

1440--A

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

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Introduced by Sens. SQUADRON, GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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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 RIFLE THAT HAS THE CAPACITY TO ACCEPT A DETACHABLE  
8 MAGAZINE AND HAS ONE OR MORE OF THE FOLLOWING:

9 (I) A PISTOL GRIP OR THUMBHOLE STOCK;

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

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

35 (II) A FOLDING OR TELESCOPING 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 NOT  
44 PARTICULARLY SUITABLE FOR SPORTING PURPOSES. IN ADDITION, THE SUPER-  
45 INTENDENT OF STATE POLICE SHALL, BY RULES AND REGULATIONS, DESIGNATE  
46 SPECIFIC SEMI-AUTOMATIC CENTERFIRE OR RIMFIRE RIFLES OR SEMI-AUTOMATIC  
47 SHOTGUNS, IDENTIFIED BY MAKE, MODEL, AND MANUFACTURER'S NAME, TO BE  
48 WITHIN THE DEFINITION OF ASSAULT WEAPON, IF THE SUPERINTENDENT OF STATE  
49 POLICE DETERMINES THAT SUCH WEAPONS ARE NOT PARTICULARLY SUITABLE FOR  
50 SPORTING PURPOSES. A LIST OF ASSAULT WEAPONS, AS DETERMINED BY THE  
51 SUPERINTENDENT OF STATE POLICE, SHALL BE MADE AVAILABLE ON A REGULAR  
52 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 four new  
56 subdivisions 24, 25, 26 and 27 to read as follows:

1 24. "DETACHABLE MAGAZINE" MEANS ANY AMMUNITION FEEDING DEVICE THAT CAN  
2 BE INSERTED INTO A FIREARM INCLUDING ANY FEEDING DEVICE THAT CAN BE  
3 LOADED OR UNLOADED WHILE DETACHED FROM THE FIREARM.

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

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

8 27. "FIXED MAGAZINE" MEANS AN AMMUNITION FEEDING DEVICE CONTAINED IN,  
9 OR PERMANENTLY ATTACHED TO, A FIREARM IN SUCH A MANNER THAT THE DEVICE  
10 CANNOT BE REMOVED WITHOUT DISASSEMBLY OF THE FIREARM ACTION.

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

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

20 1. RENDERS THE ASSAULT WEAPON PERMANENTLY INOPERABLE; OR

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

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

26 S 5. The general business law is amended by adding a new section 396-  
27 ff to read as follows:

28 S 396-FF. RULES AND REGULATIONS. THE DIVISION OF STATE POLICE SHALL  
29 NO LATER THAN JULY FIRST, TWO THOUSAND THIRTEEN, PROMULGATE RULES AND  
30 REGULATIONS FOR THE ADDITION OF INFORMATION IDENTIFYING ASSAULT WEAPONS  
31 LAWFULLY POSSESSED PRIOR TO JANUARY FIRST, TWO THOUSAND THIRTEEN TO THE  
32 DATABANK ESTABLISHED BY THIS SECTION. SUCH RULES AND REGULATIONS SHALL,  
33 AT A MINIMUM, SPECIFY PROCEDURES BY WHICH THE OWNER OF AN ASSAULT WEAPON  
34 LAWFULLY POSSESSED PRIOR TO JULY FIRST, TWO THOUSAND THIRTEEN IS TO  
35 DELIVER AN ASSAULT WEAPON AND VERIFICATION OF A BACKGROUND CHECK  
36 REQUIRED BY 18 USC S 922 TO THE REGIONAL PROGRAM FOR TESTING AND PROMPT  
37 RETURN. UPON RECEIPT OF THE SEALED CONTAINER AND INSPECTION OF A CERTIF-  
38 ICATE PROVING THAT A BACKGROUND CHECK HAS BEEN CONDUCTED AND THE OWNER  
39 IS NOT PROHIBITED FROM POSSESSING A FIREARM, THE DIVISION OF STATE  
40 POLICE SHALL CAUSE TO BE ENTERED IN THE AUTOMATED ELECTRONIC DATABANK  
41 PERTINENT DATA, INCLUDING BALLISTIC INFORMATION RELEVANT TO IDENTIFICA-  
42 TION OF THE SHELL CASING AND TO THE ASSAULT WEAPON FROM WHICH IT WAS  
43 DISCHARGED, AND THE DATE AND PLACE OF THE BACKGROUND CHECK AND THE NAME  
44 OF THE INDIVIDUAL WHO CONDUCTED SUCH BACKGROUND CHECK.

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

50 S 7. This act shall take effect July 1, 2013; provided that the divi-  
51 sion of state police is authorized to promulgate any and all rules and  
52 regulations and take any other measures necessary to implement this act  
53 on its effective date on or before such date.