STATE OF NEW YORK

7885

2023-2024 Regular Sessions

IN ASSEMBLY

July 19, 2023

Introduced by M. of A. CUNNINGHAM -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to requiring persons possessing a firearm to hold a firearms safety certificate; and to provide technical corrections to such law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 265.01 of the penal law, as amended by chapter 1 of the laws of 2013, subdivision 1 as amended by chapter 34 of the laws of 2019, subdivision 2 as amended by chapter 146 of the laws of 2019, subdivision 8 as amended by chapter 520 of the laws of 2021, subdivision 9 as added by chapter 519 of the laws of 2021, subdivision 9 as amended by chapter 149 of the laws of 2022 and subdivision 10 as amended by chapter 94 of the laws of 2022, is amended to read as follows:

§ 265.01 Criminal possession of a weapon in the fourth degree.

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

(1) [~~He or she~~] **Such person** possesses any firearm, electronic dart gun, electronic stun gun, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, [~~shirken~~] **shuriken**, or "Kung Fu star"[~~;~~]**.**

(2) [~~He or she~~] **Such person** possesses any dagger, dangerous knife, dirk, machete, razor, stiletto, imitation pistol, undetectable knife or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another[~~; or~~]**.**

(3)[~~; or~~] **Such person possesses a firearm, not being the holder of a valid firearms safety certificate issued pursuant to section 400.15 of this chapter.**

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

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(4) [~~He~~] **Such person** possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense[~~; or~~].

(5) [~~He~~] **Such person** possesses any dangerous or deadly weapon and is not a citizen of the United States[~~; or~~].

(6) [~~He is a person who~~] **Such person** has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00 **of this article**, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as [~~herein~~] provided **in this subdivision** shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

(7) [~~He~~] **Such person** knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.

(8) Such person possesses any armor piercing ammunition with intent to use the same unlawfully against another.

(9) Such person possesses a major component of a firearm, rifle, or shotgun and such person is prohibited from possessing a shotgun or rifle pursuant to:

(i) this article;

(ii) subsection (g) of section 922 of title 18 of the United States Code; or

(iii) a temporary or final extreme risk protection order issued under article sixty-three-A of the civil practice law and rules[~~; or~~].

[~~(9)~~] **(9-a)** Such person is not licensed as a gunsmith or a dealer in firearms pursuant to section 400.00 of this chapter and, knowing it is a ghost gun, such person possesses a ghost gun, provided that a person shall not be guilty under this subdivision when he or she (a) voluntarily surrenders such ghost gun to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision [~~(a)~~] **a** of section 265.20 of this article; or (b) for a period of six months after the effective date of this section possesses a ghost gun prior to serialization and registration of such ghost gun pursuant to section 265.07 of this article.

(10) Such person is not licensed as a gunsmith or dealer in firearms pursuant to section 400.00 of this chapter and, knowing it is an unserialized frame or receiver or unfinished frame or receiver, such person possesses an unserialized frame or receiver or unfinished frame or receiver, provided that for a period of six months after the effective date of this subdivision, a person shall not be guilty under this subdivision when such person: (a) voluntarily surrenders such unserialized frame or receiver or unfinished frame or receiver to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision [~~(a)~~] **a** of section 265.20 of this article; or (b) possesses such unserialized frame or receiver or unfinished frame or receiver prior to serialization of such unserialized frame or receiver or unfinished frame or receiver in accordance with the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto, except for antique firearms as defined in

subdivision fourteen of section 265.00 of this article, as added by chapter nine hundred eighty-six of the laws of nineteen hundred seventy-four, or any firearm, rifle or shotgun manufactured prior to nineteen hundred sixty-eight.

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

§ 2. The penal law is amended by adding a new section 400.15 to read as follows:

§ 400.15 Firearms safety certificate.

1. For the purposes of this section:

(a) "Commissioner" means the commissioner of the police department of a city having a population of one million or more.

(b) "Sheriff" means the sheriff of the county in which an applicant resides, except in a city having a population of one million or more.

2. No person shall possess a firearm unless such person holds a firearms safety certificate issued pursuant to this section.

3. Every person applying for a firearms safety certificate shall submit an application to the sheriff or the commissioner if such person resides in a city with a population of one million or more. Such application shall be in such form and content as shall be established by the sheriff or the commissioner, and shall include:

(a) the applicant's name, address, residence telephone number, gender, race, height, weight, date of birth, citizenship, thumbprint and driver's license or non-driver identification card number;

(b) the applicant's signature; and

(c) an oath that all information in the application is true, subject to the penalties of perjury.

4. The course of instruction for the issuance of a firearms safety certificate shall include the successful completion by the applicant of:

(a) not less than five hours of classroom instruction on:

(i) the safe use and handling of firearms;

(ii) the methods for safely storing and securing firearms, and keeping children safe when such weapons are present; and

(iii) the applicable federal, state and local laws relating to the purchase, sale, possession, transportation and storage of firearms;

(b) not less than two hours of live firing instruction at a shooting range using the type of firearm the applicant anticipates purchasing, possessing or acquiring. Notwithstanding any other provision of law, a person attending a course of instruction for the issuance of a firearm safety certificate may possess a firearm for the limited purpose of fulfilling the requirements of this paragraph while under the supervision of his or her instructor; and

(c) a safe-handling of a firearm demonstration as attested to by a duly authorized instructor.

5. Every firearms safety course, for the completion of which an applicant is granted a firearms safety certificate, shall be approved by the sheriff or the commissioner and shall be conducted by a duly authorized instructor. The sheriff or the commissioner may, for the purposes of firearms safety courses required by this section, provide for the approval of firearm safety courses required or provided for pursuant to any federal or state law.

6. Upon the successful completion of a firearms safety course by an applicant, the duly authorized instructor of such course shall provide the applicant with a signed affidavit attesting to the applicant's successful completion of the course. Such affidavit shall include the name, address and telephone number of the duly authorized instructor;

the name of the applicant; and the dates and places that the course was conducted.

7. Upon receipt of the affidavit required by subdivision six of this section, the applicant shall submit a copy of such affidavit to the sheriff or the commissioner and he or she shall administer a written examination, established by him or her, demonstrating knowledge of firearms safety and laws applicable to firearms.

(a) A firearms safety certificate shall be issued to an applicant who scores seventy-five percent or higher on such examination.

(b) If an applicant fails such written examination, he or she may retake such examination at least twenty-four hours after a prior attempt. The same version of such written examination shall not be given to an applicant upon any two consecutive takings thereof. No applicant shall be offered the written examination more than three times. After the third failure by an applicant, he or she shall be required to again successfully complete the requirements of subdivisions four and six of this section.

(c) Applicants may be charged a fee to cover the costs of administering the written examination.

8. Upon successful completion of the requirements of subdivision seven of this section by an applicant, the sheriff or the commissioner shall issue such applicant a firearms safety certificate. Firearms safety certificates shall not be transferable. The holder thereof shall store such certificate in the place where his or her firearms are stored, except that such certificate shall be carried on the person of the holder if a firearm is possessed outside of the holder's residence or place of business. Upon request of a police officer, a firearms safety certificate shall be displayed by the holder to such officer.

9. Every firearms safety certificate issued pursuant to this section shall be valid for a period of two years, and may be renewed upon completion of the requirements of this section.

10. No person shall sell or transfer possession of a firearm to any person who does not hold a firearms safety certificate.

11. A firearms safety certificate shall be revoked:

(a) for the violation of any provision of law relating to firearms;

(b) for fraud, misrepresentation or bribery in the application for and issuance of the firearms safety certificate;

(c) if the holder is disqualified from possessing a firearm; or

(d) the occurrence of any circumstance which would have disqualified the holder from being issued a firearms safety certificate.

12. This section shall not apply to:

(a) police officers as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or retired police officer, who upon separation from a law enforcement agency was immediately entitled to receive retirement benefits pursuant to the retirement and social security law or the administrative code of the city of New York;

(b) peace officers as defined in section 2.10 of the criminal procedure law;

(c) licensed manufacturers, transporters and sellers of firearms who possess such weapons for purposes of wholesale or retail sales, while engaged in the scope of their licensed activities;

(d) nonresidents of the state participating in any lawful recreational firearms related activity, and while in the course of traveling to and from such recreation activity; or

(e) any person who temporarily possesses a firearm in the residence or place of business of the holder of a firearms safety certificate, and

such possession occurs in the course of using deadly physical force authorized by article thirty-five of this chapter.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that the provisions of subdivision (3) of section 265.01 of the penal law, as added by section one of this act, and subdivision 2 of section 400.15 of the penal law, as added by section two of this act, shall not apply to any person who possesses a firearm on the effective date of this act, until such person recertifies their license pursuant to subdivision 10 of section 400.00 of the penal law.