

1804

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. ESPAILLAT, AVELLA, GIANARIS -- 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:

1 Section 1. Short title; construction. 1. This act shall be known and
2 may be cited as the "safe weapon storage act".
3 2. The provisions of this act shall not be construed to preempt or
4 supersede any local law the provisions of which are no less stringent or
5 restrictive than the provisions of this act.
6 S 2. Legislative findings. The legislature hereby finds the following:
7 The presence of unsecured, easily accessible, weapons in homes and
8 other places increases the likelihood of death or injury from accidents
9 and impulsive acts. Guns left unattended must be kept locked or stored
10 securely to prevent access by children and others who should not have
11 access to them. Gun owners and other lawful possessors are responsible
12 for keeping their weapons from falling into the hands of children and
13 other unauthorized individuals.
14 S 3. The penal law is amended by adding nine new sections 265.50,
15 265.51, 265.52, 265.53, 265.55, 265.56, 265.57, 265.58 and 265.59 to
16 read as follows:
17 S 265.50 DEFINITIONS; SAFE WEAPON STORAGE.
18 AS USED IN SECTIONS 265.51 THROUGH 265.59 OF THIS ARTICLE, THE FOLLOW-
19 ING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
20 1. "PERSON" INCLUDES A NATURAL PERSON, CORPORATION, PARTNERSHIP,
21 LIMITED LIABILITY COMPANY, OR ANY OTHER ENTITY.
22 2. "SAFE STORAGE DEPOSITORY" MEANS A SAFE OR OTHER SECURE CONTAINER
23 WHICH, WHEN LOCKED, IS INCAPABLE OF BEING OPENED WITHOUT THE KEY, COMBI-

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

LBD04875-01-3

1 NATION, OR OTHER UNLOCKING MECHANISM AND IS CAPABLE OF PREVENTING AN
2 UNAUTHORIZED PERSON FROM OBTAINING ACCESS TO AND POSSESSION OF THE WEAP-
3 ON CONTAINED THEREIN. THE DIVISION OF STATE POLICE SHALL DEVELOP AND
4 PROMULGATE RULES AND REGULATIONS SETTING FORTH THE SPECIFIC DEVICES OR
5 THE MINIMUM STANDARDS AND CRITERIA THEREFOR WHICH CONSTITUTE AN EFFEC-
6 TIVE SAFE STORAGE DEPOSITORY.

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

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

14 S 265.51 SAFE STORAGE OF WEAPONS; APPLICABILITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 IF A PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.56 IS THE PARENT
56 OR GUARDIAN OF A CHILD WHO IS INJURED OR WHO DIES AS THE RESULT OF SUCH

1 VIOLATION, THE DISTRICT ATTORNEY SHALL CONSIDER, AMONG OTHER FACTORS,
2 THE IMPACT OF THE INJURY OR DEATH ON THE PERSON WHO IS SUSPECTED OF
3 VIOLATING SECTION 265.56 WHEN DECIDING WHETHER OR NOT TO PROSECUTE SUCH
4 PERSON FOR SUCH CRIME.

5 A PARENT OR GUARDIAN OF A CHILD WHO IS INJURED OR WHO DIES AS A RESULT
6 OF A VIOLATION OF SECTION 265.56 SHALL BE PROSECUTED ONLY IN THOSE
7 INSTANCES IN WHICH THE PARENT OR GUARDIAN BEHAVED IN A RECKLESS MANNER.
8 S 265.58 FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE.

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

12 1. A SAFETY LOCKING DEVICE THAT IS CAPABLE OF PREVENTING THAT PARTIC-
13 ULAR WEAPON FROM FIRING OR A SAFE STORAGE DEPOSITORY; AND

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

17 WARNING

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

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

26 S 265.59 FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE.

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

32 FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE IS A CLASS B MISDEMEA-
33 NOR.

34 S 4. Section 400.00 of the penal law is amended by adding a new subdi-
35 vision 18 to read as follows:

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

40 WARNING

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

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

50 (2) Every person, firm or corporation engaged in the retail business
51 of selling rifles, shotguns or firearms, as such terms are defined in
52 section 265.00 of the penal law, shall, in the place where such rifles,
53 shotguns or firearms are displayed or transferred to the purchaser, post
54 a notice conspicuously stating in bold print that: ["The use of a lock-
55 ing device or safety lock is only one aspect of responsible firearm
56 storage. For increased safety firearms should be stored unloaded and

1 locked in a location that is both separate from their ammunition and
2 inaccessible to children and any other unauthorized person.]" RESPONSI-
3 BLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER
4 BE STORED WITH A SAFETY LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY
5 OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER
6 OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND
7 LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSI-
8 BLE TO A CHILD OR UNAUTHORIZED PERSON MAY SUBJECT YOU TO IMPRISONMENT,
9 FINE, OR BOTH."

10 S 6. If any word, phrase, clause, sentence, paragraph, section, or
11 part of this act shall be adjudged by any court of competent jurisdic-
12 tion to be invalid, such judgment shall not affect, impair, or invali-
13 date the remainder thereof, but shall be confined in its operation to
14 the words, phrase, clause, sentence, paragraph, section, or part thereof
15 directly involved in the controversy in which such judgment shall have
16 been rendered.

17 S 7. This act shall take effect on the first of November next succeed-
18 ing the date on which it shall have become a law.