

3244--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. SCHIMEL, ENGLEBRIGHT, KAVANAGH, LAVINE, SCARBOROUGH, TITUS, ABINANTI, WRIGHT, HEASTIE, AUBRY, McDONALD, CYMBROWITZ, ROSENTHAL, ROZIC, KELLNER, STECK, DenDEKKER, RAMOS, QUART, CRESPO, PEOPLES-STOKES, WEPRIN, BROOK-KRASNY, MOYA, CAMARA, ORTIZ, LENTOL, RODRIGUEZ -- Multi-Sponsored by -- M. of A. ARROYO, BENEDETTO, BOYLAND, BRAUNSTEIN, BRENNAN, CLARK, COLTON, COOK, DINOWITZ, FAHY, GLICK, GOTTFRIED, HEVESI, HOOPER, JACOBS, JAFFEE, LIFTON, MARKEY, McKEVITT, MOSLEY, NOLAN, O'DONNELL, PAULIN, PERRY, PRETLOW, RA, RIVERA, ROBINSON, WEISENBERG -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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 2014".  
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, 2016 to be microstamp-ready.

11 S 3. Section 265.00 of the penal law is amended by adding two new  
12 subdivisions 26 and 27 to read as follows:

13 26. "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 27. "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, is guilty of a class D  
28 felony.

29 (B) ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00 OF THIS CHAP-  
30 TER WHO SELLS, OFFERS FOR SALE, EXCHANGES, GIVES, TRANSFERS OR DELIVERS  
31 A SEMIAUTOMATIC PISTOL, KNOWING THAT A MICROSTAMPING COMPONENT OR MECH-  
32 ANISM OF SUCH PISTOL HAS BEEN DEFACED, IS GUILTY OF A CLASS A MISDEMEA-  
33 NOR. FOR PURPOSES OF THIS SUBDIVISION, DEFACING A SEMIAUTOMATIC PISTOL  
34 DOES NOT INCLUDE (1) MODIFYING A SEMIAUTOMATIC PISTOL TO RENDER IT  
35 MICROSTAMP-READY OR (2) REPLACING THE FIRING PIN OF A SEMIAUTOMATIC  
36 PISTOL THAT IS MICROSTAMP-READY WHEN SUCH PIN IS DAMAGED OR IN NEED OF  
37 REPLACEMENT FOR THE SAFE USE OF SUCH PISTOL, OR REPLACING SUCH PIN FOR A  
38 LEGITIMATE SPORTING PURPOSE.

39 S 5. The penal law is amended by adding two new sections 265.38 and  
40 265.39 to read as follows:

41 S 265.38 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; PENALTIES.

42 IT SHALL BE UNLAWFUL:

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

48 2. FOR ANY MANUFACTURER OR WHOLESALE DEALER TO DELIVER OR CAUSE TO BE  
49 DELIVERED TO ANY PERSON IN THIS STATE, A SEMIAUTOMATIC PISTOL MANUFAC-  
50 TURED AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN, UNLESS THE MANUFACTURER  
51 CERTIFIES TO SUCH PERSON AT THE TIME OF SUCH DELIVERY, IN ACCORDANCE  
52 WITH RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE,  
53 THAT SUCH PISTOL IS MICROSTAMP-READY. SUCH RULES AND REGULATIONS SHALL  
54 INCLUDE A REQUIREMENT THAT, AS PART OF THE CERTIFICATION, THE MANUFAC-  
55 Turer SHALL PROVIDE THE MAKE, MODEL AND SERIAL NUMBER OF THE PISTOL.

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

6 S 265.39 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; AFFIRMATIVE DEFENSE.

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

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

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

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

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

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

29 S 7. This act shall take effect January 1, 2016, or at such time that  
30 the superintendent of the state police has received written notice from  
31 one or more microstamp job shops that such shop or shops are willing and  
32 prepared to produce microstamp structures on two internal surfaces of a  
33 semiautomatic pistol as defined in subdivision 26 of section 265.00 of  
34 the penal law for a price of twelve dollars or less at a production  
35 level of one thousand semiautomatic pistols per batch, whichever occurs  
36 later; provided that the division of state police shall notify the  
37 legislative bill drafting commission upon the occurrence of the receipt  
38 of the written notice provided for in this section in order that the  
39 commission may maintain an accurate and timely effective data base of  
40 the official text of the laws of the state of New York in furtherance of  
41 effectuating the provisions of this act, and provided further, that  
42 effective immediately the superintendent of the state police shall  
43 promulgate rules and regulations necessary for the implementation of  
44 this act.