

53--A

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. PAULIN, ABINANTI, ENGLEBRIGHT, JAFFEE, ROSENTHAL, GALEF, COOK, ORTIZ, CYMBROWITZ, DINOWITZ, MAYER, SCARBOROUGH, WEPRIN, FAHY, BROOK-KRASNY, BRAUNSTEIN, MOSLEY, BUCHWALD, SCHIMEL, SEPULVEDA, KAVANAGH, KAMINSKY -- Multi-Sponsored by -- M. of A. ARROYO, AUBRY, BRENNAN, CLARK, GOTTFRIED, HOOPER, PERRY, SIMON, THIELE, WRIGHT -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the general business law and the environmental conservation law, in relation to the safe storage of rifles, shotguns, or firearms; and to repeal certain provisions of the penal law relating thereto

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

1 Section 1. 1. Short title. This act shall be known and may be cited as
2 "Nicholas's law".
3 2. Legislative findings. The legislature hereby finds the following:
4 a. The presence of unsecured, easily accessible, weapons in homes and
5 other places increases the likelihood of death or injury from accidents
6 and impulsive acts;
7 b. Guns left unattended must be kept locked or stored securely to
8 prevent access by children and others who should not have access to
9 them; and
10 c. Gun owners and other lawful possessors are responsible for keeping
11 their weapons from falling into the hands of children and other unau-
12 thorized individuals.
13 S 2. The penal law is amended by adding a new section 265.44 to read
14 as follows:
15 S 265.44 DEFINITION.

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

LBD00543-02-5

FOR PURPOSES OF SECTIONS 265.45, 265.46, AND 265.47 OF THIS ARTICLE, "SAFE STORAGE DEPOSITORY" SHALL MEAN 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 A PERSON OTHER THAN THE OWNER OR CUSTODIAN ACCESS TO AND POSSESSION OF THE WEAPON CONTAINED THEREIN.

S 3. Section 265.45 of the penal law is REPEALED and three new sections 265.45, 265.46 and 265.47 are added to read as follows:

S 265.45 FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM.

A PERSON IS GUILTY OF FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM WHEN HE OR SHE OWNS OR HAS CUSTODY OF A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM AND LEAVES SUCH RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM OUT OF HIS OR HER IMMEDIATE POSSESSION OR CONTROL WITHOUT HAVING FIRST SECURELY LOCKED SUCH RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN AN APPROPRIATE SAFE STORAGE DEPOSITORY OR RENDERED IT INCAPABLE OF BEING FIRED BY USE OF A GUN LOCKING DEVICE APPROPRIATE TO THAT WEAPON; PROVIDED, HOWEVER, THAT ACTUAL POSSESSION OF A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM BY THE HOLDER OF A VALID NEW YORK HUNTING LICENSE OR PERMIT ISSUED PURSUANT TO ARTICLE ELEVEN OF THE ENVIRONMENTAL CONSERVATION LAW AND CONTEMPORANEOUSLY USED IN ACCORDANCE WITH SUCH LAW SHALL NOT BE GOVERNED BY THIS SECTION.

NOTHING IN THIS SECTION SHALL BE DEEMED TO AFFECT, IMPAIR OR SUPERSEDE ANY SPECIAL OR LOCAL LAW RELATING TO THE SAFE STORAGE OF RIFLES, SHOTGUNS, FIREARMS OR ANTIQUE FIREARMS WHICH IMPOSES ADDITIONAL REQUIREMENTS ON THE OWNER OR CUSTODIAN OF SUCH WEAPONS.

FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IS A VIOLATION.

S 265.46 FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE SECOND DEGREE.

A PERSON IS GUILTY OF FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE SECOND DEGREE WHEN HE OR SHE COMMITS THE CRIME OF FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM AS DEFINED IN SECTION 265.45 OF THIS ARTICLE AND:

1. AT THE TIME OF THE COMMISSION OF SUCH CRIME, HE OR SHE RESIDES WITH ANOTHER INDIVIDUAL WHO SUCH PERSON KNOWS OR HAS REASON TO KNOW IS PROHIBITED FROM POSSESSING A FIREARM PURSUANT TO 18 U.S.C. S 922(G)(1), (4), (8) OR (9); OR

2. HE OR SHE HAS BEEN PREVIOUSLY CONVICTED OF FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM WITHIN THE PAST TEN YEARS UNDER THIS SECTION, OR SECTION 265.45 OR 265.47 OF THIS ARTICLE.

NOTHING IN THIS SECTION SHALL BE DEEMED TO AFFECT, IMPAIR OR SUPERSEDE ANY SPECIAL OR LOCAL LAW RELATING TO THE SAFE STORAGE OF RIFLES, SHOTGUNS, FIREARMS OR ANTIQUE FIREARMS, WHICH IMPOSES ADDITIONAL REQUIREMENTS ON THE OWNER OR CUSTODIAN OF SUCH WEAPONS.

FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 265.47 FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE FIRST DEGREE.

A PERSON IS GUILTY OF FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM AS DEFINED IN SECTION 265.45 OF THIS ARTICLE AND AS A RESULT OF SUCH FAILURE TO SAFELY STORE SUCH RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IS OBTAINED BY AN UNAUTHORIZED PERSON AND DISCHARGES CAUSING PHYSICAL INJURY TO ANY OTHER PERSON.

1 FAILURE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM
2 IN THE FIRST DEGREE IS A CLASS E FELONY.

3 S 4. The penal law is amended by adding three new sections 265.49,
4 265.51 and 265.53 to read as follows:

5 S 265.49 FAILURE TO PROVIDE NOTICE IN THE SECOND DEGREE.

6 NO PERSON SHALL SELL OR TRANSFER OWNERSHIP OF ANY RIFLE, SHOTGUN,
7 FIREARM, OR ANTIQUE FIREARM TO ANOTHER PERSON UNLESS THE TRANSFEREE IS
8 PROVIDED AT THE TIME OF SALE, DELIVERY, OR TRANSFER WITH:

9 1. A GUN LOCKING DEVICE THAT IS CAPABLE OF PREVENTING THAT PARTICULAR
10 WEAPON FROM FIRING OR A SAFE STORAGE DEPOSITORY; AND

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

14 WARNING

15 RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST
16 EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSI-
17 TORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE
18 OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND
19 LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSI-
20 BLE TO A CHILD OR OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR
21 BOTH.

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

23 S 265.51 FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE.

24 A PERSON IS GUILTY OF FAILURE TO PROVIDE NOTICE IN THE FIRST DEGREE
25 WHEN HE OR SHE COMMITS THE OFFENSE OF FAILURE TO PROVIDE NOTICE IN THE
26 SECOND DEGREE AS DEFINED IN SECTION 265.49 OF THIS ARTICLE AND HAS BEEN
27 PREVIOUSLY CONVICTED OF FAILURE TO PROVIDE NOTICE UNDER THIS SECTION OR
28 SECTION 265.49 OF THIS ARTICLE WITHIN THE PRECEDING TEN YEARS.

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

31 S 265.53 REPORTING OF CERTAIN FIREARM CONVICTIONS.

32 WHEN A PERSON HAS A PRIOR CONVICTION FOR FAILURE TO SAFELY STORE A
33 RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE SECOND DEGREE OR FAIL-
34 URE TO SAFELY STORE A RIFLE, SHOTGUN, FIREARM OR ANTIQUE FIREARM IN THE
35 FIRST DEGREE, UPON A SECOND OR SUBSEQUENT CONVICTION OF EITHER SUCH
36 OFFENSE, THE DISTRICT ATTORNEY OR OTHER PROSECUTING AUTHORITY WHO
37 OBTAINED SUCH CONVICTION SHALL PROVIDE NOTICE OF SUCH CONVICTION TO BOTH
38 THE DIVISION OF STATE POLICE AND, IF SUCH PERSON POSSESSES A NEW YORK
39 STATE ISSUED HANDGUN LICENSE, THE PERTINENT LICENSING OFFICER WHO
40 CURRENTLY EXERCISES LEGAL AUTHORITY OVER SUCH PERSON'S LICENSE. SUCH
41 NOTICE SHALL INCLUDE THE OFFENSE FOR WHICH THE DEFENDANT HAS BEEN
42 CONVICTED, THE NAME AND ADDRESS OF SUCH OFFENDER AND OTHER IDENTIFYING
43 INFORMATION, INCLUDING THE OFFENDER'S DATE OF BIRTH AND SOCIAL SECURITY
44 NUMBER, TO THE EXTENT CONSISTENT WITH FEDERAL AND STATE LAWS GOVERNING
45 PERSONAL PRIVACY AND CONFIDENTIALITY OF INFORMATION. SUCH DISTRICT
46 ATTORNEY OR OTHER PROSECUTING AUTHORITY SHALL INCLUDE IN SUCH NOTICE THE
47 NAME AND BUSINESS ADDRESS OF THE OFFENDER'S COUNSEL OF RECORD IN THE
48 CRIMINAL PROCEEDING. SUCH NOTICE MUST BE FILED NOT MORE THAN THIRTY DAYS
49 AFTER JUDGMENT HAS BEEN ENTERED.

50 S 5. Section 400.00 of the penal law is amended by adding a new subdi-
51 vision 18 to read as follows:

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

56 WARNING

1 RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST
2 EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSI-
3 TORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE
4 OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND
5 LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSI-
6 BLE TO A CHILD OR OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR
7 BOTH.

8 S 6. Subdivision 2 of section 396-ee of the general business law, as
9 added by chapter 189 of the laws of 2000, is amended to read as follows:

10 (2) Every person, firm or corporation engaged in the retail business
11 of selling rifles, shotguns [or], firearms OR ANTIQUE FIREARMS, as such
12 terms are defined in section 265.00 of the penal law, shall, in the
13 place where such rifles, shotguns [or], firearms OR ANTIQUE FIREARMS are
14 displayed or transferred to the purchaser, post a notice conspicuously
15 stating in bold print that: ["The use of a locking device or safety lock
16 is only one aspect of responsible firearm storage. For increased safety
17 firearms should be stored unloaded and locked in a location that is both
18 separate from their ammunition and inaccessible to children and any
19 other unauthorized person."]"RESPONSIBLE FIREARM STORAGE IS THE LAW IN
20 NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A GUN LOCKING DEVICE
21 OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE
22 POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS
23 SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNI-
24 TION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR OTHER PERSON MAY SUBJECT
25 YOU TO IMPRISONMENT, FINE, OR BOTH."

26 S 7. Section 11-0713 of the environmental conservation law is amended
27 by adding a new subdivision 7 to read as follows:

28 7. UPON THE ISSUANCE OF A HUNTING LICENSE OR MUZZLE-LOADING PRIVILEGE,
29 THE ISSUING OFFICER SHALL ISSUE THEREWITH THE FOLLOWING NOTICE IN
30 CONSPICUOUS AND LEGIBLE TYPE STATING THE FOLLOWING:

31 WARNING

32 RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST
33 EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSI-
34 TORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE
35 OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND
36 LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSI-
37 BLE TO A CHILD OR OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR
38 BOTH.

39 S 8. Severability. If any word, phrase, clause, sentence, paragraph,
40 section, or part of this act shall be adjudged by any court of competent
41 jurisdiction to be invalid, such judgment shall not affect, impair, or
42 invalidate the remainder thereof, but shall be confined in its operation
43 to the word, phrase, clause, sentence, paragraph, section, or part ther-
44 eof directly involved in the controversy in which such judgment shall
45 have been rendered.

46 S 9. This act shall take effect on the first of November next succeed-
47 ing the date on which it shall have become a law.