

5843

2015-2016 Regular Sessions

I N A S S E M B L Y

March 5, 2015

Introduced by M. of A. KAVANAGH, COOK, RAMOS, JAFFEE, ROBINSON, LAVINE, ARROYO, LIFTON -- Multi-Sponsored by -- M. of A. DINOWITZ, ENGLE-BRIGHT, GLICK, GOTTFRIED, JOHNS, MARKEY, ORTIZ, PAULIN, PEOPLES-STOKES, PERRY, SCARBOROUGH -- read once and referred to the Committee on Codes

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

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

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

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

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

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

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

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

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

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

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

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

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

15 S 7. Subdivisions 1, 2, 3 and 6 of section 265.10 of the penal law,
16 subdivisions 1 and 2 as amended by chapter 257 of the laws of 2008 and
17 subdivisions 3 and 6 as amended by chapter 189 of the laws of 2000, are
18 amended to read as follows:

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

27 2. Any person who transports or ships any machine-gun, firearm silenc-
28 er, assault weapon, 50 CALIBER WEAPON or large capacity ammunition feed-
29 ing device or disguised gun, or who transports or ships as merchandise
30 five or more firearms, is guilty of a class D felony. Any person who
31 transports or ships as merchandise any firearm, other than an assault
32 weapon OR 50 CALIBER WEAPON, switchblade knife, gravity knife, pilum
33 ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal
34 knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a
35 class A misdemeanor.

36 3. Any person who disposes of any machine-gun, assault weapon, 50
37 CALIBER WEAPON, large capacity ammunition feeding device or firearm
38 silencer is guilty of a class D felony. Any person who knowingly buys,
39 receives, disposes of, or conceals a machine-gun, 50 CALIBER WEAPON,
40 firearm, large capacity ammunition feeding device, rifle or shotgun
41 which has been defaced for the purpose of concealment or prevention of
42 the detection of a crime or misrepresenting the identity of such
43 machine-gun, 50 CALIBER WEAPON, firearm, large capacity ammunition feed-
44 ing device, rifle or shotgun is guilty of a class D felony.

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

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

51 8. The manufacturer of machine-guns, firearm silencers, assault weap-
52 ons, large capacity ammunition feeding devices, 50 CALIBER WEAPONS,
53 disguised guns, pilum ballistic knives, switchblade or gravity knives,
54 billies or blackjacks as merchandise, or as a transferee recipient of
55 the same for repair, lawful distribution or research and development,
56 and the disposal and shipment thereof direct to a regularly constituted

1 or appointed state or municipal police department, sheriff, policeman or
2 other peace officer, or to a state prison, penitentiary, workhouse,
3 county jail or other institution for the detention of persons convicted
4 or accused of crime or held as witnesses in criminal cases, or to the
5 military service of this state or of the United States; or for the
6 repair and return of the same to the lawful possessor or for research
7 and development.

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

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

15 S 10. The executive law is amended by adding a new section 232 to read
16 as follows:

17 S 232. COMPLIANCE WITH THE BAN ON THE SALE, POSSESSION OR USE OF 50
18 CALIBER WEAPONS. 1. FROM WITHIN AMOUNTS APPROPRIATED THEREFOR, THE
19 DIVISION OF STATE POLICE SHALL TAKE SUCH ACTION AS IS NECESSARY TO
20 IMPLEMENT A PROGRAM WHEREBY PERSONS, INCLUDING DEALERS OF FIREARMS, IN
21 LAWFUL POSSESSION OF 50 CALIBER WEAPONS MAY BRING THEMSELVES INTO
22 COMPLIANCE WITH THE PROVISIONS OF THE PENAL LAW WHICH BANS THE SALE,
23 POSSESSION OR USE OF SUCH WEAPONS.

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

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

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

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