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

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Cal. No. 428

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. TITONE, COOK, PEOPLES-STOKES, KAVANAGH, SCHIMEL -- Multi-Sponsored by -- M. of A. BOYLAND, GLICK, GOTTFRIED, MAYER-SOHN, PERRY, TOWNS -- read once and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

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

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

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a serious threat to the public health and safety. Most citizens, including most gun owners, believe that assault weapons should not be available for civilian use.

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 Subdivision 22 of section 265.00 of the penal law is REPEALED and a new subdivision 22 is added to read as follows:

22. "ASSAULT WEAPON" MEANS ANY:

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

(I) A PISTOL GRIP;

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

(III) A FOLDING OR TELESCOPING STOCK;

(IV) 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 ENCLOSES THE BARREL; OR

(V) A MUZZLE BRAKE OR MUZZLE COMPENSATOR;

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

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

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

(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 ENCLOSES 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 OF 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 3. 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 4. 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 ELEVEN AND WHO, PRIOR TO APRIL FIRST, TWO THOUSAND ELEVEN:

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; OR

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

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

(7) THE DIVISION OF STATE POLICE SHALL NO LATER THAN JANUARY FIRST, TWO THOUSAND ELEVEN, PROMULGATE RULES AND REGULATIONS FOR THE ADDITION OF INFORMATION IDENTIFYING ASSAULT WEAPONS LAWFULLY POSSESSED PRIOR TO JANUARY FIRST, TWO THOUSAND ELEVEN TO THE DATABANK ESTABLISHED BY THIS SECTION. SUCH RULES AND REGULATIONS SHALL, AT A MINIMUM, SPECIFY PROCEDURES BY WHICH THE OWNER OF AN ASSAULT WEAPON LAWFULLY POSSESSED PRIOR TO JANUARY FIRST, TWO THOUSAND ELEVEN IS TO DELIVER AN ASSAULT WEAPON AND VERIFICATION OF A BACKGROUND CHECK REQUIRED BY 18 USC S 922 TO THE REGIONAL PROGRAM FOR TESTING AND PROMPT RETURN. UPON RECEIPT OF THE SEALED CONTAINER AND INSPECTION OF A CERTIFICATE PROVING THAT A BACKGROUND CHECK HAS BEEN CONDUCTED AND THE OWNER IS NOT PROHIBITED FROM POSSESSING A FIREARM, THE DIVISION OF STATE POLICE SHALL CAUSE TO BE ENTERED IN THE AUTOMATED ELECTRONIC DATABANK PERTINENT DATA, INCLUDING BALLISTIC INFORMATION RELEVANT TO IDENTIFICATION OF THE SHELL CASING AND TO THE ASSAULT WEAPON FROM WHICH IT WAS DISCHARGED, AND THE DATE AND PLACE OF THE BACKGROUND CHECK AND THE NAME OF THE INDIVIDUAL WHO CONDUCTED SUCH BACKGROUND CHECK.

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

S 7. This act shall take effect January 1, 2011.