SPONSOR: Rep. Longhurst & Sen. Poore & Rep. Schwartzkopf & Rep. Mitchell & Rep. Dorsey Walker & Rep. Baumbach & Rep. Bolden & Rep. Griffith & Rep. Lynn
Reps. Bentz, Chukwuocha, Freel, Heffernan, K. Johnson, Kowalko, Lambert, Minor-Brown, Morrison, Osienski; Sens. Gay, Lockman, S. McBride, Paradee, Pinkney, Sokola, Sturgeon, Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 450

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

WHEREAS, on May 24 an 18-year-old gunman entered Robb Elementary School in Uvalde, Texas and murdered 19 children and 2 teachers with an AR-15-style semi-automatic rifle; and

WHEREAS, this tragedy came just 10 days after a shooting in Buffalo, New York where a gunman with an AR-15-style semi-automatic rifle murdered 10 people in a grocery store; and

WHEREAS, there have been dozens more mass shootings during the last decade, including in 2019 at a Walmart in El Paso, Texas, where a gunman using a WASR-10 semi-automatic rifle murdered 23 people and wounded 23 others; and

WHEREAS, in 2018 at Stoneman Douglas High School in Parkland, Florida, a gunman with an AR-15-style semi-automatic rifle murdered 14 students and 3 adults and injured 17 more people; and

WHEREAS, in 2017, a gunman barricaded himself in a Las Vegas hotel room and used multiple AR-15 and AR-10-type rifles to murder 60 people and injure hundreds more at an outdoor music festival; and

WHEREAS, in 2012, a shooter walked into Sandy Hook Elementary School in Newtown, Connecticut armed with a Bushmaster semi-automatic rifle with 30-round magazines enabling him to fire 154 rounds in less than 5 minutes, murdering 20 first-grade children and 6 adults; and

WHEREAS, assault-style weapons have been used disproportionately to their ownership in mass shootings; and

WHEREAS, in 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994, which prohibited the possession and sale of assault-style weapons and large capacity ammunition magazines which limited magazines to 10 rounds; and

WHEREAS, between 1994 and 2004 when the Act was in effect, there were fewer than 20 mass shootings during that decade, substantially lower than the decades since, and since the law expired in 2004 there has been a proliferation of assault-style weapons in the United States; and

WHEREAS, since 2009, there have been 274 mass shootings in the United States resulting in 1,536 people shot and killed and 983 people shot and wounded, including 362 children and teens and 21 law enforcement officers; and

WHEREAS, between 2009 and 2020, there were at least 30 mass shootings that involved the use of an assault-style weapon, resulting in 347 deaths and 719 injuries, with mass shootings that involved an assault-style weapon accounting for 25 percent of all mass shooting deaths and 76 percent of injuries; and

WHEREAS, assault-style weapons have immense killing power which amplifies the deadly will of a person seeking to kill others and the use of an assault weapon has led to six times as many people shot per mass shooting; and

WHEREAS, the AR-15, AK-47 and other similar firearm profiles now recognized as assault-style weapons were originally designed solely for military use, and these weapons, which have been modified over time to be marketed and sold to civilians, were not intended for sport or self-defense; and

WHEREAS, the Delaware General Assembly has a compelling interest to ensure the safety of Delawareans and finds that assault-style weapons are exceptionally lethal weapons of war that have no place in civilian life.

NOW, THEREFORE:

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

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

~~§§ 1464 -1469. [Reserved.]~~

§ 1464. Legislative findings.

The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in § 1465 of this title based upon finding that each firearm has such a high rate of fire and capacity for firepower that its potential function as a sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the possession and use of assault weapons. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

§ 1465. Definitions related to assault weapons.

For purposes of this section and § 1466 and § 1467 of this title:

(1) "Ammunition feeding device" means any magazine, belt, drum, feed strip, or similar device that holds ammunition for a firearm.

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

a. American Arms Spectre da Semiautomatic carbine.

b. Avtomat Kalashnikov semiautomatic rifle in any format, including the AK-47 in all forms.

c. Algimec AGM-1 type semi-auto.

d. AR 100 type semi-auto.

e. AR 180 type semi-auto.

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

g. Australian Automatic Arms SAR type semi-auto.

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

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

j. Beretta AR70 type semi-auto.

k. Bushmaster semi-auto rifle.

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

m. CIS SR 88 type semi-auto.

n. Claridge HI TEC C-9 carbines.

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

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

q. Dragunov Chinese made semi-auto.

r. Famas semi-auto (.223 caliber).

s. Feather AT-9 semi-auto.

t. FN LAR and FN FAL assault rifle.

u. FNC semi-auto type carbine.

v. F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun.

w. Steyr-AUG-SA semi-auto.

x. Galil models AR and ARM semi-auto.

y. Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3.

z. Holmes model 88 shotgun.

aa. Manchester Arms "Commando" MK-45, MK-9.

bb. Mandell TAC-1 semi-auto carbine.

cc. Mossberg model 500 Bullpup assault shotgun.

dd. Sterling Mark 6.

ee. P.A.W.S. carbine.

ff. Ruger mini-14 folding stock model (.223 caliber).

gg. SIG 550/551 assault rifle (.223 caliber).

hh. SKS with detachable magazine.

ii. AP-74 Commando type semi-auto.

jj. Springfield Armory BM-59, SAR-48, G3, SAR-3, M-21 sniper rifle, and M1A, excluding the M1 Garand.

kk. Street sweeper assault type shotgun.

ll. Striker 12 assault shotgun in all formats.

mm. Unique F11 semi-auto type.

nn. Daewoo USAS 12 semi-auto shotgun.

oo. UZI 9mm carbine or rifle.

pp. Valmet M-76 and M-78 semi-auto.

qq. Weaver Arms “Nighthawk” semi-auto carbine.

rr. Wilkinson Arms 9mm semi-auto “Terry”.

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

a. AA Arms AP-9 pistol.

b. Beretta 93R pistol.

c. Bushmaster pistol.

d. Claridge HI-TEC pistol.

e. D Max Industries pistol.

f. EKO Cobra pistol.

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

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

i. Holmes MP-83 pistol.

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

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

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

m. Skorpion pistol.

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

o. Stechkin automatic pistol.

p. Steyer tactical pistol.

q. UZI pistol.

r. Weaver Arms Nighthawk pistol.

s. Wilkinson "Linda" pistol.

(3) "Assault weapon" means any of the following:

a. An assault long gun.

b. An assault pistol.

c. A copycat weapon.

(4) "Completed a purchase" means that the purchaser completed an application, passed a background check, and has a receipt or purchase order for the assault weapon, without regard to whether the purchaser has actual physical possession of the assault weapon. If receipt of the assault weapon will not occur until more than 1 year after [the effective date of this Act], it is not a completed purchase.

(5) "Copycat weapon" means any of the following:

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

1. A folding stock.

2. A grenade launcher or flare launcher.

3. A flash suppressor.

4. A pistol grip that protrudes conspicuously beneath the action of the weapon.

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

c. A semiautomatic shotgun that has a folding stock.

d. A shotgun with a revolving cylinder.

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

(7) "Family" means as defined in § 901 of Title 10.

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

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

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

(11) "Grenade launcher" means a device designed to fire, launch, or propel a grenade.

(12) “Secure storage” means a firearm that is stored in a locked container or equipped with a tamper resistant mechanical lock or other safety device that is properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully authorized user.

§ 1466. Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F felony.

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

(1) Transport an assault weapon into this State.

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

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

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

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

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

c. A law-enforcement officer.

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

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

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

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

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

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

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

(6) The receipt of an assault weapon by a personal representative of an estate for purposes of exercising the powers and duties of a personal representative of an estate, including transferring the assault weapon according to will or probate proceedings.

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

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

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

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

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

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

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

(c) Exceptions. -

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

a. Possess the assault weapon.

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

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

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

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

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

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

b. While on the premises of a shooting range.

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

d. While transporting the assault weapon between any of the places set forth in this this paragraph (c)(3) of this section, or to any licensed firearms dealer for servicing or repair under paragraph (c)(2) of this section, if the person places the assault weapon in secure storage.

(4) A person may transport an assault weapon to or from any of the following if the person places the assault weapon in secure storage:

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

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

(5) An assault weapon may be transferred from the person owning the assault weapon to a member of that person's family, and it is lawful for the family member to possess the transferred assault weapon, if the transferor lawfully possessed the assault weapon and the family member to whom the assault weapon is transferred is not otherwise a person prohibited under § 1448 of this title.

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

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

§ 1467. Voluntary certificate of possession.

(a) A person who is exempt from § 1466(a) of this title under § 1466(c)(3) of this title may, no later than 1 year from the [effective date of this Act], apply to the Secretary of the Department of Safety and Homeland Security for a certificate of possession.

(b) In a prosecution under § 1466 of this title, the burden is on the defendant to prove that he or she was lawfully in possession or had completed a purchase of the assault weapon at issue prior to the [effective date of this Act]. A certificate of possession is conclusive evidence that a person lawfully possessed or had completed a purchase of an assault weapon before [the effective date of this Act] and is entitled to continue to possess and transport the assault weapon on or after [the effective date of this Act] under § 1466(c)(3) of this title.

(c) The Secretary of the Department of Safety and Homeland Security shall establish procedures with respect to the application for and issuance of certificates of possession for assault weapons that are lawfully owned and possessed before [the effective date of this Act]. Rules and procedures under this subsection must include all of the following:

(1) That the application contain proof that the person lawfully possessed or had completed a purchase of an assault weapon before [the effective date of this Act].

(2) That the certificate of possession must contain a description of the assault weapon, including the make, model, and serial number. For an assault weapon manufactured before 1968, identifying marks may be substituted for the serial number.

(3) That the certificate of possession must contain the full name, address, date of birth, and thumbprint of the person who owns the assault weapon, and any other information the Secretary deems appropriate.

(4) That the Department will not retain copies of the certificate or other identifying information relating to any individual who applies for a voluntary certificate of possession.

§§ 1468 – 1469. [Reserved.]

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

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

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

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

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

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

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

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

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

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

(7) Section 14XX. – Manufacture, sale, transport, transfer, purchase, receipt, or possession of assault weapons; class E or F felony.

Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application.

Section 4. This Act is to be known as the "Delaware Lethal Firearms Safety Act of 2022."

SYNOPSIS

The Delaware Lethal Firearms Safety Act of 2022 prohibits the manufacture, sale, offer to sell, transfer, purchase, receipt, possession, or transport of assault weapons in Delaware, subject to certain exceptions. One exception is that the Act does not prohibit the possession and transport of firearms that were lawfully possessed or purchased 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. There are also exceptions for law-enforcement and military personnel in the course of their official duties, and a limited exception for retired law-enforcement personnel. Finally, a person lawfully in possession of an assault weapon prior to the passage of this Act may lawfully transfer the weapon to a member of their family, through inheritance or otherwise.

The Act directs the Department of Safety and Homeland Security to develop a procedure for issuance of a voluntary certificate of possession to show lawful possession of an assault weapon prior to the effective date of the Act. A gun owner is not required to apply for the certificate, but a certificate provides a conclusive means of proving lawful possession prior to the passage of this Act. The Department is not permitted to retain copies of issued certificates or identifying information of any applicant.

The Act also adds a violation of this Act to the list of predicate crimes for possession of a weapon in a school zone.