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

2869

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. CALHOUN, CROUCH -- Multi-Sponsored by -- M. of A. CONTE, FINCH, KOLB, J. MILLER, OAKS, TEDISCO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the vehicle and traffic law and the general business law, in relation to the criminal use of a firearm during the commission of a crime 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. 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].

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

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

Criminal use of a firearm [in the second degree] is a class [C] A-II felony.

S 2. Section 265.09 of the penal law is REPEALED.

S 3. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the laws of 2006, paragraph (b) as amended by chapter 405 of the laws of 2010, are 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

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

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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 as defined in section 265.09,] 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.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, [criminal use of a firearm in the second degree as defined in section 265.08,] criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 405 of the laws of 2010, 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, 121.12, 121.13, 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 5. Paragraph f of 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:

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] ONE HUNDRED FIFTY-FIVE; 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] ONE HUNDRED SIXTY; 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 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] ONE HUNDRED THIRTY 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.

S 6. This act shall take effect immediately.