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

4376

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. KOON, CARROZZA, ENGLEBRIGHT, DESTITO, RAMOS -- Multi-Sponsored by -- M. of A. ABBATE, BRADLEY, CLARK, COLTON, CYMBROWITZ, DIAZ, GALEF, JACOBS, JOHN, McENENY, PHEFFER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to the criminal use of a deadly weapon during the commission of a felony, to amend the general business law and the vehicle and traffic law, in relation to making technical corrections thereto and to repeal section 265.09 of the penal law relating thereto

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

Section 1. Subdivision 2 of section 70.25 of the penal law, as amended by chapter 56 of the laws of 1984, is amended to read as follows:

2. When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences, except if one or more of such sentences is for a violation of section 265.08 OR 270.20 of this chapter, must run concurrently. PROVIDED, FURTHER, IN THE CASE OF A VIOLATION OF SECTION 265.08 OF THIS CHAPTER, THE SENTENCE OF IMPRISONMENT FOR SUCH OFFENSE SHALL RUN CONSECUTIVELY TO ALL OTHER SENTENCES IMPOSED.

S 2. Section 265.08 of the penal law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

S 265.08 Criminal use of a [firearm in the second degree] DEADLY WEAPON.

A person is guilty of criminal use of a [firearm in the second degree] DEADLY WEAPON when he commits [any class C violent felony offense as defined in paragraph (b) of subdivision one of section 70.02] A FELONY and he either:

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

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

(2) DISPLAYS A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM; OR

(3) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

Criminal use of a [firearm in the second degree] DEADLY WEAPON is a class [C] A-I felony PROVIDED, HOWEVER, THAT CRIMINAL USE OF A DEADLY WEAPON AS DEFINED IN SUBDIVISION THREE OF THIS SECTION IS A CLASS B FELONY.

S 3. Section 265.09 of the penal law is REPEALED.

S 4. Paragraph (a) of subdivision 5 of section 220.10 of the criminal procedure law is amended by adding a new subparagraph (ii) to read as follows:

(II) WHERE THE INDICTMENT CHARGES THE CLASS A-I FELONY OF CRIMINAL USE OF A DEADLY WEAPON AS DEFINED IN SECTION 265.08 OF THE PENAL LAW, ANY PLEA TO SUCH INDICTMENT SHALL INCLUDE A PLEA OF GUILTY TO SUCH CHARGE.

S 5. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 320 of the laws of 2006, is 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] DEADLY WEAPON as defined in SUBDIVISION THREE OF section [265.09] 265.08, criminal sale of a firearm in the first degree as defined in section 265.13, 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.

S 6. Subdivision 1 of section 410 of the general business law, as added by chapter 509 of the laws of 1992, is amended to read as follows:

1. Suspension and revocation of licenses; fines; reprimands. A license issued pursuant to this article may be suspended or revoked, or a fine not exceeding five hundred dollars payable to the department may be imposed for any one or more of the following causes:

a. Fraud or bribery in securing a license or permission to take an examination therefor.

b. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article.

c. Incompetence or untrustworthiness.

d. Failure to display the license as provided in this article.

e. Violation of any provision of this article, or of any rule or regulation adopted hereunder.

f. Conviction of any of the following crimes subsequent to the issuance of a license pursuant to this article: fraud pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying business records pursuant to section 175.10; grand larceny pursuant to article 155; bribery pursuant to sections 180.03, 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article 160; homicide pursuant to sections 125.25 and 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping and unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03 and 265.04; criminal use of a DEADLY weapon pursuant to [sections] SECTION 265.08 [and 265.09]; criminal sale of a weapon pursuant to sections 265.11 and 265.12; and sex offenses pursuant to article 130 of the penal law. Provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

Provided, however, a fine shall not be imposed for the causes specified in paragraph f of this subdivision.

In lieu of or in conjunction with the suspension or revocation of a license, or the imposition of a fine pursuant to this section, the secretary may issue a reprimand. When a license issued pursuant to this article is revoked, such license shall not be reinstated or reissued until after the expiration of a period of one year from the date of such revocation. No license shall be issued after a second revocation.

S 7. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 345 of the laws of 2007, is amended to read as follows:

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00, 230.05, 230.06, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and sections 260.25, 265.02, 265.03, 265.08, [265.09,] 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of the aforesaid offenses under section

110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.