S T A T E O F N E W Y O R K

4538

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sen. ESPAILLAT -- 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 general business law, in relation to safe weapon storage

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

Section 1. Short title; construction. 1. This act shall be known and may be cited as the "safe weapon storage act".

2. The provisions of this act shall not be construed to preempt or supersede any local law the provisions of which are no less stringent or restrictive than the provisions of this act.

S 2. Legislative findings. The legislature hereby finds the following:

The presence of unsecured, easily accessible, weapons in homes and other places increases the likelihood of death or injury from accidents and impulsive acts. Guns left unattended must be kept locked or stored securely to prevent access by children and others who should not have access to them. Gun owners and other lawful possessors are responsible for keeping their weapons from falling into the hands of children and other unauthorized individuals.

S 3. The penal law is amended by adding nine new sections 265.50, 265.51, 265.52, 265.53, 265.55, 265.56, 265.57, 265.58 and 265.59 to read as follows:

S 265.50 DEFINITIONS; SAFE WEAPON STORAGE.

AS USED IN SECTIONS 265.51 THROUGH 265.59 OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "PERSON" INCLUDES A NATURAL PERSON, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR ANY OTHER ENTITY.

2. "SAFE STORAGE DEPOSITORY" MEANS A SAFE OR OTHER SECURE CONTAINER WHICH, WHEN LOCKED, IS INCAPABLE OF BEING OPENED WITHOUT THE KEY, COMBINATION, OR OTHER UNLOCKING MECHANISM AND IS CAPABLE OF PREVENTING AN UNAUTHORIZED PERSON FROM OBTAINING ACCESS TO AND POSSESSION OF THE WEAP-

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

LBD00322-01-1

ON CONTAINED THEREIN. THE DIVISION OF STATE POLICE SHALL DEVELOP AND PROMULGATE RULES AND REGULATIONS SETTING FORTH THE SPECIFIC DEVICES OR THE MINIMUM STANDARDS AND CRITERIA THEREFOR WHICH CONSTITUTE AN EFFECTIVE SAFE STORAGE DEPOSITORY.

3. "SAFETY LOCKING DEVICE" MEANS A DESIGN ADAPTATION, ATTACHED ACCESSORY, OR DEVICE INSTALLED THAT, WHEN ACTIVATED, ATTACHED, OR INSTALLED, PREVENTS THE DISCHARGE OR FIRING OF THE WEAPON. THE DIVISION OF STATE POLICE SHALL DEVELOP AND PROMULGATE RULES AND REGULATIONS SETTING FORTH THE SPECIFIC DEVICES OR THE MINIMUM STANDARDS AND CRITERIA THEREFOR WHICH CONSTITUTE AN EFFECTIVE GUN LOCKING DEVICE.

4. "WEAPON" MEANS A "RIFLE", "SHOTGUN", "FIREARM", OR "MACHINE GUN".

S 265.51 SAFE STORAGE OF WEAPONS; APPLICABILITY.

THE PROVISIONS OF SECTION 265.52 SHALL NOT APPLY TO ANY DULY LICENSED MANUFACTURER OF WEAPONS.

S 265.52 FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE.

A PERSON IS GUILTY OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE WHEN HE OR SHE OWNS OR IS A BAILEE OR OTHER KNOWING AND VOLUNTARY POSSESSOR OF A WEAPON AND STORES OR OTHERWISE LEAVES A WEAPON OUT OF HIS OR HER IMMEDIATE POSSESSION OR CONTROL WITHOUT HAVING FIRST SECURELY LOCKED SUCH WEAPON IN AN APPROPRIATE SAFE STORAGE DEPOSITORY OR RENDERED IT INCAPABLE OF BEING FIRED BY THE USE OF A SAFETY LOCKING DEVICE APPROPRIATE TO THAT WEAPON.

FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE IS A VIOLATION.

S 265.53 FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE.

A PERSON IS GUILTY OF FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.52 AND HAS BEEN PREVIOUSLY CONVICTED OF THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.52 WITHIN THE PRECEDING TEN YEARS.

FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE IS A CLASS A MISDEMEANOR.

S 265.55 AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE.

A PERSON IS GUILTY OF AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.52 AND SUCH WEAPON IS REMOVED BY ANY OTHER PERSON FROM THE PREMISES WHERE IT WAS STORED UNSAFELY.

AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 265.56 AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE.

A PERSON IS GUILTY OF AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE AS DEFINED IN SECTION 265.52 AND SUCH WEAPON DISCHARGES AND THEREBY CAUSES, DIRECTLY OR INDIRECTLY, PHYSICAL INJURY, SERIOUS PHYSICAL INJURY, OR DEATH TO ANY OTHER PERSON.

AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE IS A CLASS E FELONY.

S 265.57 AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE; APPLICATION.

IF A PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.56 IS THE PARENT OR GUARDIAN OF A CHILD WHO IS INJURED OR WHO DIES AS THE RESULT OF SUCH VIOLATION, THE DISTRICT ATTORNEY SHALL CONSIDER, AMONG OTHER FACTORS, THE IMPACT OF THE INJURY OR DEATH ON THE PERSON WHO IS SUSPECTED OF

VIOLATING SECTION 265.56 WHEN DECIDING WHETHER OR NOT TO PROSECUTE SUCH PERSON FOR SUCH CRIME.

A PARENT OR GUARDIAN OF A CHILD WHO IS INJURED OR WHO DIES AS A RESULT OF A VIOLATION OF SECTION 265.56 SHALL BE PROSECUTED ONLY IN THOSE INSTANCES IN WHICH THE PARENT OR GUARDIAN BEHAVED IN A RECKLESS MANNER.

S 265.58 FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE.

NO PERSON SHALL SELL, DELIVER, OR TRANSFER ANY WEAPON TO ANOTHER PERSON UNLESS THE TRANSFEREE IS PROVIDED AT THE TIME OF SALE, DELIVERY, OR TRANSFER WITH:

1. A SAFETY LOCKING DEVICE THAT IS CAPABLE OF PREVENTING THAT PARTICULAR WEAPON FROM FIRING OR A SAFE STORAGE DEPOSITORY; AND

2. A COPY OF THE FOLLOWING WARNING IN CONSPICUOUS AND LEGIBLE TWENTY-FOUR POINT TYPE ON EIGHT AND ONE-HALF INCHES BY ELEVEN INCHES PAPER STATING IN BOLD PRINT THE FOLLOWING WARNING:

WARNING

RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A SAFETY LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR UNAUTHORIZED PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH.

FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE IS A VIOLATION.

S 265.59 FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE.

A PERSON IS GUILTY OF FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE AS DEFINED IN SECTION 265.58 AND HAS BEEN PREVIOUSLY CONVICTED OF THE OFFENSE OF FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE AS DEFINED IN SECTION 265.58 WITHIN THE PRECEDING TEN YEARS.

FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE IS A CLASS B MISDEMEANOR.

S 4. Section 400.00 of the penal law is amended by adding a new subdivision 18 to read as follows:

18. UPON THE ISSUANCE OR RENEWAL OF A LICENSE, THE LICENSING OFFICER SHALL ISSUE THEREWITH THE FOLLOWING NOTICE IN CONSPICUOUS AND LEGIBLE TWENTY-FOUR POINT TYPE ON EIGHT AND ONE-HALF INCHES BY ELEVEN INCHES PAPER STATING IN BOLD PRINT THE FOLLOWING:

WARNING

RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A SAFETY LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR UNAUTHORIZED PERSONS MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH.

S 5. Subdivision 2 of section 396-ee of the general business law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

(2) Every person, firm or corporation engaged in the retail business of selling rifles, shotguns or firearms, as such terms are defined in section 265.00 of the penal law, shall, in the place where such rifles, shotguns or firearms are displayed or transferred to the purchaser, post a notice conspicuously stating in bold print that: ["The use of a locking device or safety lock is only one aspect of responsible firearm storage. For increased safety firearms should be stored unloaded and locked in a location that is both separate from their ammunition and inaccessible to children and any other unauthorized person."] "RESPONSI-

BLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A SAFETY LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR UNAUTHORIZED PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH."

S 6. If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the words, phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.