

3322--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 24, 2013

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Introduced by M. of A. KAVANAGH, COOK, JAFFEE, LAVINE, LIFTON, RAMOS, ROBINSON, ARROYO -- Multi-Sponsored by -- M. of A. DINOWITZ, ENGLE-BRIGHT, 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:

1     Section 1. Legislative findings and declaration. The legislature here-  
2 by finds and declares that 50 caliber or larger weapons having the  
3 capacity for rapidly discharging ammunition have no acceptable purpose.  
4 The legislature additionally finds and declares that such weapons pose  
5 such an imminent threat and danger to the safety and security of the  
6 people of this state that it is necessary to ban the possession and use  
7 of such weapons.  
8     S 2. Short title. This act shall be known and may be cited as the "50  
9 Caliber Threat Reduction Act".  
10    S 3. Section 265.00 of the penal law is amended by adding a new subdi-  
11 vision 26 to read as follows:  
12     26. "50 CALIBER WEAPON" MEANS:  
13     (A) ANY RIFLE CAPABLE OF FIRING A CENTER-FIRE CARTRIDGE:  
14     (I) OF A CALIBER OF 50 OR GREATER, WHICH SHALL INCLUDE ANY METRIC  
15 EQUIVALENT OF 50 CALIBER OR GREATER; OR  
16     (II) THAT IS CAPABLE OF FIRING A PROJECTILE THAT ATTAINS A MUZZLE  
17 ENERGY OF TWELVE THOUSAND FOOT-POUNDS OR GREATER IN ANY COMBINATION OF  
18 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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1 (III) ANY COPY OR DUPLICATE OF ANY SUCH WEAPON THAT IS CAPABLE OF  
2 FIRING A PROJECTILE THAT ATTAINS A MUZZLE ENERGY OF TWELVE THOUSAND  
3 FOOT-POUNDS OR GREATER REGARDLESS OF CALIBER;

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

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

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

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

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

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

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

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

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

33 18. REGISTRATION OF 50 CALIBER WEAPONS. (A) AN OWNER OF A WEAPON  
34 DEFINED IN PARAGRAPH (B) OF SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF  
35 THIS CHAPTER, POSSESSED BEFORE THE EFFECTIVE DATE OF THIS SUBDIVISION,  
36 MUST MAKE AN APPLICATION TO REGISTER SUCH WEAPON WITH THE SUPERINTENDENT  
37 OF STATE POLICE, IN THE MANNER PROVIDED BY THE SUPERINTENDENT, OR BY  
38 AMENDING A LICENSE ISSUED PURSUANT TO THIS SECTION WITHIN ONE YEAR OF  
39 THE EFFECTIVE DATE OF THIS SUBDIVISION EXCEPT ANY WEAPON DEFINED UNDER  
40 SUBPARAGRAPH (IV) OF PARAGRAPH (C) OF SUBDIVISION TWENTY-SIX OF SECTION  
41 265.00 OF THIS CHAPTER TRANSFERRED INTO THE STATE MAY BE REGISTERED AT  
42 ANY TIME, PROVIDED SUCH WEAPONS ARE REGISTERED WITHIN THIRTY DAYS OF  
43 THEIR TRANSFER INTO THE STATE. REGISTRATION INFORMATION SHALL INCLUDE  
44 THE REGISTRANT'S NAME, DATE OF BIRTH, GENDER, RACE, RESIDENTIAL ADDRESS,  
45 SOCIAL SECURITY NUMBER AND DESCRIPTION OF EACH WEAPON BEING REGISTERED.  
46 A REGISTRATION OF ANY WEAPON DEFINED UNDER SUBPARAGRAPH (IV) OF PARA-  
47 GRAPH (C) OF SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF THIS CHAPTER  
48 SHALL BE TRANSFERABLE, PROVIDED THAT THE SELLER NOTIFIES THE STATE  
49 POLICE WITHIN SEVENTY-TWO HOURS OF THE TRANSFER AND THE BUYER PROVIDES  
50 THE STATE POLICE WITH INFORMATION SUFFICIENT TO CONSTITUTE A REGISTRA-  
51 TION UNDER THIS SECTION. SUCH REGISTRATION SHALL NOT BE VALID IF SUCH  
52 REGISTRANT IS PROHIBITED OR BECOMES PROHIBITED FROM POSSESSING A FIREARM  
53 PURSUANT TO STATE OR FEDERAL LAW. THE SUPERINTENDENT SHALL DETERMINE  
54 WHETHER SUCH REGISTRANT IS PROHIBITED FROM POSSESSING A FIREARM UNDER  
55 STATE OR FEDERAL LAW. SUCH CHECK SHALL BE LIMITED TO DETERMINING WHETHER  
56 THE FACTORS IN PARAGRAPH (G) OF SECTION NINE HUNDRED TWENTY-TWO OF TITLE

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

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

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

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

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

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

55 S 5. Section 265.02 of the penal law is amended by adding a new subdi-  
56 vision 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,

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

11 S 9. Section 265.20 of the penal law is amended by adding a new subdi-  
12 vision f to read as follows:

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

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

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

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

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

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

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