE, THIRTEEN
44 AND THIRTEEN-A OF SUBDIVISION A OF THIS SECTION SHALL NOT INCLUDE A
45 50-CALIBER WEAPON AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION
46 265.00 OF THIS ARTICLE.

47 S 15. Section 265.11 of the penal law, as amended by chapter 764 of
48 the laws of 2005, is amended to read as follows:

49 S 265.11 Criminal sale of a firearm OR 50-CALIBER WEAPON in the third
50 degree.

51 A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON
52 in the third degree when such person is not authorized pursuant to law
53 to possess a firearm OR 50-CALIBER WEAPON and such person unlawfully
54 either:

(1) sells, exchanges, gives or disposes of a firearm [or], large capacity ammunition feeding device OR 50-CALIBER WEAPON to another person; or

(2) possesses a firearm OR 50-CALIBER WEAPON with the intent to sell it.

Criminal sale of a firearm OR 50-CALIBER WEAPON in the third degree is a class D felony.

S 16. Section 265.12 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.12 Criminal sale of a firearm OR 50-CALIBER WEAPON in the second degree.

A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON in the second degree when such person:

(1) unlawfully sells, exchanges, gives or disposes of to another five or more firearms OR 50-CALIBER WEAPONS; or

(2) unlawfully sells, exchanges, gives or disposes of to another person or persons a total of five or more firearms OR 50-CALIBER WEAPONS in a period of not more than one year.

Criminal sale of a firearm OR 50-CALIBER WEAPON in the second degree is a class C felony.

S 17. Section 265.14 of the penal law, as added by chapter 175 of the laws of 1991 and the closing paragraph as amended by chapter 654 of the laws of 1998, is amended to read as follows:

S 265.14 Criminal sale of a firearm OR 50-CALIBER WEAPON with the aid of a minor.

A person over the age of eighteen years of age is guilty of criminal sale of a [weapon] FIREARM OR 50-CALIBER WEAPON with the aid of a minor when a person under sixteen years of age knowingly and unlawfully sells, exchanges, gives or disposes of a firearm OR 50-CALIBER WEAPON in violation of this article, and such person over the age of eighteen years of age, acting with the mental culpability required for the commission thereof, solicits, requests, commands, importunes or intentionally aids such person under sixteen years of age to engage in such conduct.

Criminal sale of a firearm OR 50-CALIBER WEAPON with the aid of a minor is a class C felony.

S 18. Section 265.13 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.13 Criminal sale of a firearm OR 50-CALIBER WEAPON in the first degree.

A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON in the first degree when such person:

(1) unlawfully sells, exchanges, gives or disposes of to another ten or more firearms OR 50-CALIBER WEAPONS; or

(2) unlawfully sells, exchanges, gives or disposes of to another person or persons a total of ten or more firearms OR 50-CALIBER WEAPONS in a period of not more than one year.

Criminal sale of a firearm OR 50-CALIBER WEAPON in the first degree is a class B felony.

S 19. Section 265.16 of the penal law, as added by chapter 600 of the laws of 1992 and the closing paragraph as amended by chapter 654 of the laws of 1998, is amended to read as follows:

S 265.16 Criminal sale of a firearm OR 50-CALIBER WEAPON to a minor.

A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON to a minor when he is not authorized pursuant to law to possess a firearm OR 50-CALIBER WEAPON and he unlawfully sells, exchanges, gives

1 or disposes of a firearm OR 50-CALIBER WEAPON to another person who is
2 or reasonably appears to be less than nineteen years of age who is not
3 licensed pursuant to law to possess a firearm OR 50-CALIBER WEAPON.

4 Criminal sale of a firearm OR 50-CALIBER WEAPON to a minor is a class
5 C felony.

6 S 20. The opening paragraph of subdivision 1 of section 55.05 of the
7 penal law, as amended by chapter 276 of the laws of 1973, is amended to
8 read as follows:

9 [Felonies] EXCEPT FOR THE FELONIES DEFINED IN SECTIONS 265.45 AND
10 265.46 OF THIS CHAPTER, FELONIES are classified, for the purpose of
11 sentence, into five categories as follows:

12 S 21. Paragraph (a) of subdivision 1 of section 55.10 of the penal
13 law, as amended by chapter 276 of the laws of 1973, is amended to read
14 as follows:

15 (a) [The] EXCEPT FOR THE FELONIES DEFINED IN SECTIONS 265.45 AND
16 265.46 OF THIS CHAPTER, THE particular classification or subclassifica-
17 tion of each felony defined in this chapter is expressly designated in
18 the section or article defining it.

19 S 22. The executive law is amended by adding a new section 231 to read
20 as follows:

21 S 231. COMPLIANCE WITH THE BAN ON THE SALE, POSSESSION OR USE OF
22 50-CALIBER WEAPONS. 1. FROM WITHIN AMOUNTS APPROPRIATED THEREFOR, THE
23 DIVISION OF STATE POLICE SHALL TAKE SUCH ACTION AS IS NECESSARY TO
24 IMPLEMENT A PROGRAM WHEREBY PERSONS, INCLUDING DEALERS OF FIREARMS, IN
25 LAWFUL POSSESSION OF 50-CALIBER WEAPONS MAY BRING THEMSELVES INTO
26 COMPLIANCE WITH THE PROVISIONS OF THE PENAL LAW WHICH BANS THE SALE,
27 POSSESSION OR USE OF SUCH WEAPONS.

28 2. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, ANY
29 LICENSED FIREARM DEALER WHO HAS IN HIS OR HER POSSESSION A NEW 50-CALI-
30 BER WEAPON SHALL BE ENTITLED TO RETURN SUCH WEAPON TO THE DISTRIBUTOR OR
31 MANUFACTURER, AND SHALL BE ENTITLED TO A FULL REFUND, OR CREDIT, IN AN
32 AMOUNT EQUAL TO THE PURCHASE PRICE OF SUCH WEAPON. IN ANY CASE WHERE A
33 DISTRIBUTOR OR MANUFACTURER FAILS OR REFUSES TO SO REFUND OR CREDIT SUCH
34 DEALER, THE DEALER SHALL NOTIFY THE DIVISION OF STATE POLICE, AND IT
35 SHALL IMMEDIATELY NOTIFY THE ATTORNEY GENERAL SO THAT HE OR SHE MAY
36 INTERCEDE AND TAKE SUCH ACTIONS ON BEHALF OF THE DEALER TO SECURE SUCH
37 REFUND OR CREDIT.

38 3. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, ANY
39 PERSON, INCLUDING A LICENSED FIREARM DEALER, WHO HAS IN HIS OR HER LEGAL
40 POSSESSION A USED 50-CALIBER WEAPON SHALL PERSONALLY DELIVER SUCH WEAPON
41 TO THE DIVISION OF STATE POLICE, AND UPON TRANSFERRING OWNERSHIP AND
42 POSSESSION TO A DULY DESIGNATED OFFICER THEREOF, SHALL BE ENTITLED TO
43 RECEIVE PAYMENT IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF SUCH
44 WEAPON, BUT NOT TO EXCEED EIGHT THOUSAND FIVE HUNDRED DOLLARS.

45 4. THE DIVISION OF STATE POLICE SHALL TAKE SUCH ACTION, INCLUDING A
46 PUBLIC CAMPAIGN USING THE PRINT MEDIA, TELEVISION, RADIO OR OTHER MEANS
47 TO NOTIFY PERSONS OF THE EXISTENCE OF THE PROGRAM ESTABLISHED IN THIS
48 SECTION.

49 S 23. This act shall take effect immediately; provided, however, that
50 sections one through twenty-one of this act shall take effect on the
51 thirtieth day after this act shall have become a law; and provided,
52 further, that those sections of this act which provide that it shall be
53 unlawful to sell, exchange, give or dispose of a 50-caliber weapon shall
54 take effect with respect to a gunsmith or dealer in firearms on the
55 fifth day after this act shall have become a law.