

2237--B

Cal. No. 387

2013-2014 Regular Sessions

I N   S E N A T E

January 15, 2013

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Introduced by Sens. GOLDEN, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, the vehicle and traffic law and the general business law, in relation to criminal use of a firearm in the first degree and to repeal certain provisions 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. Section 265.09 of the penal law, as amended by chapter 650  
2     of the laws of 1996, subdivision 2 as amended by chapter 1 of the laws  
3     of 2013, is amended to read as follows:  
4     S 265.09 Criminal use of a firearm in the first degree.  
5     (1) A person is guilty of criminal use of a firearm in the first  
6     degree when he OR SHE commits any [class B violent] felony offense [as  
7     defined in paragraph (a) of subdivision one of section 70.02] and he  
8     [either:  
9     (a) possesses a deadly weapon, if the weapon is a loaded weapon from  
10    which a shot, readily capable of producing death or other serious injury  
11    may be discharged; or  
12    (b)] OR SHE displays what appears to be a pistol, revolver, rifle,  
13    shotgun, machine gun or other firearm.  
14    Criminal use of a firearm in the first degree is a class B felony.  
15    (2) Sentencing. Notwithstanding any other provision of law to the  
16    contrary, when a person is convicted of criminal use of a firearm in the  
17    first degree as defined in subdivision one of this section, the court  
18    shall impose [an additional] A consecutive sentence of five years to the

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

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1 sentence imposed on the underlying [class B violent] felony offense  
2 where the person convicted of such crime displays [a loaded weapon from  
3 which a shot, readily capable of producing death or other serious injury  
4 may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOT-  
5 GUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission of  
6 such crime, provided, however, that such additional sentence shall not  
7 be imposed if the court, having regard to the nature and circumstances  
8 of the crime and to the history and character of the defendant, finds on  
9 the record that such additional consecutive sentence would be unduly  
10 harsh and that not imposing such sentence would be consistent with the  
11 public safety and would not deprecate the seriousness of the crime.  
12 Notwithstanding any other provision of law to the contrary, the aggre-  
13 gate of the five year consecutive term imposed pursuant to this subdivi-  
14 sion and the minimum term of the [indeterminate] sentence imposed on the  
15 underlying [class B violent] felony shall constitute the new aggregate  
16 minimum term of imprisonment, and a person subject to such term shall be  
17 required to serve the entire aggregate minimum term and shall not be  
18 eligible for release on parole or conditional release during such term.  
19 This subdivision shall not apply where the defendant's criminal liabil-  
20 ity for displaying [a loaded weapon from which a shot, readily capable  
21 of producing death or other serious injury may be discharged,] WHAT  
22 APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER  
23 FIREARM in furtherance of the commission of crime is based on the  
24 conduct of another pursuant to section 20.00 of this chapter.

25 S 2. Section 265.08 of the penal law is REPEALED.

26 S 3. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,  
27 as amended by chapter 1 of the laws of 2013, is amended to read as  
28 follows:

29 (b) Class C violent felony offenses: an attempt to commit any of the  
30 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
31 vated criminally negligent homicide as defined in section 125.11, aggra-  
32 vated manslaughter in the second degree as defined in section 125.21,  
33 aggravated sexual abuse in the second degree as defined in section  
34 130.67, assault on a peace officer, police officer, fireman or emergency  
35 medical services professional as defined in section 120.08, assault on a  
36 judge as defined in section 120.09, gang assault in the second degree as  
37 defined in section 120.06, strangulation in the first degree as defined  
38 in section 121.13, burglary in the second degree as defined in section  
39 140.25, robbery in the second degree as defined in section 160.10, crim-  
40 inal possession of a weapon in the second degree as defined in section  
41 265.03, [criminal use of a firearm in the second degree as defined in  
42 section 265.08,] criminal sale of a firearm in the second degree as  
43 defined in section 265.12, criminal sale of a firearm with the aid of a  
44 minor as defined in section 265.14, aggravated criminal possession of a  
45 weapon as defined in section 265.19, soliciting or providing support for  
46 an act of terrorism in the first degree as defined in section 490.15,  
47 hindering prosecution of terrorism in the second degree as defined in  
48 section 490.30, and criminal possession of a chemical weapon or biolog-  
49 ical weapon in the third degree as defined in section 490.37.

50 S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle  
51 and traffic law, as amended by chapter 400 of the laws of 2011, is  
52 amended to read as follows:

53 (c) The offenses referred to in subparagraph (i) of paragraph (b) of  
54 subdivision one and subparagraph (i) of paragraph (c) of subdivision two  
55 of this section that result in disqualification for a period of five  
56 years shall include a conviction under sections 100.10, 105.13, 115.05,

1 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,  
2 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,  
3 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,  
4 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,  
5 230.05, 230.06, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00,  
6 260.10, subdivision two of section 260.20 and sections 260.25, 265.02,  
7 265.03, [265.08,] 265.09, 265.10, 265.12, 265.35 of the penal law or an  
8 attempt to commit any of the aforesaid offenses under section 110.00 of  
9 the penal law, or any similar offenses committed under a former section  
10 of the penal law, or any offenses committed under a former section of  
11 the penal law which would constitute violations of the aforesaid  
12 sections of the penal law, or any offenses committed outside this state  
13 which would constitute violations of the aforesaid sections of the penal  
14 law.

15 S 5. The opening paragraph of paragraph (f) of subdivision 1 of  
16 section 410 of the general business law, as added by chapter 509 of the  
17 laws of 1992, is amended to read as follows:

18 Conviction of any of the following crimes subsequent to the issuance  
19 of a license pursuant to this article: fraud pursuant to sections  
20 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying  
21 business records pursuant to section 175.10; grand larceny pursuant to  
22 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,  
23 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;  
24 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to  
25 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article  
26 160; homicide pursuant to sections 125.25 and 125.27; manslaughter  
27 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-  
28 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons  
29 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use  
30 of a weapon pursuant to [sections 265.08 and] SECTION 265.09; criminal  
31 sale of a [weapon] FIREARM pursuant to sections 265.11 and 265.12; and  
32 sex offenses pursuant to article 130 of the penal law. Provided, howev-  
33 er, that for the purposes of this article, none of the following shall  
34 be considered criminal convictions or reported as such: (i) a conviction  
35 for which an executive pardon has been issued pursuant to the executive  
36 law; (ii) a conviction which has been vacated and replaced by a youthful  
37 offender finding pursuant to article seven hundred twenty of the crimi-  
38 nal procedure law, or the applicable provisions of law of any other  
39 jurisdiction; or (iii) a conviction the records of which have been  
40 expunged or sealed pursuant to the applicable provisions of the laws of  
41 this state or of any other jurisdiction; and (iv) a conviction for which  
42 other evidence of successful rehabilitation to remove the disability has  
43 been issued.

44 S 6. This act shall take effect on the first of November next succeed-  
45 ing the date on which it shall have become a law