

5926

2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. KAVANAGH, BING, COOK, JAFFEE, LAVINE, LIFTON, MAYERSOHN, RAMOS, ROBINSON -- Multi-Sponsored by -- M. of A. DINOWITZ, ENGLEBRIGHT, GLICK, GOTTFRIED, HOYT, JOHNS, MARKEY, ORTIZ, PAULIN, PEOPLES-STOKES, PERRY, PHEFFER, SCARBOROUGH, TOWNS, WEINSTEIN, WEISENBERG -- read once and referred 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:

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

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24. "50-CALIBER WEAPON" MEANS A RIFLE CAPABLE OF FIRING A CENTER-FIRE CARTRIDGE IN 50-CALIBER OR LARGER, .50 BMG CALIBER OR LARGER, ANY OTHER VARIANT OF 50-CALIBER OR LARGER, OR ANY OTHER METRIC EQUIVALENT OF SUCH 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 ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRETIONARY RELEASE DURING SUCH TERM.

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

1. A PERSON IS GUILTY OF CRIMINAL USE OF A 50-CALIBER WEAPON IN THE FIRST DEGREE WHEN HE COMMITS ANY CLASS A FELONY OFFENSE CONSTITUTING MURDER, KIDNAPPING, ARSON, CONSPIRACY OR SALE OF A CONTROLLED SUBSTANCE OR ATTEMPTS TO COMMIT ANY SUCH CLASS A FELONY WHERE SUCH ATTEMPT ALSO CONSTITUTES A CLASS A FELONY, OR ANY CLASS B VIOLENT FELONY OFFENSE AS DEFINED IN PARAGRAPH (A) 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 FIRST DEGREE AS DEFINED IN SUBDIVISION ONE OF THIS SECTION THE COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE TERM OF TEN YEARS TO THE MINIMUM TERM OF THE INDETERMINATE SENTENCE OR TERM OF THE DETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS A OR CLASS B VIOLENT FELONY CONVICTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGREGATE OF THE TEN YEAR CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SUBDIVISION AND THE MINIMUM TERM OF AN INDETERMINATE SENTENCE IMPOSED ON THE UNDERLYING CLASS A OR CLASS B 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 ELIGIBLE FOR RELEASE ON PAROLE OR OTHER DISCRETIONARY RELEASE DURING SUCH TERM.

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

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

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

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

S 10. Subdivisions 2, 3 and 6 of section 265.10 of the penal law, subdivision 2 as amended by chapter 257 of the laws of 2008 and subdivisions 3 and 6 as amended by chapter 189 of the laws of 2000, are amended to read as follows:

2. Any person who transports or ships any machine-gun, 50-CALIBER WEAPON, firearm silencer, assault weapon or large capacity ammunition feeding device or disguised gun, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a class A misdemeanor.

3. Any person who disposes of any machine-gun, assault weapon, large capacity ammunition feeding device, 50-CALIBER WEAPON or firearm silencer is guilty of a class D felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun, 50-CALIBER WEAPON, firearm, large capacity ammunition feeding device, rifle or shotgun

1 which has been defaced for the purpose of concealment or prevention of
2 the detection of a crime or misrepresenting the identity of such
3 machine-gun, 50-CALIBER WEAPON, firearm, large capacity ammunition feed-
4 ing device, rifle or shotgun is guilty of a class D felony.

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

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

11 1. The presence in any room, dwelling, structure or vehicle of any
12 machine-gun OR 50-CALIBER WEAPON is presumptive evidence of its unlawful
13 possession by all persons occupying the place where such machine-gun OR
14 50-CALIBER WEAPON is found.

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

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

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

29 S 13. Paragraph 8 of subdivision a of section 265.20 of the penal law,
30 as amended by chapter 61 of the laws of 2010, is amended to read as
31 follows:

32 8. The manufacturer of machine-guns, firearm silencers, assault weap-
33 ons, large capacity ammunition feeding devices, 50-CALIBER WEAPONS,
34 disguised guns, pilum ballistic knives, switchblade or gravity knives,
35 billies or blackjacks as merchandise, or as a transferee recipient of
36 the same for repair, lawful distribution or research and development,
37 and the disposal and shipment thereof direct to a regularly constituted
38 or appointed state or municipal police department, sheriff, policeman or
39 other peace officer, or to a state prison, penitentiary, workhouse,
40 county jail or other institution for the detention of persons convicted
41 or accused of crime or held as witnesses in criminal cases, or to the
42 military service of this state or of the United States; or for the
43 repair and return of the same to the lawful possessor or for research
44 and development.

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

47 E. THE TERMS "PISTOL," "REVOLVER," "RIFLE," AND "SHOTGUN" AS USED IN
48 PARAGRAPHS THREE THROUGH FIVE, SEVEN THROUGH SEVEN-B, TWELVE, THIRTEEN
49 AND THIRTEEN-A OF SUBDIVISION A OF THIS SECTION SHALL NOT INCLUDE A
50 50-CALIBER WEAPON AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION
51 265.00 OF THIS ARTICLE.

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

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

1 A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON
2 in the third degree when such person is not authorized pursuant to law
3 to possess a firearm OR 50-CALIBER WEAPON and such person unlawfully
4 either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 A person is guilty of criminal sale of a firearm OR 50-CALIBER WEAPON
3 to a minor when he is not authorized pursuant to law to possess a
4 firearm OR 50-CALIBER WEAPON and he unlawfully sells, exchanges, gives
5 or disposes of a firearm OR 50-CALIBER WEAPON to another person who is
6 or reasonably appears to be less than nineteen years of age who is not
7 licensed pursuant to law to possess a firearm OR 50-CALIBER WEAPON.

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

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

13 [Felonies] EXCEPT FOR THE FELONIES DEFINED IN SECTIONS 265.45 AND
14 265.46 OF THIS CHAPTER, FELONIES are classified, for the purpose of
15 sentence, into five categories as follows:

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

19 (a) [The] EXCEPT FOR THE FELONIES DEFINED IN SECTIONS 265.45 AND
20 265.46 OF THIS CHAPTER, THE particular classification or subclassifica-
21 tion of each felony defined in this chapter is expressly designated in
22 the section or article defining it.

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

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

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

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

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

53 S 23. This act shall take effect immediately; provided, however, that
54 sections one through twenty-one of this act shall take effect on the
55 thirtieth day after this act shall have become a law.