

6294

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 27, 2009

---

Introduced by M. of A. ROSENTHAL, SCHIMEL, BING, GOTTFRIED, CAMARA, DINOWITZ, JAFFEE, ROBINSON, HOOPER, KELLNER -- Multi-Sponsored by -- M. of A. BOYLAND, BROOK-KRASNY, COLTON, DIAZ, GLICK, MAISEL, PEOPLES, PERRY, PHEFFER, WEISENBERG -- 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 Investigation Unit of the NYPD Organized Crime Control Bureau were brutally  
18 murdered while attempting to purchase an illegal TEC-9 semi-automatic  
19 assault weapon. The availability of military-style assault weapons poses  
20

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

LBD02833-01-9

1 a serious threat to the public health and safety. Most citizens, includ-  
2 ing most gun owners, believe that assault weapons should not be avail-  
3 able for civilian use.

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 Subdivision 22 of section 265.00 of the penal law is REPEALED and  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

6 22. "ASSAULT WEAPON" MEANS ANY:

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

9 (I) A PISTOL GRIP;

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

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

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

17 (V) A MUZZLE BRAKE OR MUZZLE COMPENSATOR;

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

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

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

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

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

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

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

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

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

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

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

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

38 (E) SHOTGUN WITH A REVOLVING CYLINDER; OR

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

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

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

55 S 3. Section 265.00 of the penal law is amended by adding three new  
56 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 JULY FIRST, TWO THOUSAND TEN AND WHO, PRIOR TO OCTOBER FIRST, TWO THOUSAND TEN:

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 JULY FIRST, TWO THOUSAND TEN, PROMULGATE RULES AND REGULATIONS FOR THE ADDITION OF INFORMATION IDENTIFYING ASSAULT WEAPONS LAWFULLY POSSESSED PRIOR TO JANUARY FIRST, TWO THOUSAND TEN 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 JULY FIRST, TWO THOUSAND TEN 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 July 1, 2010; provided that the division of state police is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.