STATE OF NEW YORK

4392--A

2017-2018 Regular Sessions

IN SENATE

February 13, 2017

Introduced by Sens. KLEIN, KAMINSKY -- 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, and the general business 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:

Section 1. 1. Short title. This act shall be known and may be cited as "Nicholas's law".

2. Legislative findings. The legislature hereby finds the following:

a. The presence of unsecured, easily accessible, weapons in homes and other places increases the likelihood of death or injury from accidents and impulsive acts;

b. Guns left unattended must be kept locked or stored securely to prevent access by children and others who should not have access to them; and

c. Gun owners and other lawful possessors are responsible for keeping their weapons from falling into the hands of children and other unauthorized individuals.

§ 2. The penal law is amended by adding a new section 265.44 to read as follows:

§ 265.44 Definition.

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.

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

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 Section 265.45 of the penal law is REPEALED and three new sections 265.45, 265.46 and 265.47 are added to read as follows:

§ 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.

§ 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. § 922(g)(1), (4), (8) or (9);

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; or

3. as a result, such rifle, shotgun, firearm or antique firearm is obtained by an unauthorized person and discharges causing physical injury to any other person.

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.

§ 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, such rifle, shotgun, firearm or antique firearm is obtained by an unauthorized person and discharges causing the death of any other person.

Failure to safely store a rifle, shotgun, firearm or antique firearm in the first degree is a class E felony.

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

§ 265.49 Failure to provide notice in the second degree.

No person shall sell or transfer ownership of any rifle, shotgun, firearm, or antique firearm to another person unless the transferee is provided at the time of sale, delivery, or transfer with:

1. A gun locking device that is capable of preventing that particular weapon from firing or a safe storage depository; and

2. A copy of the following warning in conspicuous and legible twenty-four point type on eight and one-half inches by eleven inches paper stating in bold print the following warning:

WARNING

RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH.

Failure to provide notice in the second degree is a violation.

§ 265.51 Failure to provide notice in the first degree.

A person is guilty of failure to provide notice in the first degree when he or she commits the offense of failure to provide notice in the second degree as defined in section 265.49 of this article and has been previously convicted of failure to provide notice under this section or section 265.49 of this article within the preceding ten years.

Failure to provide notice in the first degree is a class B misdemeanor.

§ 265.53 Reporting of certain firearm convictions.

When a person has a prior conviction for failure to safely store a rifle, shotgun, firearm or antique firearm in the second degree or failure to safely store a rifle, shotgun, firearm or antique firearm in the first degree, upon a second or subsequent conviction of either such offense, the district attorney or other prosecuting authority who obtained such conviction shall provide notice of such conviction to both the division of state police and, if such person possesses a New York state issued handgun license, the pertinent licensing officer who currently exercises legal authority over such person's license. Such notice shall include the offense for which the defendant has been convicted, the name and address of such offender and other identifying information, including the offender's date of birth and social security number, to the extent consistent with federal and state laws governing personal privacy and confidentiality of information. Such district attorney or other prosecuting authority shall include in such notice the name and business address of the offender's counsel of record in the criminal proceeding. Such notice must be filed not more than thirty days after judgment has been entered.

§ 5. Section 400.00 of the penal law is amended by adding a new subdivision 18 to read as follows:

18. Notice. Upon the issuance or renewal of a license, the licensing officer shall issue therewith the following notice in conspicuous and legible twenty-four point type on eight and one-half inches by eleven inches paper stating in bold print the following:

WARNING

RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. FIREARMS MUST EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSI-

TORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR. FIREARMS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR OTHER PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH.

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

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

§ 7. Severability. If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.