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HOUSE BILL 402

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Stephen Easley

AN ACT

RELATING TO CRIMINAL LAW; RESTRICTING THE OWNERSHIP OF ASSAULT WEAPONS AND LARGE-CAPACITY AMMUNITION-FEEDING DEVICES; ENHANCING GUN SAFETY; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Criminal Code is enacted to read:

"~~[NEW MATERIAL]~~ UNLAWFUL POSSESSION OF AN ASSAULT WEAPON OR LARGE-CAPACITY AMMUNITION-FEEDING DEVICE--PENALTY.--

A. Unlawful possession of an assault weapon or a large-capacity ammunition-feeding device by a person consists of a person knowingly having an assault weapon or a large-capacity ammunition-feeding device in that person's possession or knowingly transporting an assault weapon or a large-capacity ammunition-feeding device, except in the following cases:

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1 (1) the person owned the assault weapon or
2 large-capacity ammunition-feeding device in New Mexico prior to
3 July 1, 2013;

4 (2) the person is a peace officer who is
5 certified pursuant to the Law Enforcement Training Act and who
6 possesses an assault weapon or large-capacity ammunition-
7 feeding device pursuant to the peace officer's official duties;

8 (3) the person is an active-duty or reserve
9 member of the armed services of the United States or of the
10 national guard of New Mexico who possesses an assault weapon or
11 large-capacity ammunition-feeding device pursuant to the
12 member's official duties;

13 (4) the person is a gun dealer licensed in New
14 Mexico who possesses an assault weapon or large-capacity
15 ammunition-feeding device for use by customers exclusively at a
16 firing range owned and operated by that gun dealer and the
17 assault weapon or large-capacity ammunition-feeding device is
18 located on the premises of the firing range; or

19 (5) the person possesses an assault weapon or
20 large-capacity ammunition-feeding device for use exclusively at
21 a firing range owned and operated by a gun dealer licensed in
22 New Mexico and the assault weapon or large-capacity ammunition-
23 feeding device is located on the premises of the firing range.

24 B. A person whose possession of an assault weapon
25 or large-capacity ammunition-feeding device is not within one

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1 of the exceptions set forth in Subsection A of this section
2 shall bear the burden of proving that the person owned the
3 assault weapon or large-capacity ammunition-loading device
4 before July 1, 2013.

5 C. A person possessing an assault weapon shall
6 store the weapon in a securely locked gun safe except when the
7 weapon is being transported or used.

8 D. A person transporting an assault weapon shall
9 ensure that while the weapon is being transported, the weapon
10 is:

- 11 (1) not loaded with ammunition;
- 12 (2) disconnected from any detachable magazine;
- 13 and
- 14 (3) rendered inoperative by a secured trigger
15 lock.

16 E. A person shall not transfer possession or
17 ownership of an assault weapon or large-capacity ammunition-
18 feeding device except under the auspices of a purchase program
19 of a law enforcement agency.

20 F. If a law enforcement officer finds probable
21 cause that a person is in unlawful possession of an assault
22 weapon or a large-capacity ammunition-feeding device or is in
23 violation of the provisions of Subsection C, D or E of this
24 section, the law enforcement officer shall impound the assault
25 weapon or large-capacity ammunition-feeding device. The law

1 enforcement officer or the officer's law enforcement agency
2 shall maintain possession of the involved assault weapon or
3 large-capacity ammunition-feeding device until such time as the
4 charges against the person allegedly in violation are either
5 dismissed or that person is acquitted of those charges. If a
6 person is found guilty of unlawful possession of an assault
7 weapon or a large-capacity ammunition-feeding device or of
8 violating the provisions of Subsection C, D or E of this
9 section, the involved assault weapon or large-capacity
10 ammunition-feeding device shall be destroyed at the direction
11 of the law enforcement agency in possession of the involved
12 assault weapon or large-capacity ammunition-feeding device.

13 G. A person who commits unlawful possession of an
14 assault weapon or a large-capacity ammunition-feeding device or
15 who violates the provisions of Subsection C, D or E of this
16 section is guilty of a misdemeanor.

17 H. As used in this section:

18 (1) "assault weapon" means:

19 (a) a semiautomatic rifle that has an
20 ability to accept a detachable magazine and has at least one of
21 the following characteristics: 1) a folding or telescoping
22 stock; 2) a pistol grip that protrudes conspicuously beneath
23 the action of the weapon; 3) a thumbhole stock; 4) a second
24 handgrip or a protruding grip that can be held by the
25 non-trigger hand; 5) a bayonet mount; 6) a flash suppressor,

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1 muzzle break, muzzle compensator or threaded barrel designed to
2 accommodate a flash suppressor, muzzle break or muzzle
3 compensator; or 7) a grenade launcher;

4 (b) a semiautomatic shotgun that has at
5 least one of the following characteristics: 1) a folding or
6 telescoping stock; 2) a thumbhole stock; 3) a second handgrip
7 or a protruding grip that can be held by the non-trigger hand;
8 4) a fixed magazine capacity in excess of seven rounds; or 5)
9 the ability to accept a detachable magazine;

10 (c) a semiautomatic pistol that has an
11 ability to accept a detachable magazine and has at least one of
12 the following characteristics: 1) a folding or telescoping
13 stock; 2) a thumbhole stock; 3) a second handgrip or a
14 protruding grip that can be held by the non-trigger hand; 4)
15 the capacity to accept an ammunition magazine that attaches to
16 the pistol outside of the pistol grip; 5) a threaded barrel
17 capable of accepting a barrel extender, flash suppressor,
18 forward handgrip or silencer; 6) a shroud that is attached to,
19 or partially or completely encircles, the barrel and that
20 permits the shooter to hold the firearm with the non-trigger
21 hand without being burned; 7) a manufactured weight of fifty
22 ounces or more when the pistol is unloaded; or 8) is a
23 semiautomatic version of an automatic rifle, shotgun or
24 firearm; or

25 (d) a revolving cylinder shotgun;

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(2) "assault weapon" does not mean:

(a) any rifle, shotgun or pistol that:

- 1) is manually operated by bolt, pump, lever or slide action;
- 2) has been rendered permanently inoperable; or 3) is an antique firearm as defined in 18 U.S.C. 921(a)(16);

(b) a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition;

(c) a semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine; or

(d) a rifle, shotgun or pistol, or a replica or a duplicate thereof, specified in Appendix A to 18 U.S.C. 922, as such weapon was manufactured on October first, nineteen hundred ninety-three. The mere fact that a weapon is not listed in Appendix A shall not be construed to mean that such weapon is an assault weapon;

(3) "large-capacity ammunition-feeding device" means a magazine, belt, drum, feed strip or similar device that has a capacity of, or that can be readily restored or converted to, accept more than ten rounds of ammunition or that contains more than seven rounds of ammunition and includes an attached tubular device designed to accept, and is capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A large-capacity ammunition-feeding

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1 device that is a curio or relic is defined as a device that was
2 manufactured at least fifty years prior to the current date and
3 is capable of being used exclusively in a firearm, rifle or
4 shotgun that was manufactured at least fifty years prior to the
5 current date, but not including replicas thereof;

6 (4) "pistol" means a weapon that is designed
7 or redesigned, is made or remade and is intended to be fired
8 while being held by hand and that is designed or redesigned and
9 is made or remade to use the energy of the explosive in a fixed
10 metallic cartridge to fire only a single projectile through a
11 barrel for each single pull of the trigger and the barrel
12 length of which, not including a revolving, detachable or
13 magazine breech, does not exceed twelve inches;

14 (5) "rifle" means a weapon that is designed or
15 redesigned, is made or remade and is intended to be fired from
16 the shoulder and that is designed or redesigned and is made or
17 remade to use the energy of the explosive in a fixed metallic
18 cartridge to fire only a single projectile through a rifled
19 bore for each single pull of the trigger;

20 (6) "semiautomatic" means any repeating rifle,
21 shotgun or pistol, regardless of barrel or overall length, that
22 utilizes a portion of the energy of a firing cartridge or shell
23 to extract the fired cartridge case or spent shell and to
24 chamber the next round and that requires a separate pull of the
25 trigger to fire each cartridge or shell; and

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1 (7) "shotgun" means a weapon that is designed
2 or redesigned, is made or remade and is intended to be fired
3 from the shoulder and that is designed or redesigned and is
4 made or remade to use the energy of the explosive in a fixed
5 shotgun shell to fire through a smooth bore either ball shot or
6 a single projectile for each single pull of the trigger."

7 SECTION 2. SEVERABILITY.--If any part or application of
8 this act is held invalid, the remainder or its application to
9 other situations or persons shall not be affected.

10 SECTION 3. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2013.