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

3361

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. EDDINGTON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to possession of a firearm in a person's home or place of business, criminal sale of firearms, and sale of defaced firearms

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

Section 1. Section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.11 Criminal sale of a firearm in the third degree.

A person is guilty of criminal sale of a firearm in the third degree when such person [is not authorized pursuant to law to possess a firearm and such person unlawfully either]:

(1) IS NOT AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM AND SUCH PERSON UNLAWFULLY sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person OR OFFERS OR AGREES TO DO THE SAME; or

(2) IS NOT AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM AND SUCH PERSON UNLAWFULLY possesses a firearm OR LARGE CAPACITY AMMUNITION FEEDING DEVICE with the intent to sell, EXCHANGE, GIVE OR DISPOSE OF it OR OFFERS OR AGREES TO DO THE SAME; OR

(3) SELLS, EXCHANGES, GIVES OR DISPOSES OF A FIREARM OR LARGE CAPACITY AMMUNITION FEEDING DEVICE TO A PERSON, OR OFFERS OR AGREES TO DO THE SAME, WITHOUT HAVING MADE REASONABLE EFFORTS TO VERIFY THAT THE PERSON IS AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM OR SUCH A DEVICE; OR

(4) POSSESSES A FIREARM OR LARGE CAPACITY AMMUNITION FEEDING DEVICE WITH THE INTENT TO SELL, EXCHANGE, GIVE OR DISPOSE OF IT, OR TO OFFER OR AGREE TO DO THE SAME, TO A PERSON WITHOUT HAVING MADE REASONABLE EFFORTS TO VERIFY THAT THE PERSON IS AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM OR SUCH DEVICE.

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

LBD04615-01-9

Criminal sale of a firearm in the third degree is a class [D] C felony.

S 2. Section 265.12 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.12 Criminal sale of a firearm in the second degree.

A person is guilty of criminal sale of a firearm in the second degree when such person[:

(1) unlawfully sells, exchanges, gives or disposes of to another five or more firearms; or

(2) unlawfully sells, exchanges, gives or disposes of to another person or persons a total of five or more firearms in a period of not more than one year] COMMITS THE CRIME OF CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS SET FORTH IN SECTION 265.11 OF THIS ARTICLE, AND THE COMMISSION OF SUCH CRIME INVOLVES EITHER:

(1) TWO OR MORE OF ANY COMBINATION OF FIREARMS OR LARGE CAPACITY AMMUNITION FEEDING DEVICES, AND SUCH TRANSACTION OR TRANSACTIONS OCCURRED WITHIN A PERIOD OF SIXTY CONSECUTIVE DAYS; OR

(2) A DEFACED FIREARM OR DEFACED LARGE CAPACITY AMMUNITION FEEDING DEVICE.

Criminal sale of a firearm in the second degree is a class [C] B felony.

S 3. Section 265.13 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.13 Criminal sale of a firearm in the first degree.

A person is guilty of criminal sale of a firearm in the first degree when such person[:

(1) unlawfully sells, exchanges, gives or disposes of to another ten or more firearms; or

(2) unlawfully sells, exchanges, gives or disposes of to another person or persons a total of ten or more firearms in a period of not more than one year] COMMITS THE CRIME OF CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS SET FORTH IN SECTION 265.11 OF THIS ARTICLE, AND THE COMMISSION OF SUCH CRIME INVOLVES EITHER:

(1) TEN OR MORE OF ANY COMBINATION OF FIREARMS OR LARGE CAPACITY AMMUNITION FEEDING DEVICES, AND SUCH TRANSACTION OR TRANSACTIONS OCCURRED WITHIN A PERIOD OF SIXTY CONSECUTIVE DAYS; OR

(2) FIVE OR MORE OF ANY COMBINATION OF DEFACED FIREARMS OR DEFACED LARGE CAPACITY AMMUNITION FEEDING DEVICES, AND SUCH TRANSACTION OR TRANSACTIONS OCCURRED WITHIN A PERIOD OF SIXTY CONSECUTIVE DAYS.

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

S 4. Section 265.14 of the penal law, as added by chapter 175 of the laws of 1991, the closing paragraph as amended by chapter 654 of the laws of 1998, is amended to read as follows:

S 265.14 Criminal sale of a firearm with the aid of a minor.

A person over [the age of] eighteen years of age is guilty of criminal sale of a weapon with the aid of a minor when a person under sixteen years of age knowingly and unlawfully sells, exchanges, gives or disposes of a firearm in violation of this article, OR OFFERS OR AGREES TO DO THE SAME, and such person over [the age of] eighteen years of age, acting with the mental culpability required for the commission thereof, solicits, requests, commands, importunes or intentionally aids such person under sixteen years of age to engage in such conduct.

Criminal sale of a firearm with the aid of a minor is a class [C] B felony.

S 5. Subdivisions 5 and 6 of section 265.15 of the penal law, subdivision 5 as amended by chapter 695 of the laws of 1987 and subdivision 6 as added by chapter 233 of the laws of 1980, are amended to read as follows:

5. The possession by any person of a defaced machine-gun, firearm, LARGE CAPACITY AMMUNITION FEEDING DEVICE, rifle or shotgun is presumptive evidence that such person defaced the same.

6. The possession of ANY COMBINATION OF five or more firearms OR LARGE CAPACITY AMMUNITION FEEDING DEVICES by any person is presumptive evidence that such person possessed the firearms OR DEVICES with the intent to sell same.

S 6. Section 265.16 of the penal law, as added by chapter 600 of the laws of 1992, the closing paragraph as amended by chapter 654 of the laws of 1998, is amended to read as follows:

S 265.16 Criminal sale of a firearm to a minor.

A person is guilty of criminal sale of a firearm to a minor when he [is not authorized pursuant to law to possess a firearm and he] unlawfully sells, exchanges, gives or disposes of a firearm, OR OFFERS OR AGREES TO DO THE SAME, to another person who is or reasonably appears to be less than nineteen years of age who is not licensed pursuant to law to possess a firearm.

Criminal sale of a firearm to a minor is a class [C] B felony.

S 7. The opening paragraph of subdivision a of section 265.20 of the penal law, as amended by chapter 496 of the laws of 1991, is amended to read as follows:

Sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, [265.11, 265.12, 265.13,] 265.15 and 270.05 shall not apply to:

S 8. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the laws of 2006 and paragraph (b) as separately amended by chapters 764 and 765 of the laws of 2005, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the [first] SECOND degree as defined in section [265.13] 265.12, CRIMINAL SALE OF A FIREARM WITH THE AID OF A MINOR AS DEFINED IN SECTION 265.14, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or

biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(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] THIRD degree as defined in section [265.12] 265.11, [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.

S 9. This act shall take effect on the ninetieth day after it shall have become a law.