



NATIONAL SHOOTING SPORTS FOUNDATION, INC.

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New York State's Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013

On January 15, 2013, New York State adopted the Secure Ammunition and Firearms Enforcement Act of 2013 (NY SAFE Act) as a legislative priority of Governor Andrew M. Cuomo. The entire 53-page text of the NY SAFE Act can be found [here](#).

The NY SAFE Act includes the following provisions:

Expanded ban on "assault weapons"

Rifles, shotguns and handguns with certain characteristics are defined to be *assault weapons*, including semi-automatic rifles with detachable magazines and one military style feature. New York State previously banned assault weapons using a "two-feature" test taken from the now-expired federal assault weapons ban. The NY SAFE Act also expands the definition to include pistols and shotguns with certain proscribed features.

The New York State Governor's office has prepared initial guidance about which firearms will or will not be considered assault weapons for purposes of the NY SAFE Act, which can be accessed by clicking on the following hyperlinks:

<i>Banned features</i>	Rifles	Pistols	Shotguns
<i>Classified as assault weapons</i>	Rifles	Pistols	Shotguns
<i>NOT classified as assault weapons</i>	Rifles	Pistols	Shotguns
<i>Images</i>	Rifles	Pistols	Shotguns

The NY SAFE Act:

- Bans the in-state acquisition of assault weapons, effective as of January 15, 2013.
- Grandfathers the prior ownership of assault weapons, but requires that they be registered with the State by April 15, 2014 and recertified every five years. Registration and recertification of grandfathered ownership will be subject to review by the New York State Police for "disqualifiers" which have not yet been defined.
- Requires that owners of grandfathered assault weapons may only sell these firearms out-of-state or through an in-state licensed dealer. Assault weapons cannot be inherited.

While the NY SAFE Act broadens the definition of assault weapon, it does not affect the exemptions for the possession of an assault weapon that were previously in place for certain persons and entities including police officers, manufacturers and licensed dealers.

Magazine capacity

Effective April 15, 2013, only magazines that contain seven rounds of ammunition or less can be sold in New York. Magazines that can hold more than seven rounds but not more than ten rounds and are currently possessed will be grandfathered, but may only be loaded with seven rounds. By January 15, 2014, magazines that have the capacity to hold more than ten rounds of ammunition that were grandfathered by 1994 legislation must be discarded or sold to a licensed dealer or an out-of-state purchaser. Exceptions are made for large capacity magazines that are curios or relics.

Exemptions to allow manufacturers, licensed dealers and police officers to possess large capacity magazines continue to apply, except for an apparent drafting error in the NY SAFE Act that can read to prohibit anyone from possessing a magazine that is loaded with more than seven rounds. The exemption provided by Penal Law §265.20(a)(8) for manufacturers of “large capacity ammunition feeding devices”, etc. was unchanged, so that Section 265.02(8), which makes possession of a “large capacity ammunition feeding device” a class D felony wouldn’t apply to a manufacturer, even though the definition of a “large capacity ammunition feeding devices” has been expanded. This would be the end of the discussion except that the SAFE Act added two new sections banning certain magazines that are not exempted by Section 265.20:

- Penal Law § 265.36: Makes it a class A misdemeanor to knowingly possess a “**greater than ten**” magazine manufactured before 9/13/1994, if owned before 1/15/2013.
- Penal Law § 265.37: Makes it a class A misdemeanor to knowingly possess an “ammunition feeding device” that was possessed before 1/15/2013 if it has a capacity of “more than seven but less than ten” if loaded with more than seven.

Penal Law § 265.37 could conceivably apply to a manufacturer, if rounds are put in a pre-1/15/2013 magazine. Police officers have the same issue.

Ammunition Sales

Effective January 15, 2014, sellers of ammunition must (1) register with the New York State Police, (2) run any buyer through a State-created review of disqualifiers to ensure that the buyer is not prohibited by law from possessing ammunition, and (3) keep records of sales that are electronically accessible to the State. The NY SAFE Act also bans direct internet sales of ammunition.

Database for Universal Background Checks

The NY SAFE Act mandates a statewide license and record database to be run by the New York State Police, to become effective on January 15, 2014. This will require individuals

who own a handgun or an assault rifle to recertify their permit every five years through their county of residence. This database will enable checks against other databases containing the names of people who should be disqualified from possessing firearms, including those with criminal convictions, involuntary commitments, and those subject to orders of protection, as well as death records. The NY SAFE Act requires that any theft of a firearm be reported to authorities within 24 hours.

Private Firearm Sales

The NY SAFE Act extends required background checks to all gun sales, effective March 15, 2013. All gun transfers between private parties, except immediate family, must be made through a federal firearms licensee, subject to a federal National Instant Criminal Background Check, subject to a maximum fee of \$10.

Mental Health Alerts

The NY SAFE Act requires mental health professionals to report to local mental health officials when there is reason to believe a patient is likely to engage in conduct that will cause serious harm to themselves or others. This information will then be crosschecked against the new firearm registration database. If the patient possesses a firearm, the license will be suspended and law enforcement will be authorized to remove the person's firearm.

Increased Criminal Penalties

The NY SAFE Act increases penalties for certain firearm-related crimes, including for the murder of a first responder or for possession of a firearm on school grounds or on a school bus.

Interpretive Questions Arise About Application of the NY SAFE Act

Given the haste in which the NY SAFE Act was adopted, and the breadth of its reach, many interpretive questions have already arisen about how the NY SAFE Act will apply to firearm owners, dealers, distributors, manufacturers and the law enforcement community. For example, in an apparent drafting oversight, new bans on magazines were not added to the list for purposes of providing exemptions for certain persons and entities including police officers, manufacturers and licensed dealers. As another example, a literal reading of the NY SAFE Act would prohibit a police officer from entering a school with a service pistol without prior written permission from the school. There are other apparent drafting errors and inconsistencies in the NY SAFE Act. NSSF will be working to educate legislators of these errors and problems and seek the immediate introduction of legislation to fix these problems, with a focus on those that directly impact the lawful commerce in firearms and ammunition products.

This summary was provided to NSSF courtesy of the Renzulli Law Firm, of White Plains, NY. [available here](#).