S T A T E O F N E W Y O R K

3346

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. KOON, CARROZZA, ENGLEBRIGHT, ALFANO -- Multi-Sponsored by -- M. of A. AUBRY, BARRA, CLARK, DIAZ, DINOWITZ, GALEF, GLICK, GOTTFRIED, GREENE, HOOPER, HOYT, JACOBS, JOHN, LAVINE, MAYER-SOHN, PERRY, PHEFFER, SCARBOROUGH, TOWNS, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to banning dangerous firearms

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

Section 1. Legislative findings and declarations. The legislature hereby finds and declares that certain poorly made, easily concealable, and generally unsafe weapons commonly known as "Saturday night specials" or "junk guns" are disproportionately used in the commission of crimes and serve no legitimate sporting or self-protection purpose. The legislature additionally finds and declares that these weapons pose such an imminent threat and danger to the safety and security of the people of this state that it is necessary to ban the possession and use of such weapons. The legislature further finds and declares that such weapons, if produced outside of the United States, would fail the public safety standards established by the United States bureau of alcohol, tobacco, and firearms for imported firearms under the provisions of the Gun Control Act of 1968, and that, at present, large numbers of such weapons are being manufactured and sold domestically without having to meet these federal import standards.

S 2. Section 265.00 of the penal law is amended by adding a new subdivision 24 to read as follows:

24. "DANGEROUS FIREARM" MEANS ANY OF THE FIREARMS, IN SUCH CALIBER, KNOWN AS:

(I) ACCU-TEK MODEL 32SS

(II) ACCU-TEK MODEL 380SS

(III) ACCU-TEK MODEL AT-25

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

LBD01622-01-9

(IV) AMT BACKUP
(V) AMT BACKUP II
(VI) BERETTA MODEL 21 BOBCAT, .221R
(VII) BERETTA MODEL 21 BOBCAT, .25ACP
(VIII) BERETTA MODEL 950 JETFIRE
(IX) BRYCO MODEL 38, .380ACP
(X) BRYCO MODEL J-22
(XI) BRYCO MODEL J-25
(XII) COLT MUSTANG
(XIII) COLT MUSTANG PLUS II
(XIV) DAVIS BIG BORE DERRINGER, .32 H&R MAG
(XV) DAVIS BIG BORE DERRINGER, .38SPL
(XVI) DAVIS D SERIES DERRINGER, .221R
(XVII) DAVIS D SERIES DERRINGER, .22WMR
(XVIII) DAVIS D SERIES DERRINGER, .25ACP
(XIX) DAVIS D SERIES DERRINGER, .32ACP
(XX) DAVIS P-32
(XXI) DAVIS P-38
(XXII) INTRATEC PROTEC 22
(XXIII) INTRATEC PROTEC 25
(XXIV) KBI PSP 25
(XXV) LORCIN L-22
(XXVI) LORCIN L-25
(XXVII) PHOENIX HP22
(XXVIII) PHOENIX HP25
(XXIX) PHOENIX RAVEN
(XXX) SUNDANCE A-25
(XXXI) SUNDANCE BOA
(XXXII) SUNDANCE POINT BLANK DERRINGER
(XXXIII) TAURUS PT-22
(XXXIV) TAURUS PT-25
(XXXV) BRYCO 48, .221R
(XXXVI) BRYCO 48, .32ACP
(XXXVII) BRYCO 48, .380ACP
(XXXVIII) BRYCO 59, .380ACP
(XXXIX) BRYCO 59, .40 S&W
(XL) BRYCO 59, 9MM
(XLI) COLT MUSTANG POCKETL
(XLII) LORCIN L-32, .32ACP
(XLIII) LORCIN L-380, .380ACP
(XLIV) LORCIN L-9MM, 9MM

S 3. The superintendent of the division of state police, in consultation with the secretary of the treasury and the attorney general of the United States, is directed to conduct ongoing tests and evaluations of pistols and revolvers manufactured in this country to determine whether such weapons satisfy the public safety standards relating to size, design and performance established by the United States bureau of alcohol, tobacco, and firearms for the importation of firearms under the provisions of the Gun Control Act of 1968 (18 U.S.C. Sect. 921, et seq.). The superintendent shall compile a list of weapons that, when tested and evaluated using these criteria, fail to satisfy these public safety standards. The superintendent shall submit such list to the legislature not later than one year after the effective date of this act and shall submit an updated list of additional weapons, if any, annually thereafter. Such list shall be made public and available upon request provided, however, that the list of firearms compiled by the superinten-

dent shall not have the force and effect of law unless such list, or any part of such list, is thereafter enacted into law as a provision of the penal law.

S 4. Section 265.20 of the penal law is amended by adding a new subdivision e to read as follows:

E. THE TERMS "PISTOL" AND "REVOLVER" AS USED IN PARAGRAPHS THREE, SEVEN-A, SEVEN-B, SEVEN-C, SEVEN-D, NINE, NINE-A, TWELVE, THIRTEEN, AND THIRTEEN-A OF SUBDIVISION A OF THIS SECTION SHALL NOT INCLUDE A DANGEROUS FIREARM AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION 265.00 OF THIS ARTICLE.

S 5. Subdivisions 1 and 3 of section 265.01 of the penal law, subdivision 1 as amended by chapter 257 of the laws of 2008 and subdivision 3 as amended by chapter 199 of the laws of 2006, are amended to read as follows:

(1) He or she possesses any firearm OTHER THAN A DANGEROUS FIREARM, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star"; or

(3) He or she knowingly has in his or her possession a rifle, shotgun or firearm OTHER THAN A DANGEROUS FIREARM in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, or upon a school bus as defined in section one hundred forty-two of the vehicle and traffic law, without the written authorization of such educational institution; or

S 6. Subdivision 8 of section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended and a new subdivision 9 is added to read as follows:

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

(9) SUCH PERSON POSSESSES ANY DANGEROUS FIREARM.

S 7. Subdivision 1 of section 265.08 of the penal law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

(1) possesses a deadly weapon, INCLUDING A DANGEROUS FIREARM, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or

S 8. Paragraph (a) of subdivision 1 of section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, is amended to read as follows:

(a) possesses a deadly weapon, INCLUDING A DANGEROUS FIREARM, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or

S 9. Subdivisions 1 and 2 of section 265.10 of the penal law, as amended by chapter 257 of the laws of 2008, are amended to read as follows:

1. Any person who manufactures or causes to be manufactured any machine-gun, assault weapon, large capacity ammunition feeding device, DANGEROUS FIREARM, or disguised gun is guilty of a class D felony. Any person who manufactures or causes to be manufactured any switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slungshot is guilty of a class A misdemeanor.

2. Any person who transports or ships any machine-gun, firearm silencer, assault weapon or large capacity ammunition feeding device, DANGEROUS FIREARM, or disguised gun, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a class A misdemeanor.

S 10. Paragraph 8 of subdivision a of section 265.20 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

8. The manufacturer of machine-guns, assault weapons, large capacity ammunition feeding devices, DANGEROUS FIREARMS, disguised guns, pilum ballistic knives, switchblade or gravity knives, billies or blackjacks as merchandise and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States.

S 11. Paragraphs (b), (c) and (d) of subdivision 1 and paragraph (b) and the opening paragraph of paragraph (c) of subdivision 2 of section 70.02 of the penal law, paragraph (b) of subdivision 1 and paragraph (b) of subdivision 2 as separately amended by chapters 764 and 765 of the laws of 2005, paragraphs (c) and (d) of subdivision 1 as amended by chapter 7 of the laws of 2007, and the opening paragraph of paragraph (c) of subdivision 2 as amended by chapter 764 of the laws of 2005, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37, AND CRIMINAL SALE OF A FIREARM TO A MINOR AS DEFINED IN SECTION 265.16.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section

130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven [or], eight OR NINE of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven [or], eight OR NINE of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law, ATTEMPTED CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS DEFINED IN SECTION 265.11 AS A LESSER INCLUDED OFFENSE OF THAT SECTION AS DEFINED IN SECTION 220.20 OF THE CRIMINAL PROCEDURE LAW, persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, falsely reporting an incident in the second degree as defined in section 240.55 and placing a false bomb or hazardous substance in the second degree as defined in section 240.61.

(b) Except as provided in paragraph (b-1) of this subdivision, subdivision six of section 60.05 and subdivision four of this section, the sentence imposed upon a person who stands convicted of a class D violent felony offense, other than the offense of criminal possession of a weapon in the third degree as defined in subdivision [four,] five, seven [or], eight, OR NINE of section 265.02 or criminal sale of a firearm in the third degree as defined in section 265.11, must be in accordance with the applicable provisions of this chapter relating to sentencing for class D felonies provided, however, that where a sentence of imprisonment is imposed which requires a commitment to the state department of correctional services, such sentence shall be a determinate sentence in accordance with paragraph (c) of subdivision three of this section.

Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision [four,] five, seven [or], eight, OR NINE of section 265.02, OR THE CLASS E VIOLENT FELONY OFFENSE OF ATTEMPTED CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS DEFINED IN SECTION 265.11, criminal sale of a firearm in the third degree as defined in section 265.11 or the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision [four,] five, seven or eight of section 265.02 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that:

S 12. Subparagraph (iv) of paragraph (d) of subdivision 5 of section 220.10 of the criminal procedure law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

(iv) Where the indictment charges the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in [subdivision four of section 265.02 of the penal law and the provisions of subparagraph (iii) of this paragraph do not apply, or] subdivision five, seven [or], eight, OR NINE of section 265.02 of the penal law, then a plea of guilty must include at least a plea of guilty to a class E violent felony offense.

S 13. Subparagraph (v) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

(v) A plea of guilty, whether to the entire indictment or part of the indictment, for any crime other than a violent felony offense as defined in section 70.02 of the penal law, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision [four,] five, seven [or], eight, OR NINE of section 265.02 of the penal law; provided, however, a plea of guilty, whether to the entire indictment or part of the indictment, for the class A misdemeanor of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 of the penal law may be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged the class [D] B violent felony offense of criminal possession of a weapon in the [third] SECOND degree as defined in subdivision [four] THREE of section [265.02] 265.03 of the penal law when the defendant has not been previously convicted of a class A misdemeanor defined in the penal law in the five years preceding the commission of the offense.

S 14. The opening paragraph of subdivision 2 of section 400.00 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

A license for gunsmith or dealer in firearms OTHER THAN DANGEROUS FIREARMS shall be issued to engage in such business. A license for a pistol or revolver, other than an assault weapon or a disguised gun, THAT IS NOT A DANGEROUS FIREARM shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap,

or similar type of ignition system manufactured in or before l898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica--

S 15. The superintendent of the division of state police shall undertake the following activities: (a) publicizing the provisions of this act banning the possession and use of dangerous firearms, (b) providing advice to lawful gun owners as to how they can comply with the provisions of this act, and (c) taking such other actions consistent with the purposes of this act which will facilitate compliance with the ban on dangerous firearms and result in the lowest possible cost to lawful gun owners to achieve such compliance.

S 16. This act shall take effect on the three hundred sixtieth day after it shall have become a law, provided however, that the division of state police is authorized and directed to immediately conduct testing and evaluations as required in section three of this act and to publicize the provisions of this act and assist lawful gun owners as required under section fifteen of this act.