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

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2013-2014 Regular Sessions

I N A S S E M B L Y

December 6, 2013

Introduced by M. of A. PAULIN, WEISENBERG, ABINANTI, ENGLEBRIGHT, JAFFEE, JACOBS, ROSENTHAL, GALEF, COOK, ORTIZ, CYMBROWITZ, DINOWITZ, WEINSTEIN, MAYER, SCARBOROUGH, WEPRIN, FAHY, BROOK-KRASNY -- Multi-Sponsored by -- M. of A. ARROYO, AUBRY, BRENNAN, CLARK, GOTTFRIED, HOOPER, MILLMAN, THIELE -- 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 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 "Nicholas's law".

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 ten new sections 265.50, 265.51, 265.52, 265.53, 265.54, 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:

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

LBD13076-04-4

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

S 265.51 SAFE STORAGE OF WEAPONS; APPLICABILITY.

THE PROVISIONS OF SECTION 265.52 OF THIS ARTICLE 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 GUN 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 OF THIS ARTICLE 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 OF THIS ARTICLE WITHIN THE PRECEDING TEN YEARS.

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

S 265.54 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 OF THIS ARTICLE 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 265.55 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 OF THIS ARTICLE 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 265.56 AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE; APPLICATION.

IF A PERSON WHO IS SUSPECTED OF VIOLATING SECTION 265.55 OF THIS ARTICLE 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 265.55 OF THIS ARTICLE 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 265.55 OF THIS ARTICLE SHALL BE PROSECUTED ONLY IN THOSE INSTANCES IN WHICH THE PARENT OR GUARDIAN BEHAVED IN A RECKLESS MANNER.

S 265.57 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 GUN 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 GUN 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 OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH.

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

S 265.58 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 265.57 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY CONVICTED OF THE OFFENSE OF FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE AS DEFINED IN SECTION 265.57 OF THIS ARTICLE WITHIN THE PRECEDING TEN YEARS.

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

S 265.59 SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS PURSUANT TO SECTION 400.00 OF THIS CHAPTER AND INELIGIBILITY FOR SUCH A LICENSE; ORDER TO SURRENDER FIREARMS.

1. WHENEVER (A) A PERSON IS CONVICTED OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE UNDER SECTION 265.52 OF THIS ARTICLE OR AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE UNDER SECTION 265.54 OF THIS ARTICLE, AND HAS A PRIOR CONVICTION OF FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE UNDER SECTION 265.52 OF THIS ARTICLE OR AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE SECOND DEGREE UNDER SECTION 265.54 OF THIS ARTICLE; OR (B) A PERSON IS CONVICTED OF FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE UNDER SECTION 265.53 OF THIS ARTICLE OR AGGRAVATED FAILURE TO STORE A WEAPON SAFELY IN THE FIRST DEGREE UNDER SECTION 265.55 OF THIS ARTICLE, THE COURT SHALL REVOKE ANY EXISTING LICENSE POSSESSED BY SUCH PERSON, ORDER SUCH PERSON INELIGIBLE FOR SUCH A LICENSE, AND ORDER THE IMMEDIATE SURRENDER PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS ARTICLE AND SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER, OF ANY OR ALL FIREARMS OWNED OR POSSESSED, OR SUSPEND OR CONTINUE TO SUSPEND ANY SUCH EXISTING LICENSE POSSESSED BY SUCH PERSON, ORDER SUCH PERSON INELIGIBLE FOR SUCH A LICENSE, AND ORDER THE

IMMEDIATE SURRENDER PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS ARTICLE AND SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER, OF ANY OR ALL FIREARMS OWNED OR POSSESSED.

2. ANY SUSPENSION ORDER ISSUED PURSUANT TO THIS SECTION SHALL REMAIN IN EFFECT FOR FIVE YEARS.

3. (A) WHENEVER A PERSON IS CONVICTED AS PROVIDED IN PARAGRAPH ONE OF THIS SECTION, THE COURT SHALL REQUIRE THE RESPONDENT TO INFORM THE COURT OF ALL FIREARMS HE OR SHE OWNS OR POSSESSES. ANY ORDER TO SURRENDER ONE OR MORE FIREARMS SHALL SPECIFY A DATE AND TIME BY WHICH THE SURRENDER SHALL BE COMPLETED AND, TO THE EXTENT POSSIBLE, SHALL DESCRIBE SUCH FIREARMS TO BE SURRENDERED AND SHALL DIRECT THE AUTHORITY RECEIVING SUCH SURRENDERED FIREARMS TO IMMEDIATELY NOTIFY THE COURT OF SUCH SURRENDER.

(B) THE PROMPT SURRENDER OF ONE OR MORE FIREARMS PURSUANT TO A COURT ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE CONSIDERED A VOLUNTARY SURRENDER FOR PURPOSES OF SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS ARTICLE. THE DISPOSITION OF ANY SUCH FIREARMS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER.

(C) THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO LIMIT, RESTRICT OR OTHERWISE IMPAIR THE AUTHORITY OF THE COURT TO ORDER AND DIRECT THE SURRENDER OF ANY OR ALL PISTOLS, REVOLVERS, RIFLES, SHOTGUNS OR OTHER FIREARMS OWNED OR POSSESSED BY A RESPONDENT PURSUANT TO THIS CHAPTER.

4. (A) THE COURT REVOKING OR SUSPENDING THE LICENSE, ORDERING A PERSON INELIGIBLE FOR SUCH LICENSE, OR ORDERING THE SURRENDER OF ANY FIREARM AS PROVIDED IN THIS SECTION SHALL IMMEDIATELY NOTIFY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY OF SUCH ACTION AND THE DIVISION OF STATE POLICE AT ITS OFFICE IN THE CITY OF ALBANY.

(B) WHERE AN ORDER OF REVOCATION, SUSPENSION, INELIGIBILITY, OR SURRENDER IS MODIFIED OR VACATED, THE COURT SHALL IMMEDIATELY NOTIFY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY CONCERNING SUCH ACTION AND SHALL GIVE WRITTEN NOTICE THEREOF WITHOUT UNNECESSARY DELAY TO THE DIVISION OF STATE POLICE AT ITS OFFICE IN THE CITY OF ALBANY.

5. THE RESPONDENT SHALL HAVE THE RIGHT TO A HEARING BEFORE THE COURT REGARDING ANY REVOCATION, SUSPENSION, INELIGIBILITY OR SURRENDER ORDER ISSUED PURSUANT TO THIS SECTION, PROVIDED THAT NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE COURT FROM ISSUING ANY SUCH ORDER PRIOR TO A HEARING. WHERE THE COURT HAS ISSUED SUCH AN ORDER PRIOR TO A HEARING, IT SHALL COMMENCE SUCH HEARING WITHIN FOURTEEN DAYS OF THE DATE SUCH ORDER WAS ISSUED.

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 GUN 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 OTHER PERSON 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."] "RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A GUN 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 OTHER 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.