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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 253

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DELAWARE CRIMINAL CODE.

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

1 Section 1. Amend § 222, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 222. General definitions.

4 When used in this Criminal Code:

5 (12) "Firearm" includes any weapon from which a shot, ~~projectile~~ projectile, or other object may be
6 discharged by force of ~~combustion, explosive, gas and/or mechanical means,~~ an explosive, whether operable or
7 inoperable, loaded or unloaded. ~~It does not include a BB gun.~~

SYNOPSIS

This Act narrows the meaning of "firearm" for purposes of the Delaware Criminal Code by aligning the definition of "firearm" with the definition in the federal criminal background check law. The reference to a BB gun is no longer necessary because a BB gun does not use an explosive force to propel a projectile.

"Firearm" was defined in the Criminal Code for the first time in 1983 by Senate Bill No. 13, as amended, 132nd General Assembly, 64 Del. Laws, c. 17 ("Senate Bill No. 13"). Senate Bill No. 13 defined "firearm" to include "any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable. It does not include a BB gun." This definition is substantially the same as the definition for "firearm" in the Delaware Criminal Code today. During the Senate floor debate on Senate Bill No. 13, Senator Berndt noted the expansive nature of the definition due to the inclusion of "by . . . mechanical means," which he noted meant that the definition would include cross bows and slingshots.

Because of Senate Bill No. 13's placement of "firearm" in the general definition section for the Delaware Criminal Code, the definition applied throughout the Delaware Criminal Code. When the Delaware Criminal Code was adopted in 1972 there were 9 mentions of "firearm" in the Delaware Criminal Code. Today, there are 194 mentions of "firearm" in the Delaware Criminal Code (Part I of Title 11). As the number of mentions of "firearm" has increased, it has done so with the definition of "firearm" as a backdrop, meaning that these new mentions have intentionally or unintentionally adopted the definition of "firearm."

Research reveals no other state with a similar definition of "firearm" in its laws. While at least 2 states had previously had a similar definition, those definitions were removed by their legislatures in 2015. In 1 of those states, Michigan, legislative history indicates the definition was changed as part of the state's efforts to align its definitions of firearms with the definition found in federal law governing the National Instant Criminal Background Check System (NICS), the system through which criminal history checks are performed. For purposes of NICS, firearm is defined to mean as follows:

“(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” See 18 U.S.C. 921(a)(3).