

# STATE OF NEW YORK

7067

## IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to banning 50 caliber weapons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and declaration. The legislature here-  
2 by finds and declares that 50 caliber or larger weapons having the  
3 capacity for rapidly discharging ammunition have no acceptable purpose.  
4 The legislature additionally finds and declares that such weapons pose  
5 such an imminent threat and danger to the safety and security of the  
6 people of this state that it is necessary to ban the possession and use  
7 of such weapons.

8 § 2. Short title. This act shall be known and may be cited as the "50  
9 Caliber Threat Reduction Act".

10 § 3. Section 265.00 of the penal law is amended by adding a new subdi-  
11 vision 26 to read as follows:

12 26. "50 caliber weapon" means:

13 (a) any rifle capable of firing a center-fire cartridge:

14 (i) of a caliber of 50 or greater, which shall include any metric  
15 equivalent of 50 caliber or greater; or

16 (ii) that is capable of firing a projectile that attains a muzzle  
17 energy of twelve thousand foot-pounds or greater in any combination of  
18 bullet, propellant, case, or primer; or

19 (iii) any copy or duplicate of any such weapon that is capable of  
20 firing a projectile that attains a muzzle energy of twelve thousand  
21 foot-pounds or greater regardless of caliber;

22 (b) any rifle capable of firing a center-fire cartridge defined in  
23 paragraph (a) of this subdivision, possessed prior to the effective date  
24 of this subdivision;

25 (c) provided, however, that such term does not include:

26 (i) any weapon capable of firing a center-fire cartridge that has been  
27 rendered permanently inoperable;

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

LBD02841-01-7

1 (ii) any weapon capable of firing a center-fire cartridge that is an  
2 antique firearm as defined in clause sixteen of paragraph (a) of section  
3 nine hundred twenty-one of title eighteen of the United States code;

4 (iii) any weapon validly registered pursuant to subdivision eighteen  
5 of section 400.00 of this chapter. Such weapons shall be subject to the  
6 provisions of paragraph (d) of this subdivision;

7 (iv) any weapon that was manufactured at least fifty years prior to  
8 the current date, but not including replicas thereof, that is validly  
9 registered pursuant to subdivision eighteen of section 400.00 of this  
10 chapter;

11 (v) any muzzle-loading rifle or shotgun with a rifled bore.

12 (d) Any weapon defined in paragraph (b) of this subdivision may only  
13 be sold to, exchanged with or disposed of to a purchaser authorized to  
14 possess such weapons or to an individual or entity outside of the state  
15 provided that any such transfer to an individual or entity outside of  
16 the state must be reported to the entity wherein the weapon is regis-  
17 tered within seventy-two hours of such transfer. An individual who  
18 transfers any such weapon to an individual inside New York state or  
19 without complying with the provisions of this paragraph shall be guilty  
20 of a class A misdemeanor unless transferred within one year of the  
21 effective date of this subdivision.

22 § 4. Section 400.00 of the penal law is amended by adding two new  
23 subdivisions 18 and 19 to read as follows:

24 18. Registration of 50 caliber weapons. (a) An owner of a weapon  
25 defined in paragraph (b) of subdivision twenty-six of section 265.00 of  
26 this chapter, possessed before the effective date of this subdivision,  
27 must make an application to register such weapon with the superintendent  
28 of state police, in the manner provided by the superintendent, or by  
29 amending a license issued pursuant to this section within one year of  
30 the effective date of this subdivision except any weapon defined under  
31 subparagraph (iv) of paragraph (c) of subdivision twenty-six of section  
32 265.00 of this chapter transferred into the state may be registered at  
33 any time, provided such weapons are registered within thirty days of  
34 their transfer into the state. Registration information shall include  
35 the registrant's name, date of birth, gender, race, residential address,  
36 social security number and description of each weapon being registered.  
37 A registration of any weapon defined under subparagraph (iv) of para-  
38 graph (c) of subdivision twenty-six of section 265.00 of this chapter  
39 shall be transferable, provided that the seller notifies the state  
40 police within seventy-two hours of the transfer and the buyer provides  
41 the state police with information sufficient to constitute a registra-  
42 tion under this section. Such registration shall not be valid if such  
43 registrant is prohibited or becomes prohibited from possessing a firearm  
44 pursuant to state or federal law. The superintendent shall determine  
45 whether such registrant is prohibited from possessing a firearm under  
46 state or federal law. Such check shall be limited to determining whether  
47 the factors in paragraph (g) of section nine hundred twenty-two of title  
48 eighteen of the United States code apply or whether a registrant has  
49 been convicted of a serious offense as defined in subdivision seventeen  
50 of section 265.00 of this chapter, so as to prohibit such registrant  
51 from possessing a firearm, and whether a report has been issued pursuant  
52 to section 9.46 of the mental hygiene law. All registrants shall recer-  
53 tify to the division of state police every five years thereafter. Fail-  
54 ure to recertify shall result in a revocation of such registration.

55 (b) Notwithstanding any inconsistent provisions of paragraph (a) of  
56 this subdivision, an owner of a 50 caliber weapon as defined in subdivi-

1 sion twenty-six of section 265.00 of this chapter, who is a qualified  
2 retired New York or federal law enforcement officer as defined in subdi-  
3 vision twenty-five of section 265.00 of this chapter, where such weapon  
4 was issued to or purchased by such officer prior to retirement and in  
5 the course of his or her official duties, and for which such officer was  
6 qualified by the agency that employed such officer within twelve months  
7 prior to his or her retirement, must register such weapon within sixty  
8 days of retirement.

9 (c) The superintendent of state police shall create and maintain a "50  
10 caliber weapons" page or section on the existing internet website,  
11 created pursuant to paragraph (b) of subdivision sixteen-a of this  
12 section, to educate the public as to which 50 caliber weapons are ille-  
13 gal as a result of the enactment of this subdivision, as well as such 50  
14 caliber weapons which are illegal pursuant to article two hundred  
15 sixty-five of this chapter. Such website shall contain information to  
16 assist the public in recognizing the relevant features proscribed by  
17 such article two hundred sixty-five, as well as which make and model of  
18 weapons require registration.

19 (d) A person who knowingly fails to apply to register such weapon, as  
20 required by this section, within one year of the effective date of this  
21 subdivision shall be guilty of a class A misdemeanor and such person who  
22 unknowingly fails to validly register such weapon within such one year  
23 period shall be given a warning by an appropriate law enforcement  
24 authority about such failure and given thirty days in which to apply to  
25 register such weapon or to surrender it. A failure to apply or surrender  
26 such weapon within such thirty-day period shall result in such weapon  
27 being removed by an appropriate law enforcement authority and declared a  
28 nuisance.

29 (e) The cost of the software, programming and interface required to  
30 transmit any record that must be electronically transmitted by the deal-  
31 er or licensing officer to the division of state police pursuant to this  
32 chapter shall be borne by the state.

33 19. Applicability of section. The provisions of article two hundred  
34 sixty-five of this chapter relating to illegal possession of a firearm,  
35 shall not apply to an offense which also constitutes a violation of this  
36 section by a person holding an otherwise valid license under the  
37 provisions of this section and such offense shall only be punishable as  
38 a class A misdemeanor pursuant to this section. In addition, the  
39 provisions of such article two hundred sixty-five shall not apply to the  
40 possession of a firearm in a place not authorized by law, by a person  
41 who holds an otherwise valid license or possession of a firearm by a  
42 person within a one year period after the stated expiration date of an  
43 otherwise valid license which has not been previously cancelled or  
44 revoked shall only be punishable as a class A misdemeanor pursuant to  
45 this section.

46 § 5. Section 265.02 of the penal law is amended by adding a new subdi-  
47 vision 11 to read as follows:

48 (11) Such person possesses a 50 caliber weapon.

49 § 6. Subdivision 3 of section 265.00 of the penal law, as amended by  
50 chapter 189 of the laws of 2000, is amended to read as follows:

51 3. "Firearm" means (a) any pistol or revolver; or (b) a shotgun having  
52 one or more barrels less than eighteen inches in length; or (c) a rifle  
53 having one or more barrels less than sixteen inches in length; or (d)  
54 any weapon made from a shotgun or rifle whether by alteration, modifica-  
55 tion, or otherwise if such weapon as altered, modified, or otherwise has  
56 an overall length of less than twenty-six inches; or (e) an assault

1 weapon; or (f) a 50 caliber weapon. For the purpose of this subdivision  
2 the length of the barrel on a shotgun or rifle shall be determined by  
3 measuring the distance between the muzzle and the face of the bolt,  
4 breech, or breechlock when closed and when the shotgun or rifle is  
5 cocked; the overall length of a weapon made from a shotgun or rifle is  
6 the distance between the extreme ends of the weapon measured along a  
7 line parallel to the center line of the bore. Firearm does not include  
8 an antique firearm.

9 § 7. Subdivisions 1, 2, 3 and 6 of section 265.10 of the penal law,  
10 subdivisions 1 and 2 as amended by chapter 257 of the laws of 2008 and  
11 subdivisions 3 and 6 as amended by chapter 189 of the laws of 2000, are  
12 amended to read as follows:

13 1. Any person who manufactures or causes to be manufactured any  
14 machine-gun, assault weapon, 50 caliber weapon, large capacity ammuni-  
15 tion feeding device or disguised gun is guilty of a class D felony. Any  
16 person who manufactures or causes to be manufactured any switchblade  
17 knife, gravity knife, pilum ballistic knife, metal knuckle knife, billy,  
18 blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star,  
19 chuka stick, sandbag, sandclub or slungshot is guilty of a class A  
20 misdemeanor.

21 2. Any person who transports or ships any machine-gun, firearm silenc-  
22 er, assault weapon, 50 caliber weapon or large capacity ammunition feed-  
23 ing device or disguised gun, or who transports or ships as merchandise  
24 five or more firearms, is guilty of a class D felony. Any person who  
25 transports or ships as merchandise any firearm, other than an assault  
26 weapon or 50 caliber weapon, switchblade knife, gravity knife, pilum  
27 ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal  
28 knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a  
29 class A misdemeanor.

30 3. Any person who disposes of any machine-gun, assault weapon, 50  
31 caliber weapon, large capacity ammunition feeding device or firearm  
32 silencer is guilty of a class D felony. Any person who knowingly buys,  
33 receives, disposes of, or conceals a machine-gun, 50 caliber weapon,  
34 firearm, large capacity ammunition feeding device, rifle or shotgun  
35 which has been defaced for the purpose of concealment or prevention of  
36 the detection of a crime or misrepresenting the identity of such  
37 machine-gun, 50 caliber weapon, firearm, large capacity ammunition feed-  
38 ing device, rifle or shotgun is guilty of a class D felony.

39 6. Any person who wilfully defaces any machine-gun, 50 caliber weapon,  
40 large capacity ammunition feeding device or firearm is guilty of a class  
41 D felony.

42 § 8. Paragraph 8 of subdivision a of section 265.20 of the penal law,  
43 as amended by chapter 61 of the laws of 2010, is amended to read as  
44 follows:

45 8. The manufacturer of machine-guns, firearm silencers, assault weap-  
46 ons, large capacity ammunition feeding devices, 50 caliber weapons,  
47 disguised guns, pilum ballistic knives, switchblade or gravity knives,  
48 billies or blackjacks as merchandise, or as a transferee recipient of  
49 the same for repair, lawful distribution or research and development,  
50 and the disposal and shipment thereof direct to a regularly constituted  
51 or appointed state or municipal police department, sheriff, policeman or  
52 other peace officer, or to a state prison, penitentiary, workhouse,  
53 county jail or other institution for the detention of persons convicted  
54 or accused of crime or held as witnesses in criminal cases, or to the  
55 military service of this state or of the United States; or for the

1 repair and return of the same to the lawful possessor or for research  
2 and development.

3 § 9. Section 265.20 of the penal law is amended by adding a new subdi-  
4 vision f to read as follows:

5 f. The terms "pistol," "revolver," "rifle," and "shotgun" as used in  
6 paragraphs three through five, seven through seven-b, twelve, thirteen  
7 and thirteen-a of subdivision a of this section shall not include a 50  
8 caliber weapon as defined in subdivision twenty-six of section 265.00 of  
9 this article.

10 § 10. The executive law is amended by adding a new section 233 to read  
11 as follows:

12 § 233. Compliance with the ban on the sale, possession or use of 50  
13 caliber weapons. 1. From within amounts appropriated therefor, the  
14 division of state police shall take such action as is necessary to  
15 implement a program whereby persons, including dealers of firearms, in  
16 lawful possession of 50 caliber weapons may bring themselves into  
17 compliance with the provisions of the penal law which bans the sale,  
18 possession or use of such weapons.

19 2. Within thirty days of the effective date of this section, any  
20 licensed firearm dealer who has in his or her possession a new 50 cali-  
21 ber weapon shall be entitled to return such weapon to the distributor or  
22 manufacturer, and shall be entitled to a full refund, or credit, in an  
23 amount equal to the purchase price of such weapon. In any case where a  
24 distributor or manufacturer fails or refuses to so refund or credit such  
25 dealer, the dealer shall notify the division of state police, and it  
26 shall immediately notify the attorney general so that he or she may  
27 intercede and take such actions on behalf of the dealer to secure such  
28 refund or credit.

29 3. Within thirty days of the effective date of this section, any  
30 person, including a licensed firearm dealer, who has in his or her legal  
31 possession a used 50 caliber weapon shall personally deliver such weapon  
32 to the division of state police, and upon transferring ownership and  
33 possession to a duly designated officer thereof, shall be entitled to  
34 receive payment in an amount equal to the fair market value of such  
35 weapon, but not to exceed eight thousand five hundred dollars.

36 4. The division of state police shall take such action, including a  
37 public campaign using the print media, television, radio or other means  
38 to notify persons of the existence of the program established in this  
39 section.

40 § 11. This act shall take effect immediately; provided, however, that  
41 sections one through nine of this act shall take effect on the thirtieth  
42 day after this act shall have become a law.