

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S3948

**SPONSOR:** MARCHIONE

**TITLE OF BILL:** An act to amend the family court act, in relation to the suspension and revocation of a license to carry firearms; to amend the domestic relations law, in relation to orders of protection; to amend the penal law, in relation to the applicability of certain provisions of the penal law, large capacity ammunition feeding devices, and gun licenses; to amend section 58 of chapter 1 of the laws of 2013 amending the criminal procedure law and other laws relating to suspension and revocation of firearms licenses; private sale or disposal of firearms, rifles or shotguns and establishing a minimum age to possess a firearm, in relation to the effectiveness thereof; and to repeal article 39-DDD of the general business law relating to the private sale or disposal of firearms, rifles and shotguns, section 9.46 of the mental hygiene law relating to reports of substantial risk or threat of harm by mental health professionals, sections 37, 38, 46 and 51 of chapter 1 of the laws of 2013, amending the criminal procedure law and other laws relating to suspension and revocation of firearms licenses; private sale or disposal of firearms, rifles or shotguns and establishing a minimum age to possess a firearm relating to gun control, section 265.01-b of the penal law relating to criminal possession of a firearm, section 265.36 of the penal law relating to unlawful possession of a large capacity ammunition feeding device, 265.37 of the penal law relating to unlawful possession of certain ammunition feeding devices, 265.45 of the penal law relating to the safe storage of rifles, shotguns, and firearms, 400.02 of the penal law relating to the statewide license and record database and 400.03 of the penal law relating to sellers of ammunition, and section 2509 of the surrogate's court procedure act relating to a firearms inventory

**PURPOSE:** This bill seeks to amend or repeal those sections of the NY SAFE Act that are of questionable legality or which present practical problems for mental health officials or law enforcement and those sections that impose an unfunded mandate on local governments.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill seeks to amend section 446-a of the Family Court Act to clarify that the Family Court Judge can determine to suspend or revoke the license to carry, possess, repair or dispose of a firearm or the eligibility for such a license when issuing an order of protection; this is particularly important in the case of a temporary order where suspension, rather than revocation may be most appropriate until all facts are known or adjudicated.

Section 2 makes the same amendment to 552 of the Family Court Act as section 1 does for section 446 for much the same reasons. Depending on the nature of the violation, the Family Court Judge should decide whether suspension or revocation is appropriate.

Sections 3, 4, 5 and 6 make the same amendments as sections 1 and 2 for similar reasons.

Section 7 repeals section 17 of the SAFE act which added a new Article 39-DDD to the General Business Law. While there is some merit to requiring a background check for sales or exchanges of certain weapons, the SAFE act presumes that licensed dealers will be willing to perform the background check,

complete the necessary paperwork and maintain records of such transaction and assume the liability therefore for a fee not to exceed ten (\$10.00) dollars per transaction. At a time when the minimum wage is proposed to be increased to \$9.00 per hour this is unrealistic. If the dealer were to charge more than ten (\$10) dollars, the dealer would violate the law and commit a misdemeanor, punishable by up to one year in jail. It is more probable that no dealers would consent to undertake these tasks for the limited fee authorized and the individual seller would be left without the ability to transfer the weapon or risk punishment for a class A misdemeanor by transferring the weapon without a dealer's involvement.

Section 8 of this bill repeals section 20 of the SAFE Act. While undoubtedly well intended, the new section 9.46 added to the Mental Hygiene Law has been opposed by some organizations of mental health professionals because it may deter individuals from seeking professional help or from fully disclosing their intentions to their mental health professional. There is further opposition to this provision on the basis that it reinforces stereotypes of persons with mental illness as dangerous. To add to the problems with this provision, it would appear to be an unfunded mandate. If just all hospital admissions to psychiatric units (presumably because the individual is likely to engage in conduct that would result in harm to himself/herself or another) required a MHL 9.46 report, there would be over 200,000 reports annually in the state to be received, evaluated and passed on to DCJS. County mental health offices are not equipped to handle this flood of new work and would have to hire at least hundreds of new staff without a revenue stream. Lastly, while MHL 9.46 protects the mental health professional from civil or criminal liability, no such protection is afforded the directors of community services or their counties.

Section 9 of this bill will repeal section 37 of the SAFE Act which redefined an "assault weapon" by stating that a semiautomatic rifle or pistol that has an ability to accept a detachable magazine (regardless of size) or a semiautomatic shotgun, either of which has only one of the characteristics listed in the statute, such as a folding or telescoping stock, would now be defined as an "assault weapon". These artificial distinctions would re-classify a large number of the weapons currently owned by law abiding citizens for sporting and personal protection, arguably infringing upon the rights guaranteed them by the Second Amendment to the U.S. Constitution and Article 2, section 4 of the New York Civil Rights Law.

Section 9 of this bill will also repeal section 38 of the SAFE Act which redefines "large capacity ammunition feeding device" to include those that can accept more than seven rounds of ammunition. Section 38 contains measures that would be extremely burdensome to enforce and would create new "New York only" manufacturing standards on manufacturers of ammunition feeding devices. The SAFE act also does not contain appropriate exemptions for police, military and other government agencies.

Section 9 of this bill also repeals the amendment to paragraph 3 of subdivision a of section 265.20 of the Penal Law contained in section 46 of the SAFE Act as it refers to the registration of firearms, that by the repeal of other sections would no longer be required. This section also repeals new paragraph 7-f as that exemption would no longer be needed with the repeal of sections dealing with the possession of ammunition feeding devices capable of holding more than seven rounds. Section 9 additionally repeals section 51 of the SAFE Act which would criminalize the failure of a gun owner to report the loss or theft of a gun to a police department within twenty-four hours of discovery by making it a class A misdemeanor, punishable by up to a year in jail. Previously, such a failure was only punishable by a fine not to exceed one hundred dollars. This amendment criminalizes this failure or omission to act, without requiring knowledge or intent on the part of the person failing to act and without regard to his or her

ability to act. Conceivably, a victim of a robbery, hospitalized as a result of injuries sustained in the robbery for more than 24 hours, could be guilty of failing to make a timely report.

Section 10 of this bill amends paragraph a of section 265.20 of the Penal Law to add the provisions of section 265.01-a, added by section 41 of the SAFE Act, to the list of sections that do not apply to law enforcement. Without this amendment, a law enforcement officer could be prosecuted for having a weapon on school grounds.

Section 11 of this bill would repeal section 41-a of the SAFE Act which would criminalize the possession of a firearm, which would include the newly defined "assault weapon" and make the failure to register a firearm, including the newly defined assault weapon, a felony crime. The latter provision of the SAFE Act could result in thousands of otherwise law abiding New Yorkers being subject to felony prosecution if they fail, refuse or neglect to register weapons that are now legal. This section is of questionable constitutional validity and appears in conflict with the New York Civil Rights Law.

Section 11 of this bill also repeals section 46-a of the SAFE Act which would make possession of a newly defined large capacity ammunition feeding device a crime. The reasons for repeal are the same as stated in section 10 above.

Section 11 of this bill also repeals section 47 of the SAFE Act which added a new requirement for the storage of rifles, shotguns and firearms. While this section of the SAFE Act is well intentioned, it was not fully thought out and contains practical problems that could unintentionally subject otherwise law abiding citizens to criminal prosecution. The provisions of the SAFE Act would seem to require that persons living with someone prohibited from possessing a firearm would have to use a gun locking device or lock his or her weapons in a "safe storage depository" nearly all of the time, which would seemingly prevent such weapons from being immediately available for self-defense, the defense of others or the protection of home invasion.

Section 11 of this bill would repeal section 49 of the SAFE Act which would create a new statewide license and record database. This database would cost approximately \$32.7 million, according to the Executive's proposed 2013-14 budget. While the creation of the database is well-intended, the chilling effect on the rights of legal gun owners imposed by the additional records maintained in this database, outweighs its benefit.

Section 11 repeals section 50 of the SAFE Act which would impose a new requirement on sellers of ammunition to record, in detail, every ammunition sale and clear every transaction through the proposed, to-be-established statewide license and record database. This is a new mandate on ammunition sellers and purchasers, regardless of the type of ammunition or quantity, which will result in tens of thousands of new records required to be kept. The likely impact will be additional costs to New York business owners, a chilling effect on the rights of New York gun owners exercise of their legal rights and the shift of ammunition purchases out of state.

Section 12 of this bill repeals the amendments to subdivision (8) of section 265.02 of the Penal Law, added by section 41-b of the SAFE Act, as that section would criminalize the possession of the newly defined "large capacity ammunition feeding device".

Section 13 of this bill repeals those amendments of section 48 of the SAFE Act that create a new firearm licensing system. The Executive's proposed 2013-14 budget estimates the cost of this new system at

\$35.9 million at a time when the state is struggling to meet the challenges of our current economic climate and faces significant cuts in federal assistance. Additionally, this system would seem duplicative of the record keeping of county clerks and separate from any national gun registration database. The SAFE Act additionally establishes a complex system for certain gun owners to request that their license information to be withheld from disclosure. This issue is dealt with more simply in this bill by making license information not subject to FOIL. The reason for exempting this information is arcane and varied and have been the subject of much media attention since the disclosure by a Hudson Valley newspaper of the names and addresses of those in certain counties that had pistol permits. The potential harm to police officers, corrections officers, parole officers, federal agents, judges, victims of domestic violence and others outweighs the need for public disclosure of this information. These license holders have committed no crime, in fact, they have submitted to a background investigation in order to get their licenses so sufficient safeguards are in place obviating the need for public disclosure of their personal information. Additionally, this bill will repeal the new requirement that pistol license holders recertify every five years under the threat of license revocation. Most important, this bill repeals those new sections of law added by the SAFE Act which would require, for the first time, registration of newly defined assault weapons. This registration requirement will affect tens of thousands of sportsmen and hunters in New York and potentially subject them to criminal prosecution for their failure to register their firearms. This requirement could create a chilling effect on the exercise of citizens' rights under the Second Amendment to the U.S. Constitution, the NYS Constitution and the New York Civil Rights Law.

Section 15 of this bill repeals section 53 of the SAFE Act which would require that the fiduciary or attorney of record include a particularized description of every firearm, shotgun and rifle in the list of assets of the decedent's estate in the surrogate's court and with the division of criminal justice services. This section appears to require all firearms, shotguns, and rifles, whether antique, non-working or otherwise to be listed. While there appears to be no sanction for a failure to list, it is practically difficult for an attorney of record, who generally does not control the decedent's household effects and personal property to report any specific property; he must usually trust the next-of-kin to provide the list.

Section 16 is a standard severability clause.

Section 17 makes required adjustments to the effective dates of the various sections of the SAFE Act.

**EXISTING LAW:** In large part, this bill seeks, in many respects, to return to the law existing prior to the enactment of the SAFE Act.

**JUSTIFICATION:** The SAFE Act was rushed into print and to votes in both chambers of the Legislature without the opportunity for rank and file members to review the text, analyze the impacts or to consult with constituents and interested parties. Since its enactment, over 125,000 New Yorkers have signed a petition requesting its repeal. Now that the public has had an opportunity to review the provisions of the SAFE Act, law enforcement groups, mental health organizations, gun owner groups, and others have identified problems with the bill. Since the SAFE Act's signing into law, several lawsuits have been instituted to challenge various aspects of the law. This bill attempts to address the legitimate concerns raised about the SAFE Act.

**LEGISLATIVE HISTORY:** This is a new bill to repeal or amend certain provisions of S.2230/A.2388 (Chapter 1 of the Laws of 2013).

**EFFECTIVE DATE:** Immediately, with provisions.