

1113

2015-2016 Regular Sessions

I N S E N A T E

January 8, 2015

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed 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  
18 to target illegal firearms trafficking; that microstamping technology  
19 continues to produce identifiable markings onto expended cartridge  
20 casings even after thousands of rounds of testing; that this additional  
21 tool will help law enforcement investigate illegal gun trafficking,  
22 close firearm-related criminal cases and protect the public; and that  
23 legislative action is necessary to require all new semiautomatic pistols  
24 sold after January 1, 2017 to be microstamp-ready.

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

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

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

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

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

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

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

29 S 5. The penal law is amended by adding two new sections 265.38 and  
30 265.39 to read as follows:

31 S 265.38 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; PENALTIES.

32 IT SHALL BE UNLAWFUL:

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

38 2. FOR ANY MANUFACTURER OR WHOLESALE DEALER TO DELIVER OR CAUSE TO BE  
39 DELIVERED TO ANY PERSON IN THIS STATE, A SEMIAUTOMATIC PISTOL MANUFAC-  
40 TURED AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, UNLESS THE MANUFAC-  
41 Turer CERTIFIES TO SUCH PERSON AT THE TIME OF SUCH DELIVERY, IN ACCORD-  
42 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE DIVISION OF STATE  
43 POLICE, THAT SUCH PISTOL IS MICROSTAMP-READY. SUCH RULES AND REGULATIONS  
44 SHALL INCLUDE A REQUIREMENT THAT, AS PART OF THE CERTIFICATION, THE  
45 MANUFACTURER SHALL PROVIDE THE MAKE, MODEL AND SERIAL NUMBER OF THE  
46 PISTOL.

47 A VIOLATION OF ANY PROVISION OF THIS SECTION IS A CLASS B MISDEMEANOR;  
48 PROVIDED, HOWEVER, THAT A PERSON, INCLUDING A DEALER IN FIREARMS, WHOLE-  
49 SALE DEALER OR A MANUFACTURER, WHO VIOLATES ANY PROVISION OF THIS  
50 SECTION AFTER HAVING PREVIOUSLY BEEN CONVICTED OF VIOLATING ANY  
51 PROVISION OF THIS SECTION IS GUILTY OF A CLASS A MISDEMEANOR.

52 S 265.39 MICROSTAMPING OF SEMIAUTOMATIC PISTOLS; AFFIRMATIVE DEFENSE.

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

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

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

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

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

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

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