

6192

2015-2016 Regular Sessions

I N A S S E M B L Y

March 16, 2015

Introduced by M. of A. SCHIMEL, ENGLEBRIGHT, KAVANAGH, LAVINE, SCARBOROUGH, TITUS, ABINANTI, WRIGHT, CYMBROWITZ, ROSENTHAL, STECK, RAMOS, PEOPLES-STOKES, DAVILA, RODRIGUEZ, AUBRY, WEPRIN, ROZIC, DenDEKKER, QUART, CRESPO, MOSLEY, PICHARDO, SEPULVEDA, LENTOL, BROOK-KRASNY, MOYA, ORTIZ -- Multi-Sponsored by -- M. of A. ARROYO, BENEDETTO, BRAUNSTEIN, BRENNAN, CLARK, COLTON, COOK, DINOWITZ, FAHY, GLICK, GOTTFRIED, HEVESI, HOOPER, JAFFEE, LIFTON, MARKEY, McKEVITT, O'DONNELL, PAULIN, PERRY, PRETLOW, RA, RIVERA, ROBINSON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to requiring semiautomatic pistols manufactured or delivered to any licensed dealer in this state to be capable of microstamping ammunition

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "crime gun identification act of 2015".
3 S 2. Legislative findings and intent. The legislature finds that in
4 2005, the national clearance rate for homicide cases was approximately
5 60% and over 3,000 gun homicide cases went unsolved; that in approxi-
6 mately half of gun homicide investigations a spent cartridge casing, but
7 not a firearm, is recovered at the crime scene; that currently deployed
8 national ballistic identification systems cannot identify the serial
9 number of a gun unless the gun itself has been recovered; that firearm
10 microstamping is a revolutionary forensic technology that produces an
11 identifiable alpha-numeric and geometric code onto the rear of the
12 cartridge casing each time a semiautomatic pistol is fired; that the
13 alpha-numeric and geometric code on an expended cartridge casing will
14 provide an initial lead for law enforcement by enabling law enforcement
15 to match the cartridge casing found at a crime to the original owner of
16 the firearm; that information from completed crime gun tracing is an
17 important element utilized by COMPSTAT and other crime analysis systems

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

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1 to target illegal firearms trafficking; that microstamping technology
2 continues to produce identifiable markings onto expended cartridge
3 casings even after thousands of rounds of testing; that this additional
4 tool will help law enforcement investigate illegal gun trafficking,
5 close firearm-related criminal cases and protect the public; and that
6 legislative action is necessary to require all new semiautomatic pistols
7 sold after January 1, 2017 to be microstamp-ready.

8 S 3. Section 265.00 of the penal law is amended by adding two new
9 subdivisions 26 and 27 to read as follows:

10 26. "MICROSTAMP-READY", WHEN USED WITH REFERENCE TO A SEMIAUTOMATIC
11 PISTOL, MEANS THAT SUCH PISTOL IS MANUFACTURED TO PRODUCE A UNIQUE
12 ALPHA-NUMERIC OR GEOMETRIC CODE ON AT LEAST TWO LOCATIONS ON EACH
13 EXPENDED CARTRIDGE CASE THAT IDENTIFIES THE MAKE, MODEL, AND SERIAL
14 NUMBER OF THE PISTOL.

15 27. "MICROSTAMPING COMPONENT OR MECHANISM", WHEN USED WITH REFERENCE
16 TO A SEMIAUTOMATIC PISTOL, MEANS A COMPONENT OR MECHANISM OF SUCH PISTOL
17 DESIGNED AND INTENDED TO PRODUCE A UNIQUE ALPHA-NUMERIC OR GEOMETRIC
18 CODE ON AN EXPENDED CARTRIDGE THAT IDENTIFIES THE MAKE, MODEL, AND SERI-
19 AL NUMBER OF THE PISTOL.

20 S 4. Subdivision 6 of section 265.10 of the penal law, as amended by
21 chapter 189 of the laws of 2000, is amended to read as follows:

22 6. (A) Any person who wilfully defaces any machine-gun, large capacity
23 ammunition feeding device or firearm, INCLUDING DEFACING A MICROSTAMPING
24 COMPONENT OR MECHANISM OF A SEMIAUTOMATIC PISTOL, is guilty of a class D
25 felony.

26 (B) ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00 OF THIS CHAP-
27 TER WHO SELLS, OFFERS FOR SALE, EXCHANGES, GIVES, TRANSFERS OR DELIVERS
28 A SEMIAUTOMATIC PISTOL, KNOWING THAT A MICROSTAMPING COMPONENT OR MECH-
29 ANISM OF SUCH PISTOL HAS BEEN DEFACED, IS GUILTY OF A CLASS A MISDEMEA-
30 NOR. FOR PURPOSES OF THIS SUBDIVISION, DEFACING A SEMIAUTOMATIC PISTOL
31 DOES NOT INCLUDE (1) MODIFYING A SEMIAUTOMATIC PISTOL TO RENDER IT
32 MICROSTAMP-READY OR (2) REPLACING THE FIRING PIN OF A SEMIAUTOMATIC
33 PISTOL THAT IS MICROSTAMP-READY WHEN SUCH PIN IS DAMAGED OR IN NEED OF
34 REPLACEMENT FOR THE SAFE USE OF SUCH PISTOL, OR REPLACING SUCH PIN FOR A
35 LEGITIMATE SPORTING PURPOSE.

36 S 5. The penal law is amended by adding two new sections 265.38 and
37 265.39 to read as follows:

38 S 265.38 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; PENALTIES.

39 IT SHALL BE UNLAWFUL:

40 1. FOR ANY DEALER IN FIREARMS LICENSED UNDER SECTION 400.00 OF THIS
41 CHAPTER, TO SELL, OFFER FOR SALE, EXCHANGE, GIVE, TRANSFER OR DELIVER A
42 SEMIAUTOMATIC PISTOL MANUFACTURED ON OR AFTER JANUARY FIRST, TWO THOU-
43 SAND SEVENTEEN TO ANY PERSON OTHER THAN A DEALER IN FIREARMS, UNLESS
44 SUCH PISTOL IS MICROSTAMP-READY; OR

45 2. FOR ANY MANUFACTURER OR WHOLESALE DEALER TO DELIVER OR CAUSE TO BE
46 DELIVERED TO ANY PERSON IN THIS STATE, A SEMIAUTOMATIC PISTOL MANUFAC-
47 TURED AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, UNLESS THE MANUFAC-
48 Turer certifies to such person at the time of such delivery, in accord-
49 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE
50 POLICE, THAT SUCH PISTOL IS MICROSTAMP-READY. SUCH RULES AND REGULATIONS
51 SHALL INCLUDE A REQUIREMENT THAT, AS PART OF THE CERTIFICATION, THE
52 MANUFACTURER SHALL PROVIDE THE MAKE, MODEL AND SERIAL NUMBER OF THE
53 PISTOL.

54 A VIOLATION OF ANY PROVISION OF THIS SECTION IS A CLASS B MISDEMEANOR;
55 PROVIDED, HOWEVER, THAT A PERSON, INCLUDING A DEALER IN FIREARMS, WHOLE-
56 SALE DEALER OR A MANUFACTURER, WHO VIOLATES ANY PROVISION OF THIS

1 SECTION AFTER HAVING PREVIOUSLY BEEN CONVICTED OF VIOLATING ANY
2 PROVISION OF THIS SECTION IS GUILTY OF A CLASS A MISDEMEANOR.

3 S 265.39 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; AFFIRMATIVE DEFENSE.

4 IN ANY PROSECUTION UNDER SUBDIVISION ONE OF SECTION 265.38 OF THIS
5 ARTICLE, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEALER IN FIREARMS, AT
6 THE TIME OF SALE, OFFER FOR SALE, EXCHANGE, GIVING, TRANSFER OR DELIVERY
7 OF THE SEMIAUTOMATIC PISTOL, WAS IN POSSESSION OF:

8 1. A CERTIFICATION FROM THE MANUFACTURER OF SUCH PISTOL DELIVERED
9 PURSUANT TO SUBDIVISION TWO OF SECTION 265.38 OF THIS ARTICLE, THAT SUCH
10 PISTOL IS MICROSTAMP-READY; OR

11 2. AN EXACT COPY OF SUCH CERTIFICATION OBTAINED BY THE DEALER IN
12 FIREARMS FROM SUCH MANUFACTURER IN ACCORDANCE WITH APPLICABLE RULES AND
13 REGULATIONS PROMULGATED BY THE DIVISION OF STATE POLICE.

14 THE DIVISION OF STATE POLICE SHALL PROMULGATE RULES AND REGULATIONS
15 GOVERNING PROCEDURES AND STANDARDS FOR EXACT COPIES OF CERTIFICATIONS
16 AND THE OBTAINING OF SUCH COPIES BY A DEALER IN FIREARMS FROM A MANUFAC-
17 Turer FOR PURPOSES OF THIS SECTION.

18 S 6. Subdivision 5 of section 265.15 of the penal law, as amended by
19 chapter 695 of the laws of 1987, is amended to read as follows:

20 5. The possession by any person of a defaced machine-gun, firearm,
21 rifle or shotgun is presumptive evidence that such person defaced the
22 same; PROVIDED, HOWEVER, THAT THIS SUBDIVISION SHALL NOT APPLY TO
23 POSSESSION OF A SEMIAUTOMATIC PISTOL WHERE THE DEFAACEMENT ALLEGED
24 CONSISTS OF DEFACING A MICROSTAMPING COMPONENT OR MECHANISM OF SUCH
25 PISTOL.

26 S 7. This act shall take effect January 1, 2017, or at such time that
27 the superintendent of the state police has received written notice from
28 one or more microstamp job shops that such shop or shops are willing and
29 prepared to produce microstamp structures on two internal surfaces of a
30 semiautomatic pistol as defined in subdivision 26 of section 265.00 of
31 the penal law for a price of twelve dollars or less at a production
32 level of one thousand semiautomatic pistols per batch, whichever occurs
33 later; provided that the division of state police shall notify the
34 legislative bill drafting commission upon the occurrence of the receipt
35 of the written notice provided for in this section in order that the
36 commission may maintain an accurate and timely effective data base of
37 the official text of the laws of the state of New York in furtherance of
38 effectuating the provisions of this act, and provided further, that
39 effective immediately the superintendent of the state police shall
40 promulgate rules and regulations necessary for the implementation of
41 this act.