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2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. PERALTA, AVELLA, BRESLIN, DIAZ, ESPAILLAT, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, PERKINS, RIVERA, SAMPSON, SERRANO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 2012".  
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 a revolutionary 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

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

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1 to match the cartridge casing found at a crime to the original owner of  
2 the firearm; that information from completed crime gun tracing is an  
3 important element utilized by COMPSTAT and other crime analysis systems  
4 to target illegal firearms trafficking; that microstamping technology  
5 continues to produce identifiable markings onto expended cartridge  
6 casings even after thousands of rounds of testing; that this additional  
7 tool will help law enforcement investigate illegal gun trafficking,  
8 close firearm-related criminal cases and protect the public; and that  
9 legislative action is necessary to require all new semiautomatic pistols  
10 sold after January 1, 2014 to be microstamp-ready.

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

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

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

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

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

41 S 5. The penal law is amended by adding two new sections 265.38 and  
42 265.39 to read as follows:

43 S 265.38 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; PENALTIES.

44 IT SHALL BE UNLAWFUL:

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

50 2. FOR ANY MANUFACTURER OR WHOLESALE DEALER TO DELIVER OR CAUSE TO BE  
51 DELIVERED TO ANY PERSON IN THIS STATE, A SEMIAUTOMATIC PISTOL MANUFAC-  
52 TURED AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, UNLESS THE MANUFACTUR-  
53 ER CERTIFIES TO SUCH PERSON AT THE TIME OF SUCH DELIVERY, IN ACCORDANCE  
54 WITH RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE,  
55 THAT SUCH PISTOL IS MICROSTAMP-READY. SUCH RULES AND REGULATIONS SHALL

1 INCLUDE A REQUIREMENT THAT, AS PART OF THE CERTIFICATION, THE MANUFAC-  
2 Turer shall provide the make, model and serial number of the pistol.

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

8 S 265.39 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; AFFIRMATIVE DEFENSE.

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

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

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

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

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

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

31 S 7. This act shall take effect January 1, 2014, or at such time that  
32 the superintendent of the state police has received written notice from  
33 one or more microstamp job shops that such shop or shops are willing and  
34 prepared to produce microstamp structures on two internal surfaces of a  
35 semiautomatic pistol in accordance with subdivision 24 of section 265.00  
36 of the penal law for a price of twelve dollars or less at a production  
37 level of one thousand semiautomatic pistols per batch, whichever occurs  
38 later; provided that the division of state police shall notify the  
39 legislative bill drafting commission upon the occurrence of the receipt  
40 of the written notice provided for in this section in order that the  
41 commission may maintain an accurate and timely effective data base of  
42 the official text of the laws of the state of New York in furtherance of  
43 effectuating the provisions of this act, and provided further, that  
44 effective immediately the superintendent of the state police shall  
45 promulgate rules and regulations necessary for the implementation of  
46 this act.