

2291--A

2015-2016 Regular Sessions

I N S E N A T E

January 22, 2015

Introduced by Sens. KLEIN, ADDABBO, HAMILTON, HOYLMAN, LATIMER, PARKER, PERALTA, SQUADRON -- read twice and ordered printed, and when printed to be committed 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.  
16 FOR PURPOSES OF SECTIONS 265.45, 265.46, AND 265.47 OF THIS ARTICLE,  
17 "SAFE STORAGE DEPOSITORY" SHALL MEAN A SAFE OR OTHER SECURE CONTAINER  
18 WHICH, WHEN LOCKED, IS INCAPABLE OF BEING OPENED WITHOUT THE KEY, COMBI-  
19 NATION OR OTHER UNLOCKING MECHANISM AND IS CAPABLE OF PREVENTING A

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

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1 PERSON OTHER THAN THE OWNER OR CUSTODIAN ACCESS TO AND POSSESSION OF THE  
2 WEAPON CONTAINED THEREIN.

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 Section 265.45 of the penal law is REPEALED and three new  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

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

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

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

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

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

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

31 1. AT THE TIME OF THE COMMISSION OF SUCH CRIME, HE OR SHE RESIDES WITH  
32 ANOTHER INDIVIDUAL WHO SUCH PERSON KNOWS OR HAS REASON TO KNOW IS  
33 PROHIBITED FROM POSSESSING A FIREARM PURSUANT TO 18 U.S.C. S 922(G)(1),  
34 (4), (8) OR (9); OR

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

38 NOTHING IN THIS SECTION SHALL BE DEEMED TO AFFECT, IMPAIR OR SUPERSEDE  
39 ANY SPECIAL OR LOCAL LAW RELATING TO THE SAFE STORAGE OF RIFLES, SHOT-  
40 GUNS, FIREARMS OR ANTIQUE FIREARMS, WHICH IMPOSES ADDITIONAL REQUIRE-  
41 MENTS ON THE OWNER OR CUSTODIAN OF SUCH WEAPONS.

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

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

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

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

55 S 4. The penal law is amended by adding three new sections 265.49,  
56 265.51 and 265.53 to read as follows:

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

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

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

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

10 WARNING

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

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

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

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

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

27 S 265.53 REPORTING OF CERTAIN FIREARM CONVICTIONS.

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

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

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

52 WARNING

53 RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST  
54 EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSI-  
55 TORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE  
56 OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND

1 LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSI-  
2 BLE TO A CHILD OR OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR  
3 BOTH.

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

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

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

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

27 WARNING

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

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

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