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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 163

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by
2 strike through and insertions as shown by underline as follows:

3 ~~§§ 1462–1469. [Reserved.]~~

4 § 1462. Manufacture, sale, transport, transfer, purchase, receipt, or possession of assault weapons.

5 (a) Definitions. - For purposes of this section:

6 (1) “Assault long gun” means any of the following or a copy, regardless of the producer or manufacturer:

7 a. American Arms Spectre da Semiautomatic carbine.

8 b. AK-47 in all forms.

9 c. Algimec AGM-1 type semi-auto.

10 d. AR 100 type semi-auto.

11 e. AR 180 type semi-auto.

12 f. Argentine L.S.R. semi-auto.

13 g. Australian Automatic Arms SAR type semi-auto.

14 h. Auto-Ordnance Thompson M1 and 1927 semi-automatics.

15 i. Barrett light .50 cal. semi-auto.

16 j. Beretta AR70 type semi-auto.

17 k. Bushmaster semi-auto rifle.

18 l. Calico models M-100 and M-900.

19 m. CIS SR 88 type semi-auto.

20 n. Claridge HI TEC C-9 carbines.

21 o. Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle.

22 p. Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2.

- 23 q. Dragunov Chinese made semi-auto.
- 24 r. Famas semi-auto (.223 caliber).
- 25 s. Feather AT-9 semi-auto.
- 26 t. FN LAR and FN FAL assault rifle.
- 27 u. FNC semi-auto type carbine.
- 28 v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun.
- 29 w. Steyr-AUG-SA semi-auto.
- 30 x. Galil models AR and ARM semi-auto.
- 31 y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3.
- 32 z. Holmes model 88 shotgun.
- 33 aa. Avtomat Kalashnikov semiautomatic rifle in any format.
- 34 bb. Manchester Arms "Commando" MK-45, MK-9.
- 35 cc. Mandell TAC-1 semi-auto carbine.
- 36 dd. Mossberg model 500 Bullpup assault shotgun.
- 37 ee. Sterling Mark 6.
- 38 ff. P.A.W.S. carbine.
- 39 gg. Ruger mini-14 tactical rifle.
- 40 hh. SIG 550/551 assault rifle (.223 caliber).
- 41 ii. SKS with detachable magazine.
- 42 jj. AP-74 Commando type semi-auto.
- 43 kk. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1
- 44 Garand.
- 45 ll. Street sweeper assault type shotgun.
- 46 mm. Striker 12 assault shotgun in all formats.
- 47 nn. Unique F11 semi-auto type.
- 48 oo. Daewoo USAS 12 semi-auto shotgun.
- 49 pp. UZI 9mm carbine or rifle.
- 50 qq. Valmet M-76 and M-78 semi-auto.
- 51 rr. Weaver Arms "Nighthawk" semi-auto carbine.
- 52 ss. Wilkinson Arms 9mm semi-auto "Terry".

53 (2) “Assault pistol” means any of the following or a copy, regardless of the producer or manufacturer:

54 a. AA Arms AP-9 pistol.

55 b. Beretta 93R pistol.

56 c. Bushmaster pistol.

57 d. Claridge HI-TEC pistol.

58 e. D Max Industries pistol.

59 f. EKO Cobra pistol.

60 g. Encom MK-IV, MP-9, or MP-45 pistol.

61 h. Heckler and Koch MP5K, MP7, SP-89, or VP70 pistol.

62 i. Holmes MP-83 pistol.

63 j. Ingram MAC 10/11 pistol and variations, including the Partisan Avenger and the SWD Cobray.

64 k. Intratec TEC-9/DC-9 pistol in any centerfire variation.

65 l. P.A.W.S. type pistol.

66 m. Skorpion pistol.

67 n. Spectre double action pistol (Sile, F.I.E., Mitchell).

68 o. Stechkin automatic pistol.

69 p. Steyer tactical pistol.

70 q. UZI pistol.

71 r. Weaver Arms Nighthawk pistol.

72 s. Wilkinson “Linda” pistol.

73 (3) “Assault weapon” means any of the following:

74 a. An assault long gun.

75 b. An assault pistol.

76 c. A copycat weapon.

77 (4)a. “Copycat weapon” means any of the following:

78 1. A semiautomatic centerfire rifle that can accept a detachable magazine and has any 2 of the
79 following:

80 A. A folding stock.

81 B. A grenade launcher or flare launcher.

82 C. A flash suppressor.

83 2. A semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10
84 rounds.

85 3. A semiautomatic centerfire rifle that has an overall length of less than 29 inches.

86 4. A semiautomatic pistol with a fixed magazine that can accept more than 10 rounds.

87 5. A semiautomatic shotgun that has a folding stock.

88 6. A shotgun with a revolving cylinder.

89 b. "Copycat weapon" does not include an assault long gun or an assault pistol.

90 (5) "Detachable magazine" means an ammunition feeding device that can be removed readily from a firearm
91 without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.

92 (6) "Flash suppressor" means a device that functions, or is intended to function, to perceptibly reduce or
93 redirect muzzle flash from the shooter's field of vision.

94 (7) "Licensed firearms dealer" means any person licensed as a deadly weapons dealer under Chapter 9 of Title
95 24 and 18 U.S.C. § 921 et seq.

96 (8) "Qualified retired law-enforcement officer" means as defined in § 1441B(c) of this title.

97 (9) "Shooting range" means any land or structure used and operated in accordance with all applicable laws
98 and ordinances for the shooting of targets for training, education, practice, recreation, or competition.

99 (b) Applicability. - This section does not apply to any of the following:

100 (1) The following individuals, if acting within the scope of official business:

101 a. Personnel of the United States government or a unit of that government.

102 b. Members of the armed forces of the United States or of the National Guard.

103 c. A law-enforcement officer.

104 (2) An assault weapon modified to render it permanently inoperative.

105 (3) Possession, importation, manufacture, receipt for manufacture, shipment for manufacture, storage,
106 purchases, sales, and transport to or by a licensed firearms dealer or manufacturer who does any of the following:

107 a. Provides or services an assault weapon for a law-enforcement agency of this State or for personnel
108 exempted under paragraph (b)(1) of this section.

109 b. Acts to sell or transfer an assault weapon to a licensed firearm dealer in another state or to an
110 individual purchaser in another state through a licensed firearms dealer.

111 c. Acts to return to a customer in another state an assault weapon transferred to the licensed firearms
112 dealer or manufacturer under the terms of a warranty or for repair.

113 (4) Organizations that are required or authorized by federal law governing their specific business or activity to
114 maintain assault weapons.

115 (5) The receipt of an assault weapon by inheritance, and possession of the inherited assault weapon, if the
116 decedent lawfully possessed the assault weapon and the person inheriting the assault weapon is not otherwise a person
117 prohibited under § 1448 of this title.

118 (6) The receipt of an assault weapon by a personal representative of an estate for purposes of exercising the
119 powers and duties of a personal representative of an estate.

120 (7) Possession by a qualified retired law-enforcement officer who is not otherwise prohibited from receiving
121 an assault weapon if either of the following applies:

122 a. The assault weapon is sold or transferred to the qualified retired law-enforcement officer by the law-
123 enforcement agency on retirement.

124 b. The assault weapon was purchased or obtained by the qualified retired law-enforcement officer for
125 official use with the law-enforcement agency before retirement.

126 (8) Possession or transport by an armored car guard, as defined in § 1302 of Title 24, if the armored car guard
127 is acting within the scope of employment with an armored car agency, as defined under § 1302 of Title 24, and is
128 licensed under Chapter 13 of Title 24.

129 (9) Possession, receipt, and testing by, or shipping to or from any of the following:

130 a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

131 b. A facility or entity that manufactures or provides research and development testing, analysis, or
132 engineering for personal protective equipment or vehicle protection systems.

133 (c) Prohibitions. - Except as provided in subsection (d) of this section, it is unlawful for a person to do any of the
134 following:

135 (1) Transport an assault weapon into this State.

136 (2) Manufacture, sell, offer to sell, transfer, purchase, receive, or possess an assault weapon.

137 (d) Exceptions. -

138 (1) A licensed firearms dealer may continue to do all of the following with an assault weapon that the licensed
139 firearms dealer lawfully possessed on or before [the effective date of this Act]:

140 a. Possess the assault weapon.

141 b. Sell the assault weapon or offer the assault weapon for sale. But, the licensed firearms dealer may only
142 sell the assault weapon or offer the assault weapon for sale as permitted under paragraph (b)(3)b. of this section.

143 c. Transfer the assault weapon. But, the licensed firearms dealer may only transfer the assault weapon as
144 permitted by paragraph (b)(3)b. or (b)(3)c. of this section or by paragraph (d)(2)b. of this section.

145 (2)a. A licensed firearms dealer may take possession of an assault weapon from a person who lawfully
146 possessed the assault weapon before [the effective date of this Act] for the purposes of servicing or repairing the
147 assault weapon.

148 b. A licensed firearms dealer may transfer possession of an assault weapon received under paragraph
149 (d)(2)a. of this section for purposes of accomplishing service or repair of the assault weapon.

150 (3) A person who lawfully possessed, had a purchase order for, or completed an application to purchase an
151 assault weapon before [the effective date of this Act], may possess and transport the assault weapon on or after [the
152 effective date of this Act] only under the following circumstances:

153 a. At that person's residence, place of business, or other property owned by that person, or on property
154 owned by another person with the owner's express permission.

155 b. While on the premises of a shooting range.

156 c. While attending any exhibition, display, or educational project that is about firearms and that is
157 sponsored by, conducted under the auspices of, or approved by a law-enforcement agency or a nationally or state
158 recognized entity that fosters proficiency in, or promotes education about, firearms.

159 d. While transporting the assault weapon between any of the places set forth in this this paragraph (d)(3)
160 of this section, or to any licensed firearms dealer for servicing or repair under paragraph (d)(2) of this section, if
161 the person transports the assault weapon as follows:

162 1. If the assault weapon is transported outside of a motor vehicle, it must not be concealed from
163 public view.

164 2. If the assault weapon is transported inside a motor vehicle, it must be unloaded and must be kept
165 in one of the following ways:

166 A. In the trunk of the vehicle.

167 B. In a case or other container that renders the assault weapon inaccessible to the operator of or
168 any passenger in the vehicle.

169 (4) A person may transport an assault weapon to or from any of the following:

170 a. An ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory.

171 b. A facility or entity that manufactures or provides research and development testing, analysis, or
172 engineering for personal protective equipment or vehicle protection systems.

173 (e) Penalty. - A violation of this section is a class F felony for a first offense and a class E felony for any
174 subsequent offense within 10 years of a prior offense.

175 (f) Disposal. - A law-enforcement agency in possession of a person's assault weapon as a result of an arrest under
176 this section shall dispose of the assault weapon under the process established for deadly weapons and ammunition under §
177 2311 of this title following the person's adjudication of delinquency or conviction under this section or by the person's
178 agreement to forfeit the assault weapon under an agreement to plead delinquent or guilty to another offense.

179 §§ 1463 – 1469. [Reserved.]

180 Section 2. Amend § 1457, Title 11 of the Delaware Code by making deletions as shown by strike through and
181 insertions as shown by underline as follows:

182 § 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B
183 misdemeanor.

184 (a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who
185 possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone" shall be guilty
186 of the crime of possession of a weapon in a Safe School and Recreation Zone.

187 (b) The underlying offenses in Title 11 shall be:

188 (1) Section 1442. — Carrying a concealed deadly weapon; class G felony; class D felony.

189 (2) Section 1444. — Possessing a destructive weapon; class E felony.

190 (3) Section 1446. — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

191 (4) Section 1448. — Possession and purchase of deadly weapons by persons prohibited; class F felony.

192 (5) Section 1452. — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

193 (6) Section 1453. — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

194 (7) Section 1462. – Manufacture, sale, transport, transfer, purchase, receipt, or possession of assault weapons.

195 Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the
196 invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision
197 or application; and, to that end, the provisions of this Act are declared to be severable.

198 Section 4. This Act takes effect 60 days after its enactment into law.

SYNOPSIS

This Act prohibits the manufacture, sale, offer to sell, transfer, purchase, receipt, possession, or transport of assault weapons in Delaware, subject to certain exceptions. One exception relevant to individuals is that the Act does not prohibit the possession and transport of firearms that were lawfully possessed or fully applied for before the effective date of this Act; although for these firearms there are certain restrictions relating to their possession and transport after the effective date of this Act.

This Act is based on the Firearm Safety Act of 2013 (“FSA”) passed in Maryland in the wake of the tragic slaughtering of children on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut. The FSA’s assault weapons ban was upheld as constitutional on February 21, 2017, by the full membership of the United States Court of Appeals for the Fourth Circuit, in the case of *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017).

The names Newtown, Aurora, San Bernardino, Orlando, Las Vegas, and Parkland, among others, have become synonymous with tragic killing of innocent, unsuspecting Americans of all ages and backgrounds, amidst a framework of federal and state laws that have permitted the purchase of weapons designed for the battlefield — not for our schools, our theaters, our places of worship, or our homes.

Safety — both for the general public, as well as members of Delaware's law-enforcement community — is the objective of this Act, as it was for the FSA. And, as with the FSA, a primary goal of this Act is to reduce the availability of assault weapons so that when a criminal acts, he or she does so with a less dangerous weapon and less severe consequences.

Relying on United States Supreme Court precedent from *District of Columbia v. Heller*, 554 U.S. 570 (2008), as well as the holdings of its sister circuits, the full Fourth Circuit concluded that the assault weapons banned by the FSA are not protected by the Second Amendment. The Fourth Circuit was convinced that the banned assault weapons are among those arms that are “like” “M-16 rifles” — “weapons that are most useful in military service” — which the *Heller* Court singled out as being beyond the Second Amendment’s reach.

The Fourth Circuit concluded that Maryland had presented extensive uncontroverted evidence demonstrating that the assault weapons outlawed by the FSA are exceptionally lethal weapons of war. The Fourth Circuit also concluded that the evidence showed the difference between the fully automatic and semiautomatic versions of military-style weapons is slight. Further evidence considered by the Fourth Circuit that motivates this Act is as follows:

(1) Like their fully automatic counterparts, the banned assault weapons are firearms designed for the battlefield, for the soldier to be able to shoot a large number of rounds across a battlefield at a high rate of speed, and that their design results in a capability for lethality — more wounds, more serious, in more victims — far beyond that of other firearms in general, including other semiautomatic guns.

(2) The banned assault weapons have been used disproportionately to their ownership in mass shootings and the murders of law-enforcement officers.

(3) The banned assault weapons further pose a heightened risk to civilians in that rounds from assault weapons have the ability to easily penetrate most materials used in standard home construction, car doors, and similar materials, and that criminals armed with the banned assault weapons possess a “military-style advantage” in firefights with law-enforcement officers, as such weapons allow criminals to effectively engage law-enforcement officers from great distances and their rounds easily pass through the soft body armor worn by most law-enforcement officers.

(4) Although self-defense is a conceivable use of the banned assault weapons, most individuals choose to keep other firearms for that purpose.

(5) Prohibitions against assault weapons will promote public safety by reducing the availability of those armaments to mass shooters and other criminals, by diminishing their especial threat to law-enforcement officers, and by hindering their unintentional misuse by civilians.

(6) In many situations, the semiautomatic fire of an assault weapon is more accurate and lethal than the automatic fire.

Finding this evidence and these conclusions by the Fourth Circuit to be strongly persuasive of the applicable framework of constitutional rights, and firmly believing that promoting the safety of the Delaware public and Delaware law-enforcement is a paramount function of the Delaware General Assembly, Delaware legislators file this Act in the name of public safety and with adherence to core constitutional principles.

Author: Senator Townsend