

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:

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 § 2. The penal law is amended by adding a new section 265.44 to read
14 as follows:
15 § 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
20 person other than the owner or custodian access to and possession of the
21 weapon contained therein.

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

LBD01105-05-7

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 Section 265.45 of the penal law is REPEALED and three new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

3 § 265.45 Failure to safely store a rifle, shotgun, firearm or antique
4 firearm.

5 A person is guilty of failure to safely store a rifle, shotgun,
6 firearm or antique firearm when he or she owns or has custody of a
7 rifle, shotgun, firearm or antique firearm and leaves such rifle, shot-
8 gun, firearm or antique firearm out of his or her immediate possession
9 or control without having first securely locked such rifle, shotgun,
10 firearm or antique firearm in an appropriate safe storage depository or
11 rendered it incapable of being fired by use of a gun locking device
12 appropriate to that weapon; provided, however, that actual possession of
13 a rifle, shotgun, firearm or antique firearm by the holder of a valid
14 New York hunting license or permit issued pursuant to article eleven of
15 the environmental conservation law and contemporaneously used in accord-
16 ance with such law shall not be governed by this section.

17 Nothing in this section shall be deemed to affect, impair or supersede
18 any special or local law relating to the safe storage of rifles, shot-
19 guns, firearms or antique firearms which imposes additional requirements
20 on the owner or custodian of such weapons.

21 Failure to safely store a rifle, shotgun, firearm or antique firearm
22 is a violation.

23 § 265.46 Failure to safely store a rifle, shotgun, firearm or antique
24 firearm in the second degree.

25 A person is guilty of failure to safely store a rifle, shotgun,
26 firearm or antique firearm in the second degree when he or she commits
27 the crime of failure to safely store a rifle, shotgun, firearm or
28 antique firearm as defined in section 265.45 of this article and:

29 1. at the time of the commission of such crime, he or she resides with
30 another individual who such person knows or has reason to know is
31 prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)(1),
32 (4), (8) or (9);

33 2. he or she has been previously convicted of failure to safely store
34 a rifle, shotgun, firearm or antique firearm within the past ten years
35 under this section, or section 265.45 or 265.47 of this article; or

36 3. as a result, such rifle, shotgun, firearm or antique firearm is
37 obtained by an unauthorized person and discharges causing physical inju-
38 ry to any other person.

39 Nothing in this section shall be deemed to affect, impair or supersede
40 any special or local law relating to the safe storage of rifles, shot-
41 guns, firearms or antique firearms, which imposes additional require-
42 ments on the owner or custodian of such weapons.

43 Failure to safely store a rifle, shotgun, firearm or antique firearm
44 in the second degree is a class A misdemeanor.

45 § 265.47 Failure to safely store a rifle, shotgun, firearm or antique
46 firearm in the first degree.

47 A person is guilty of failure to safely store a rifle, shotgun,
48 firearm or antique firearm in the first degree when he or she commits
49 the offense of failure to safely store a rifle, shotgun, firearm or
50 antique firearm as defined in section 265.45 of this article and as a
51 result, such rifle, shotgun, firearm or antique firearm is obtained by
52 an unauthorized person and discharges causing the death of any other
53 person.

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

1 § 4. The penal law is amended by adding three new sections 265.49,
2 265.51 and 265.53 to read as follows:

3 § 265.49 Failure to provide notice in the second degree.

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

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

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

12 **WARNING**

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

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

21 § 265.51 Failure to provide notice in the first degree.

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

27 Failure to provide notice in the first degree is a class B misdemea-
28 nor.

29 § 265.53 Reporting of certain firearm convictions.

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

48 § 5. Section 400.00 of the penal law is amended by adding a new subdi-
49 vision 18 to read as follows:

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

54 **WARNING**

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

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

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

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

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

31 § 8. This act shall take effect on the first of November next succeed-
32 ing the date on which it shall have become a law.