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

1422--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. DIAZ, AVELLA, STAVISKY -- 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, in relation to increasing the penalty for the possession, use, or sale of certain firearms and ammunition, the definition of assault weapon, and to repeal subdivision 22 of section 265.00 of the penal law relating to the definition of an assault weapon

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

Section 1. Subdivision 22 of section 265.00 of the penal law is REPEALED and a new subdivision 22 is added to read as follows: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;

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

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(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 OR 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 2. Section 265.00 of the penal law is amended by adding three new subdivisions 26, 27 and 28 to read as follows:

26. "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.
27. "MUZZLE BRAKE" MEANS A DEVICE ATTACHED TO THE MUZZLE OF A WEAPON THAT UTILIZES ESCAPING GAS TO REDUCE RECOIL.
28. "MUZZLE COMPENSATOR" MEANS A DEVICE ATTACHED TO THE MUZZLE OF A WEAPON THAT UTILIZES ESCAPING GAS TO CONTROL MUZZLE MOVEMENT.

S 3. Section 265.20 of the penal law is amended by adding a new subdivision f to read as follows:

F. 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 FIFTEEN AND WHO, PRIOR TO APRIL FIRST, TWO THOUSAND FIFTEEN:
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.

S 4. Section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, subdivision 8 as amended and subdivisions 9 and 10 as added by chapter 1 of the laws of 2013, is amended to read as follows:

S 265.02 Criminal possession of a weapon in the third degree.

A person is guilty of criminal possession of a weapon in the third degree when:

(1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two[, three] or five of section 265.01, and has been previously convicted of any crime; or

(2) Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or

(3) Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or

(5) (i) Such person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business; or

(6) Such person knowingly possesses any disguised gun[; or

(7) Such person possesses an assault weapon; or

(8) Such person possesses a large capacity ammunition feeding device. For purposes of this subdivision, a large capacity ammunition feeding device shall not include an ammunition feeding device lawfully possessed by such person before the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision, that has a capacity of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition, or that was manufactured before September thirteenth, nineteen hundred ninety-four, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; or

(9) Such person possesses an unloaded firearm and also commits a drug trafficking felony as defined in subdivision twenty-one of section 10.00 of this chapter as part of the same criminal transaction; or

(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in subdivision one of section 70.02 of this chapter as part of the same criminal transaction].

Criminal possession of a weapon in the third degree is a class D felony.

S 5. Section 265.04 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.04 Criminal possession of a weapon in the first degree.

A person is guilty of criminal possession of a weapon in the first degree when such person:

(1) possesses any explosive substance with intent to use the same unlawfully against the person or property of another; or

(2) possesses ten or more firearms; OR

(3) POSSESSES AN ASSAULT WEAPON; OR

(4) POSSESSES A LARGE CAPACITY AMMUNITION FEEDING DEVICE.

Criminal possession of a weapon in the first degree is a class B felony.

S 6. The penal law is amended by adding two new sections 265.46 and 265.47 to read as follows:

S 265.46 UNLAWFUL POSSESSION OF A FIREARM UPON SCHOOL GROUNDS IN THE SECOND DEGREE.

IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY POSSESS ANY FIREARM IN OR UPON A BUILDING OR GROUNDS, USED FOR EDUCATIONAL PURPOSES, OF ANY SCHOOL, COLLEGE OR UNIVERSITY, WITHOUT THE WRITTEN AUTHORIZATION OF SUCH EDUCATIONAL INSTITUTION.

UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS IN THE SECOND DEGREE IS A CLASS C FELONY.

S 265.47 UNLAWFUL POSSESSION OF A FIREARM UPON SCHOOL GROUNDS IN THE FIRST DEGREE.

IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY POSSESS AN ASSAULT WEAPON, LARGE CAPACITY AMMUNITION FEEDING DEVICE OR DETACHABLE MAGAZINE IN OR UPON A BUILDING OR GROUNDS, USED FOR EDUCATIONAL PURPOSES, OF ANY SCHOOL, COLLEGE OR UNIVERSITY, WITHOUT THE WRITTEN AUTHORIZATION OF SUCH EDUCATIONAL INSTITUTION.

UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS IN THE FIRST DEGREE IS A CLASS B FELONY.

S 7. The closing paragraph of section 265.08 of the penal law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

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

S 8. The closing paragraph of subdivision 1 and subdivision 2 of section 265.09 of the penal law, the closing paragraph of subdivision 1 as amended by chapter 650 of the laws of 1996, and subdivision 2 as amended by chapter 1 of the laws of 2013, are amended to read as follows:

Criminal use of a firearm in the first degree is a class [B] A felony.

(2) Sentencing. Notwithstanding any other provision of law to the contrary, when a person is convicted of criminal use of a firearm in the first degree as defined in subdivision one of this section, the court shall impose an additional consecutive sentence [of five years] to the sentence imposed on the underlying class B violent felony offense where the person convicted of such crime displays a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of such crime, provided, however, that such additional sentence shall not be imposed if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such additional consecutive sentence would be unduly harsh and that not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime. Notwithstanding any other provision of law to the contrary, the aggregate of the [five year] consecutive term imposed pursuant to this subdivision and the minimum term of the indeterminate sentence imposed on the underlying class B violent felony shall constitute the new aggregate minimum term of imprisonment, and a person subject to such term shall be required to serve the entire aggregate minimum term and shall not be eligible for release on parole or conditional release during such term. This subdivision shall not apply where the defendant's criminal liability for displaying a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged, in furtherance of the commission of crime is based on the conduct of another pursuant to section 20.00 of this chapter.

S 9. The closing paragraph of section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the third degree is a class [D] C felony.

S 10. The closing paragraph of section 265.12 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the second degree is a class [C] B felony.

S 11. The closing paragraph of section 265.13 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the first degree is a class [B] A felony.

S 12. 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 13. This act shall take effect immediately.