

6157

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. TITONE, KOON, COOK, PEOPLES-STOKES, KAVANAGH, SCHIMEL -- Multi-Sponsored by -- M. of A. BOYLAND, GLICK, GOTTFRIED, MAYERSOHN, PERRY, TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the general business law, in relation to banning the possession, sale or manufacture of assault weapons and to repeal subdivision 22 of section 265.00 of the penal law relating thereto

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

1 Section 1. The New York state legislature finds that semi-automatic  
2 assault weapons are military-style guns designed to allow rapid and  
3 accurate spray firing for the quick and efficient killing of humans. The  
4 shooter can simply point - as opposed to carefully aim - the weapon to  
5 quickly spray a wide area with a hail of bullets. Gun manufacturers have  
6 for many years made, marketed and sold to civilians semi-automatic  
7 versions of military assault weapons designed with features specifically  
8 intended to increase lethality for military applications. As a result,  
9 approximately 2,000,000 assault weapons are currently in circulation in  
10 the United States. These weapons have been the weapon of choice in the  
11 most notorious mass shootings of innocent civilians in the United  
12 States, including the 1999 massacre at Columbine High School (TEC-DC9  
13 assault pistol and Hi-Point Carbine) and the 2002 Washington, D.C.-area  
14 sniper shootings (Bushmaster XM15 assault rifle). According to FBI data,  
15 between 1998 and 2001, one in five law enforcement officers slain in the  
16 line of duty was killed with an assault weapon. In 2003, New York lost  
17 two of its finest when undercover officers in the elite Firearms Inves-  
18 tigation Unit of the NYPD Organized Crime Control Bureau were brutally  
19 murdered while attempting to purchase an illegal TEC-9 semi-automatic  
20 assault weapon. The availability of military-style assault weapons poses  
21 a serious threat to the public health and safety. Most citizens, includ-

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

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1 ing most gun owners, believe that assault weapons should not be avail-  
2 able for civilian use.

3 S 2. Subdivision 22 of section 265.00 of the penal law is REPEALED and  
4 a new subdivision 22 is added to read as follows:

5 22. "ASSAULT WEAPON" MEANS ANY:

6 (A) SEMI-AUTOMATIC OR PUMP-ACTION RIFLE THAT HAS THE CAPACITY TO  
7 ACCEPT A DETACHABLE MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:

8 (I) A PISTOL GRIP;

9 (II) A SECOND HANDGRIP OR A PROTRUDING GRIP THAT CAN BE HELD BY THE  
10 NON-TRIGGER HAND;

11 (III) A FOLDING, TELESCOPING OR THUMBHOLE STOCK;

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

16 (V) A MUZZLE BRAKE OR MUZZLE COMPENSATOR;

17 (B) SEMI-AUTOMATIC PISTOL, OR ANY SEMI-AUTOMATIC, CENTERFIRE RIFLE  
18 WITH A FIXED MAGAZINE, THAT HAS THE CAPACITY TO ACCEPT MORE THAN TEN  
19 ROUNDS OF AMMUNITION;

20 (C) SEMI-AUTOMATIC PISTOL THAT HAS THE CAPACITY TO ACCEPT A DETACHABLE  
21 MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:

22 (I) A SECOND HANDGRIP OR A PROTRUDING GRIP THAT CAN BE HELD BY THE  
23 NON-TRIGGER HAND;

24 (II) A FOLDING, TELESCOPING OR THUMBHOLE STOCK;

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

29 (IV) A MUZZLE BRAKE OR MUZZLE COMPENSATOR; OR

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

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

33 (I) A PISTOL GRIP OR A VERTICAL HANDGRIP;

34 (II) A FOLDING, TELESCOPING OR THUMBHOLE STOCK;

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

36 (IV) AN ABILITY TO ACCEPT A DETACHABLE MAGAZINE;

37 (E) SHOTGUN WITH A REVOLVING CYLINDER;

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

41 (G) MODIFICATIONS OF SUCH FEATURES, OR OTHER FEATURES, DETERMINED BY  
42 RULES AND REGULATIONS OF THE SUPERINTENDENT OF STATE POLICE TO BE  
43 PARTICULARLY SUITABLE FOR MILITARY AND NOT SPORTING PURPOSES. IN ADDI-  
44 TION, THE SUPERINTENDENT OF STATE POLICE SHALL, BY RULES AND REGU-  
45 LATIONS, DESIGNATE SPECIFIC SEMIAUTOMATIC CENTERFIRE OR RIMFIRE RIFLES  
46 OR SEMIAUTOMATIC SHOTGUNS, IDENTIFIED BY MAKE, MODEL AND MANUFACTURER'S  
47 NAME, TO BE WITHIN THE DEFINITION OF ASSAULT WEAPON, IF THE SUPERINTEN-  
48 DENT OF STATE POLICE DETERMINES THAT SUCH WEAPONS ARE PARTICULARLY SUIT-  
49 ABLE FOR MILITARY AND NOT SPORTING PURPOSES. A LIST OF ASSAULT WEAPONS,  
50 AS DETERMINED BY THE SUPERINTENDENT OF STATE POLICE, SHALL BE MADE  
51 AVAILABLE ON A REGULAR BASIS TO THE GENERAL PUBLIC.

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

54 S 3. Section 265.00 of the penal law is amended by adding three new  
55 subdivisions 24, 25 and 26 to read as follows:

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

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

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

9 S 4. Section 265.20 of the penal law is amended by adding a new subdi-  
10 vision e to read as follows:

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

18 1. RENDERS THE ASSAULT WEAPON PERMANENTLY INOPERABLE; OR

19 2. SURRENDERS THE ASSAULT WEAPON TO THE APPROPRIATE LAW ENFORCEMENT  
20 AGENCY AS PROVIDED FOR IN SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVI-  
21 SION A OF THIS SECTION; OR

22 3. REGISTERS THE ASSAULT WEAPON AS PROVIDED FOR IN SUBDIVISION SEVEN  
23 OF SECTION THREE HUNDRED NINETY-SIX-FF OF THE GENERAL BUSINESS LAW.

24 S 5. Subdivision 7 of section 396-ff of the general business law is  
25 renumbered subdivision 8 and a new subdivision 7 is added to read as  
26 follows:

27 (7) THE DIVISION OF STATE POLICE SHALL NO LATER THAN JANUARY FIRST,  
28 TWO THOUSAND TEN, PROMULGATE RULES AND REGULATIONS FOR THE ADDITION OF  
29 INFORMATION IDENTIFYING ASSAULT WEAPONS LAWFULLY POSSESSED PRIOR TO  
30 JANUARY FIRST, TWO THOUSAND TEN TO THE DATABANK ESTABLISHED BY THIS  
31 SECTION. SUCH RULES AND REGULATIONS SHALL, AT A MINIMUM, SPECIFY PROCE-  
32 DURES BY WHICH THE OWNER OF AN ASSAULT WEAPON LAWFULLY POSSESSED PRIOR  
33 TO JANUARY FIRST, TWO THOUSAND TEN IS TO DELIVER AN ASSAULT WEAPON AND  
34 VERIFICATION OF A BACKGROUND CHECK REQUIRED BY 18 USC S 922 TO THE  
35 REGIONAL PROGRAM FOR TESTING AND PROMPT RETURN. UPON RECEIPT OF THE  
36 SEALED CONTAINER AND INSPECTION OF A CERTIFICATE PROVING THAT A BACK-  
37 GROUND CHECK HAS BEEN CONDUCTED AND THE OWNER IS NOT PROHIBITED FROM  
38 POSSESSING A FIREARM, THE DIVISION OF STATE POLICE SHALL CAUSE TO BE  
39 ENTERED IN THE AUTOMATED ELECTRONIC DATABANK PERTINENT DATA, INCLUDING  
40 BALLISTIC INFORMATION RELEVANT TO IDENTIFICATION OF THE SHELL CASING AND  
41 TO THE ASSAULT WEAPON FROM WHICH IT WAS DISCHARGED, AND THE DATE AND  
42 PLACE OF THE BACKGROUND CHECK AND THE NAME OF THE INDIVIDUAL WHO  
43 CONDUCTED SUCH BACKGROUND CHECK.

44 S 6. Severability. If any provision or term of this act is for any  
45 reason declared unconstitutional or invalid or ineffective by any court  
46 of competent jurisdiction, such decision shall not affect the validity  
47 or the effectiveness of the remaining portions of this act or any part  
48 thereof.

49 S 7. This act shall take effect January 1, 2010.