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

3322--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. KAVANAGH, COOK, JAFFEE, LAVINE, LIFTON, RAMOS, ROBINSON, ARROYO -- Multi-Sponsored by -- M. of A. DINOWITZ, ENGLEBRIGHT, GLICK, GOTTFRIED, JOHNS, MARKEY, ORTIZ, PAULIN, PEOPLES-STOKES, PERRY, SCARBOROUGH, WEINSTEIN, 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 and the executive law, in relation to banning 50 caliber weapons

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

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

S 2. Short title. This act shall be known and may be cited as the "50 Caliber Threat Reduction Act".

S 3. Section 265.00 of the penal law is amended by adding a new subdivision 26 to read as follows:

26. "50 CALIBER WEAPON" MEANS:

(A) ANY RIFLE CAPABLE OF FIRING A CENTER-FIRE CARTRIDGE:

(I) OF A CALIBER OF 50 OR GREATER, WHICH SHALL INCLUDE ANY METRIC EQUIVALENT OF 50 CALIBER OR GREATER; OR

(II) THAT IS CAPABLE OF FIRING A PROJECTILE THAT ATTAINS A MUZZLE ENERGY OF TWELVE THOUSAND FOOT-POUNDS OR GREATER IN ANY COMBINATION OF BULLET, PROPELLANT, CASE, OR PRIMER; OR

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

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(III) ANY COPY OR DUPLICATE OF ANY SUCH WEAPON THAT IS CAPABLE OF FIRING A PROJECTILE THAT ATTAINS A MUZZLE ENERGY OF TWELVE THOUSAND FOOT-POUNDS OR GREATER REGARDLESS OF CALIBER;

(B) ANY RIFLE CAPABLE OF FIRING A CENTER-FIRE CARTRIDGE DEFINED IN PARAGRAPH (A) OF THIS SUBDIVISION, POSSESSED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION;

(C) PROVIDED, HOWEVER, THAT SUCH TERM DOES NOT INCLUDE:

(I) ANY WEAPON CAPABLE OF FIRING A CENTER-FIRE CARTRIDGE THAT HAS BEEN RENDERED PERMANENTLY INOPERABLE;

(II) ANY WEAPON CAPABLE OF FIRING A CENTER-FIRE CARTRIDGE THAT IS AN ANTIQUE FIREARM AS DEFINED IN CLAUSE SIXTEEN OF PARAGRAPH (A) OF SECTION NINE HUNDRED TWENTY-ONE OF TITLE EIGHTEEN OF THE UNITED STATES CODE;

(III) ANY WEAPON VALIDLY REGISTERED PURSUANT TO SUBDIVISION EIGHTEEN OF SECTION 400.00 OF THIS CHAPTER. SUCH WEAPONS SHALL BE SUBJECT TO THE PROVISIONS OF PARAGRAPH (D) OF THIS SUBDIVISION;

(IV) ANY WEAPON THAT WAS MANUFACTURED AT LEAST FIFTY YEARS PRIOR TO THE CURRENT DATE, BUT NOT INCLUDING REPLICAS THEREOF, THAT IS VALIDLY REGISTERED PURSUANT TO SUBDIVISION EIGHTEEN OF SECTION 400.00 OF THIS CHAPTER;

(V) ANY MUZZLE-LOADING RIFLE OR SHOTGUN WITH A RIFLED BORE.

(D) ANY WEAPON DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION MAY ONLY BE SOLD TO, EXCHANGED WITH OR DISPOSED OF TO A PURCHASER AUTHORIZED TO POSSESS SUCH WEAPONS OR TO AN INDIVIDUAL OR ENTITY OUTSIDE OF THE STATE PROVIDED THAT ANY SUCH TRANSFER TO AN INDIVIDUAL OR ENTITY OUTSIDE OF THE STATE MUST BE REPORTED TO THE ENTITY WHEREIN THE WEAPON IS REGISTERED WITHIN SEVENTY-TWO HOURS OF SUCH TRANSFER. AN INDIVIDUAL WHO TRANSFERS ANY SUCH WEAPON TO AN INDIVIDUAL INSIDE NEW YORK STATE OR WITHOUT COMPLYING WITH THE PROVISIONS OF THIS PARAGRAPH SHALL BE GUILTY OF A CLASS A MISDEMEANOR UNLESS TRANSFERRED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBDIVISION.

S 4. Section 400.00 of the penal law is amended by adding two new subdivisions 18 and 19 to read as follows:

18. REGISTRATION OF 50 CALIBER WEAPONS. (A) AN OWNER OF A WEAPON DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF THIS CHAPTER, POSSESSED BEFORE THE EFFECTIVE DATE OF THIS SUBDIVISION, MUST MAKE AN APPLICATION TO REGISTER SUCH WEAPON WITH THE SUPERINTENDENT OF STATE POLICE, IN THE MANNER PROVIDED BY THE SUPERINTENDENT, OR BY AMENDING A LICENSE ISSUED PURSUANT TO THIS SECTION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBDIVISION EXCEPT ANY WEAPON DEFINED UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (C) OF SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF THIS CHAPTER TRANSFERRED INTO THE STATE MAY BE REGISTERED AT ANY TIME, PROVIDED SUCH WEAPONS ARE REGISTERED WITHIN THIRTY DAYS OF THEIR TRANSFER INTO THE STATE. REGISTRATION INFORMATION SHALL INCLUDE THE REGISTRANT'S NAME, DATE OF BIRTH, GENDER, RACE, RESIDENTIAL ADDRESS, SOCIAL SECURITY NUMBER AND DESCRIPTION OF EACH WEAPON BEING REGISTERED. A REGISTRATION OF ANY WEAPON DEFINED UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (C) OF SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF THIS CHAPTER SHALL BE TRANSFERABLE, PROVIDED THAT THE SELLER NOTIFIES THE STATE POLICE WITHIN SEVENTY-TWO HOURS OF THE TRANSFER AND THE BUYER PROVIDES THE STATE POLICE WITH INFORMATION SUFFICIENT TO CONSTITUTE A REGISTRATION UNDER THIS SECTION. SUCH REGISTRATION SHALL NOT BE VALID IF SUCH REGISTRANT IS PROHIBITED OR BECOMES PROHIBITED FROM POSSESSING A FIREARM PURSUANT TO STATE OR FEDERAL LAW. THE SUPERINTENDENT SHALL DETERMINE WHETHER SUCH REGISTRANT IS PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW. SUCH CHECK SHALL BE LIMITED TO DETERMINING WHETHER THE FACTORS IN PARAGRAPH (G) OF SECTION NINE HUNDRED TWENTY-TWO OF TITLE

EIGHTEEN OF THE UNITED STATES CODE APPLY OR WHETHER A REGISTRANT HAS BEEN CONVICTED OF A SERIOUS OFFENSE AS DEFINED IN SUBDIVISION SEVENTEEN OF SECTION 265.00 OF THIS CHAPTER, SO AS TO PROHIBIT SUCH REGISTRANT FROM POSSESSING A FIREARM, AND WHETHER A REPORT HAS BEEN ISSUED PURSUANT TO SECTION 9.46 OF THE MENTAL HYGIENE LAW. ALL REGISTRANTS SHALL RECERTIFY TO THE DIVISION OF STATE POLICE EVERY FIVE YEARS THEREAFTER. FAILURE TO RECERTIFY SHALL RESULT IN A REVOCATION OF SUCH REGISTRATION.

(B) NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, AN OWNER OF A 50 CALIBER WEAPON AS DEFINED IN SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF THIS CHAPTER, WHO IS A QUALIFIED RETIRED NEW YORK OR FEDERAL LAW ENFORCEMENT OFFICER AS DEFINED IN SUBDIVISION TWENTY-FIVE OF SECTION 265.00 OF THIS CHAPTER, WHERE SUCH WEAPON WAS ISSUED TO OR PURCHASED BY SUCH OFFICER PRIOR TO RETIREMENT AND IN THE COURSE OF HIS OR HER OFFICIAL DUTIES, AND FOR WHICH SUCH OFFICER WAS QUALIFIED BY THE AGENCY THAT EMPLOYED SUCH OFFICER WITHIN TWELVE MONTHS PRIOR TO HIS OR HER RETIREMENT, MUST REGISTER SUCH WEAPON WITHIN SIXTY DAYS OF RETIREMENT.

(C) THE SUPERINTENDENT OF STATE POLICE SHALL CREATE AND MAINTAIN A "50 CALIBER WEAPONS" PAGE OR SECTION ON THE EXISTING INTERNET WEBSITE, CREATED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION SIXTEEN-A OF THIS SECTION, TO EDUCATE THE PUBLIC AS TO WHICH 50 CALIBER WEAPONS ARE ILLEGAL AS A RESULT OF THE ENACTMENT OF THIS SUBDIVISION, AS WELL AS SUCH 50 CALIBER WEAPONS WHICH ARE ILLEGAL PURSUANT TO ARTICLE TWO HUNDRED SIXTY-FIVE OF THIS CHAPTER. SUCH WEBSITE SHALL CONTAIN INFORMATION TO ASSIST THE PUBLIC IN RECOGNIZING THE RELEVANT FEATURES PROSCRIBED BY SUCH ARTICLE TWO HUNDRED SIXTY-FIVE, AS WELL AS WHICH MAKE AND MODEL OF WEAPONS REQUIRE REGISTRATION.

(D) A PERSON WHO KNOWINGLY FAILS TO APPLY TO REGISTER SUCH WEAPON, AS REQUIRED BY THIS SECTION, WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE GUILTY OF A CLASS A MISDEMEANOR AND SUCH PERSON WHO UNKNOWINGLY FAILS TO VALIDLY REGISTER SUCH WEAPON WITHIN SUCH ONE YEAR PERIOD SHALL BE GIVEN A WARNING BY AN APPROPRIATE LAW ENFORCEMENT AUTHORITY ABOUT SUCH FAILURE AND GIVEN THIRTY DAYS IN WHICH TO APPLY TO REGISTER SUCH WEAPON OR TO SURRENDER IT. A FAILURE TO APPLY OR SURRENDER SUCH WEAPON WITHIN SUCH THIRTY-DAY PERIOD SHALL RESULT IN SUCH WEAPON BEING REMOVED BY AN APPROPRIATE LAW ENFORCEMENT AUTHORITY AND DECLARED A NUISANCE.

(E) THE COST OF THE SOFTWARE, PROGRAMMING AND INTERFACE REQUIRED TO TRANSMIT ANY RECORD THAT MUST BE ELECTRONICALLY TRANSMITTED BY THE DEALER OR LICENSING OFFICER TO THE DIVISION OF STATE POLICE PURSUANT TO THIS CHAPTER SHALL BE BORNE BY THE STATE.

19. APPLICABILITY OF SECTION. THE PROVISIONS OF ARTICLE TWO HUNDRED SIXTY-FIVE OF THIS CHAPTER RELATING TO ILLEGAL POSSESSION OF A FIREARM, SHALL NOT APPLY TO AN OFFENSE WHICH ALSO CONSTITUTES A VIOLATION OF THIS SECTION BY A PERSON HOLDING AN OTHERWISE VALID LICENSE UNDER THE PROVISIONS OF THIS SECTION AND SUCH OFFENSE SHALL ONLY BE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO THIS SECTION. IN ADDITION, THE PROVISIONS OF SUCH ARTICLE TWO HUNDRED SIXTY-FIVE SHALL NOT APPLY TO THE POSSESSION OF A FIREARM IN A PLACE NOT AUTHORIZED BY LAW, BY A PERSON WHO HOLDS AN OTHERWISE VALID LICENSE OR POSSESSION OF A FIREARM BY A PERSON WITHIN A ONE YEAR PERIOD AFTER THE STATED EXPIRATION DATE OF AN OTHERWISE VALID LICENSE WHICH HAS NOT BEEN PREVIOUSLY CANCELLED OR REVOKED SHALL ONLY BE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO THIS SECTION.

S 5. Section 265.02 of the penal law is amended by adding a new subdivision 11 to read as follows:

(11) SUCH PERSON POSSESSES A 50 CALIBER WEAPON.

S 6. Subdivision 3 of section 265.00 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

3. "Firearm" means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or (e) an assault weapon; OR (F) A 50 CALIBER WEAPON. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm.

S 7. Subdivisions 1, 2, 3 and 6 of section 265.10 of the penal law, subdivisions 1 and 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:

1. Any person who manufactures or causes to be manufactured any machine-gun, assault weapon, 50 CALIBER WEAPON, large capacity ammunition feeding device or disguised gun is guilty of a class D felony. Any person who manufactures or causes to be manufactured any switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slungshot is guilty of a class A misdemeanor.

2. Any person who transports or ships any machine-gun, firearm silencer, assault weapon, 50 CALIBER 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 OR 50 CALIBER 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, 50 CALIBER WEAPON, large capacity ammunition feeding device 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 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, large capacity ammunition feeding device, rifle or shotgun is guilty of a class D felony.

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

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

8. The manufacturer of machine-guns, firearm silencers, assault weapons, large capacity ammunition feeding devices, 50 CALIBER WEAPONS, disguised guns, pilum ballistic knives, switchblade or gravity knives,

billies or blackjacks as merchandise, or as a transferee recipient of the same for repair, lawful distribution or research and development, and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States; or for the repair and return of the same to the lawful possessor or for research and development.

S 9. Section 265.20 of the penal law is amended by adding a new subdivision f to read as follows:

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

S 10. The executive law is amended by adding a new section 231 to read as follows:

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

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

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

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

S 11. This act shall take effect immediately; provided, however, that sections one through nine of this act shall take effect on the thirtieth day after this act shall have become a law.