

1422

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. DIAZ -- 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 increasing the penalty for the possession, use, or sale of certain firearms and ammunition, the definition of assault weapon, and to repeal subdivision 22 of section 265.00 of the penal law relating to the definition of an assault weapon

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 22 of section 265.00 of the penal law is
2 REPEALED and a new subdivision 22 is added to read as follows:
3 22. "ASSAULT WEAPON" MEANS ANY:
4 (A) SEMI-AUTOMATIC OR PUMP-ACTION RIFLE THAT HAS THE CAPACITY TO
5 ACCEPT A DETACHABLE MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:
6 (I) A PISTOL GRIP;
7 (II) A SECOND HANDGRIP OR A PROTRUDING GRIP THAT CAN BE HELD BY THE
8 NON-TRIGGER HAND;
9 (III) A FOLDING OR TELESCOPING STOCK;
10 (IV) A SHROUD ATTACHED TO THE BARREL, OR THAT PARTIALLY OR COMPLETELY
11 ENCIRCLES THE BARREL, ALLOWING THE BEARER TO HOLD THE FIREARM WITH THE
12 NON-TRIGGER HAND WITHOUT BEING BURNED, BUT EXCLUDING A SLIDE THAT
13 ENCLOSURES THE BARREL; OR
14 (V) A MUZZLE BRAKE OR MUZZLE COMPENSATOR;
15 (B) SEMI-AUTOMATIC PISTOL, OR ANY SEMI-AUTOMATIC, CENTERFIRE RIFLE
16 WITH A FIXED MAGAZINE, THAT HAS THE CAPACITY TO ACCEPT MORE THAN TEN
17 ROUNDS OF AMMUNITION;
18 (C) SEMI-AUTOMATIC PISTOL THAT HAS THE CAPACITY TO ACCEPT A DETACHABLE
19 MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:
20 (I) A SECOND HANDGRIP OR A PROTRUDING GRIP THAT CAN BE HELD BY THE
21 NON-TRIGGER HAND;

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

LBD05841-02-3

(II) A FOLDING OR TELESCOPING STOCK;

(III) A SHROUD ATTACHED TO THE BARREL, OR THAT PARTIALLY OR COMPLETELY ENCIRCLES THE BARREL, ALLOWING THE BEARER TO HOLD THE FIREARM WITH THE NON-TRIGGER HAND WITHOUT BEING BURNED, BUT EXCLUDING A SLIDE THAT ENCLOSURES THE BARREL;

(IV) A MUZZLE BRAKE OR MUZZLE COMPENSATOR; OR

(V) THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE AT ANY LOCATION OUTSIDE OF THE PISTOL GRIP;

(D) SEMI-AUTOMATIC SHOTGUN THAT HAS ONE OR MORE OF THE FOLLOWING:

(I) A PISTOL GRIP OR A VERTICAL HANDGRIP;

(II) A FOLDING OR TELESCOPING STOCK;

(III) A FIXED MAGAZINE CAPACITY IN EXCESS OF FIVE ROUNDS; OR

(IV) AN ABILITY TO ACCEPT A DETACHABLE MAGAZINE;

(E) SHOTGUN WITH A REVOLVING CYLINDER;

(F) GRENADE LAUNCHER;

(G) CONVERSION KIT, PART, OR COMBINATION OR PARTS, FROM WHICH AN ASSAULT WEAPON CAN BE ASSEMBLED IF THOSE PARTS ARE IN THE POSSESSION OR UNDER THE CONTROL OF THE SAME PERSON; OR

(H) MODIFICATIONS OF SUCH FEATURES, OR OTHER FEATURES, DETERMINED BY RULES AND REGULATIONS OF THE SUPERINTENDENT OF STATE POLICE TO BE PARTICULARLY SUITABLE FOR MILITARY AND NOT SPORTING PURPOSES. IN ADDITION, THE SUPERINTENDENT OF STATE POLICE SHALL, BY RULES AND REGULATIONS, DESIGNATE SPECIFIC SEMIAUTOMATIC CENTERFIRE OR RIMFIRE RIFLES OR SEMIAUTOMATIC SHOTGUNS, IDENTIFIED BY MAKE, MODEL AND MANUFACTURER'S NAME, TO BE WITHIN THE DEFINITION OF ASSAULT WEAPON, IF THE SUPERINTENDENT OF STATE POLICE DETERMINES THAT SUCH WEAPONS ARE PARTICULARLY SUITABLE FOR MILITARY AND NOT SPORTING PURPOSES. A LIST OF ASSAULT WEAPONS, AS DETERMINED BY THE SUPERINTENDENT OF STATE POLICE, SHALL BE MADE AVAILABLE ON A REGULAR BASIS TO THE GENERAL PUBLIC.

PROVIDED, HOWEVER, THAT SUCH TERM DOES NOT INCLUDE ANY WEAPON THAT HAS BEEN RENDERED PERMANENTLY INOPERABLE.

S 2. Section 265.00 of the penal law is amended by adding three new subdivisions 24, 25 and 26 to read as follows:

24. "DETACHABLE MAGAZINE" MEANS ANY AMMUNITION FEEDING DEVICE, THE FUNCTION OF WHICH IS TO DELIVER ONE OR MORE AMMUNITION CARTRIDGES INTO THE FIRING CHAMBER, WHICH CAN BE REMOVED FROM THE FIREARM WITHOUT THE USE OF ANY TOOL, INCLUDING A BULLET OR AMMUNITION CARTRIDGE.

25. "MUZZLE BRAKE" MEANS A DEVICE ATTACHED TO THE MUZZLE OF A WEAPON THAT UTILIZES ESCAPING GAS TO REDUCE RECOIL.

26. "MUZZLE COMPENSATOR" MEANS A DEVICE ATTACHED TO THE MUZZLE OF A WEAPON THAT UTILIZES ESCAPING GAS TO CONTROL MUZZLE MOVEMENT.

S 3. Section 265.20 of the penal law is amended by adding a new subdivision e to read as follows:

E. POSSESSION OF AN ASSAULT WEAPON ON PROPERTY OWNED OR IMMEDIATELY CONTROLLED BY THE PERSON, OR WHILE ON THE PREMISES OF A LICENSED GUNSMITH FOR THE PURPOSE OF LAWFUL REPAIR, OR WHILE ENGAGED IN THE LEGAL USE OF THE ASSAULT WEAPON AT A DULY LICENSED FIRING RANGE, OR WHILE TRAVELING TO OR FROM THESE LOCATIONS, BY A PERSON WHO LAWFULLY POSSESSED SUCH WEAPON PRIOR TO JANUARY FIRST, TWO THOUSAND FOURTEEN AND WHO, PRIOR TO APRIL FIRST, TWO THOUSAND FOURTEEN:

1. RENDERS THE ASSAULT WEAPON PERMANENTLY INOPERABLE; OR

2. SURRENDERS THE ASSAULT WEAPON TO THE APPROPRIATE LAW ENFORCEMENT AGENCY AS PROVIDED FOR IN SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF THIS SECTION.

S 4. Subdivision 23 of section 265.00 of the penal law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

23. "Large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device[, manufactured after September thirteenth, nineteen hundred ninety-four,] that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

S 5. Section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.02 Criminal possession of a weapon in the third degree.

A person is guilty of criminal possession of a weapon in the third degree when:

(1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime; or

(2) Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or

(3) Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or

(5) (i) Such person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business; or

(6) Such person knowingly possesses any disguised gun[; or

(7) Such person possesses an assault weapon; or

(8) Such person possesses a large capacity ammunition feeding device].

Criminal possession of a weapon in the third degree is a class D felony.

S 6. Section 265.04 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.04 Criminal possession of a weapon in the first degree.

A person is guilty of criminal possession of a weapon in the first degree when such person:

(1) possesses any explosive substance with intent to use the same unlawfully against the person or property of another; or

(2) possesses ten or more firearms; OR

(3) POSSESSES AN ASSAULT WEAPON; OR

(4) POSSESSES A LARGE CAPACITY AMMUNITION FEEDING DEVICE.

Criminal possession of a weapon in the first degree is a class B felony.

S 7. The penal law is amended by adding two new sections 265.45 and 265.46 to read as follows:

S 265.45 UNLAWFUL POSSESSION OF A FIREARM UPON SCHOOL GROUNDS IN THE SECOND DEGREE.

IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY POSSESS ANY FIREARM IN OR UPON A BUILDING OR GROUNDS, USED FOR EDUCATIONAL PURPOSES, OF ANY SCHOOL, COLLEGE OR UNIVERSITY, WITHOUT THE WRITTEN AUTHORIZATION OF SUCH EDUCATIONAL INSTITUTION.

UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS IN THE SECOND DEGREE IS A CLASS C FELONY.

S 265.46 UNLAWFUL POSSESSION OF A FIREARM UPON SCHOOL GROUNDS IN THE FIRST DEGREE.

1 IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY POSSESS AN ASSAULT
2 WEAPON, LARGE CAPACITY AMMUNITION FEEDING DEVICE OR DETACHABLE MAGAZINE
3 IN OR UPON A BUILDING OR GROUNDS, USED FOR EDUCATIONAL PURPOSES, OF ANY
4 SCHOOL, COLLEGE OR UNIVERSITY, WITHOUT THE WRITTEN AUTHORIZATION OF SUCH
5 EDUCATIONAL INSTITUTION.

6 UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS IN THE FIRST
7 DEGREE IS A CLASS B FELONY.

8 S 8. The closing paragraph of section 265.08 of the penal law, as
9 added by chapter 233 of the laws of 1980, is amended to read as follows:

10 Criminal use of a firearm in the second degree is a class [C] B felo-
11 ny.

12 S 9. The closing paragraph of subdivision 1 and subdivision 2 of
13 section 265.09 of the penal law, the closing paragraph of subdivision 1
14 as amended and subdivision 2 as added by chapter 650 of the laws of
15 1996, are amended to read as follows:

16 Criminal use of a firearm in the first degree is a class [B] A felony.

17 (2) Sentencing. Notwithstanding any other provision of law to the
18 contrary, when a person is convicted of criminal use of a firearm in the
19 first degree as defined in subdivision one of this section, the court
20 shall impose an additional consecutive sentence [of five years] to the
21 minimum term of an indeterminate sentence imposed on the underlying
22 class B violent felony offense where the person convicted of such crime
23 displays a loaded weapon from which a shot, readily capable of producing
24 death or other serious injury may be discharged, in furtherance of the
25 commission of such crime, provided, however, that such additional
26 sentence shall not be imposed if the court, having regard to the nature
27 and circumstances of the crime and to the history and character of the
28 defendant, finds on the record that such additional consecutive sentence
29 would be unduly harsh and that not imposing such sentence would be
30 consistent with the public safety and would not deprecate the serious-
31 ness of the crime. Notwithstanding any other provision of law to the
32 contrary, the aggregate of the [five year] consecutive term imposed
33 pursuant to this subdivision and the minimum term of the indeterminate
34 sentence imposed on the underlying class B violent felony shall consti-
35 tute the new aggregate minimum term of imprisonment, and a person
36 subject to such term shall be required to serve the entire aggregate
37 minimum term and shall not be eligible for release on parole or condi-
38 tional release during such term. This subdivision shall not apply where
39 the defendant's criminal liability for displaying a loaded weapon from
40 which a shot, readily capable of producing death or other serious injury
41 may be discharged, in furtherance of the commission of crime is based on
42 the conduct of another pursuant to section 20.00 of the penal law.

43 S 10. The closing paragraph of section 265.11 of the penal law, as
44 amended by chapter 764 of the laws of 2005, is amended to read as
45 follows:

46 Criminal sale of a firearm in the third degree is a class [D] C felo-
47 ny.

48 S 11. The closing paragraph of section 265.12 of the penal law, as
49 amended by chapter 764 of the laws of 2005, is amended to read as
50 follows:

51 Criminal sale of a firearm in the second degree is a class [C] B felo-
52 ny.

53 S 12. The closing paragraph of section 265.13 of the penal law, as
54 amended by chapter 764 of the laws of 2005, is amended to read as
55 follows:

1 Criminal sale of a firearm in the first degree is a class [B] A felo-
2 ny.

3 S 13. Severability. If any provision or term of this act is for any
4 reason declared unconstitutional or invalid or ineffective by any court
5 of competent jurisdiction, such decision shall not affect the validity
6 or the effectiveness of the remaining portions of this act or any part
7 thereof.

8 S 14. This act shall take effect immediately.