

# ASSEMBLY, No. 3659

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 14, 2013

**Sponsored by:**

**Assemblyman PETER J. BARNES, III**

**District 18 (Middlesex)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblyman REED GUSCIORA**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Revises definition of destructive device to include certain weapons of 50 caliber or greater.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 2/12/2013)

1 AN ACT concerning destructive devices, amending N.J.S.2C:39-1  
2 and supplementing chapter 39 of Title 2C of the New Jersey  
3 Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. N.J.S.2C:39-1 is amended to read as follows:

9 2C:39-1. Definitions. The following definitions apply to this  
10 chapter and to chapter 58:

11 a. "Antique firearm" means any rifle or shotgun and "antique  
12 cannon" means a destructive device defined in paragraph (3) of  
13 subsection c. of this section, if the rifle, shotgun or destructive  
14 device, or replica thereof, as the case may be, is incapable of being  
15 fired or discharged, or which does not fire fixed ammunition,  
16 regardless of date of manufacture, or was manufactured before 1898  
17 for which cartridge ammunition is not commercially available, and  
18 is possessed as a curiosity or ornament or for its historical  
19 significance or value.

20 b. "Deface" means to remove, deface, cover, alter or destroy  
21 the name of the maker, model designation, manufacturer's serial  
22 number or any other distinguishing identification mark or number  
23 on any firearm.

24 c. "Destructive device" means any device, instrument or object  
25 designed to explode or produce uncontrolled combustion, including  
26 (1) any explosive or incendiary bomb, mine or grenade; (2) any  
27 rocket having a propellant charge of more than four ounces or any  
28 missile having an explosive or incendiary charge of more than one-  
29 quarter of an ounce; (3) any weapon capable of firing a projectile of  
30 a caliber of 50 or greater **[than 60 caliber]**, except a shotgun or  
31 shotgun ammunition generally recognized as suitable for sporting  
32 purposes; (4) any Molotov cocktail or other device consisting of a  
33 breakable container containing flammable liquid and having a wick  
34 or similar device capable of being ignited. The term **[does]** shall  
35 not include any device manufactured for the purpose of  
36 illumination, distress signaling, line-throwing, safety or similar  
37 purposes. Notwithstanding the provisions of paragraph (3) of this  
38 subsection, the term shall not include any of the following weapons  
39 capable of firing a projectile of a caliber of 50 or greater, but not  
40 exceeding a caliber of 60: antique firearm; antique handgun;  
41 muzzleloader rifle; or black powder muzzleloader having in-line  
42 ignition, a center hammer or an under hammer which has been, or  
43 subsequently is, approved for hunting in this State. The term also  
44 shall not include any firearm with a bore diameter greater than 60  
45 caliber whose principle means of ignition are traditional flintlock or

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 caplock and whose principle propellant is black powder.

2 d. "Dispose of" means to give, give away, lease, loan, keep for  
3 sale, offer, offer for sale, sell, transfer, or otherwise transfer  
4 possession.

5 e. "Explosive" means any chemical compound or mixture that  
6 is commonly used or is possessed for the purpose of producing an  
7 explosion and which contains any oxidizing and combustible  
8 materials or other ingredients in such proportions, quantities or  
9 packing that an ignition by fire, by friction, by concussion or by  
10 detonation of any part of the compound or mixture may cause such  
11 a sudden generation of highly heated gases that the resultant  
12 gaseous pressures are capable of producing destructive effects on  
13 contiguous objects. The term shall not include small arms  
14 ammunition, or explosives in the form prescribed by the official  
15 United States Pharmacopoeia.

16 f. "Firearm" means any handgun, rifle, shotgun, machine gun,  
17 automatic or semi-automatic rifle, or any gun, device or instrument  
18 in the nature of a weapon from which may be fired or ejected any  
19 solid projectable ball, slug, pellet, missile or bullet, or any gas,  
20 vapor or other noxious thing, by means of a cartridge or shell or by  
21 the action of an explosive or the igniting of flammable or explosive  
22 substances. It shall also include, without limitation, any firearm  
23 which is in the nature of an air gun, spring gun or pistol or other  
24 weapon of a similar nature in which the propelling force is a spring,  
25 elastic band, carbon dioxide, compressed or other gas or vapor, air  
26 or compressed air, or is ignited by compressed air, and ejecting a  
27 bullet or missile smaller than three-eighths of an inch in diameter,  
28 with sufficient force to injure a person.

29 g. "Firearm silencer" means any instrument, attachment,  
30 weapon or appliance for causing the firing of any gun, revolver,  
31 pistol or other firearm to be silent, or intended to lessen or muffle  
32 the noise of the firing of any gun, revolver, pistol or other firearm.

33 h. "Gravity knife" means any knife which has a blade which is  
34 released from the handle or sheath thereof by the force of gravity or  
35 the application of centrifugal force.

36 i. "Machine gun" means any firearm, mechanism or instrument  
37 not requiring that the trigger be pressed for each shot and having a  
38 reservoir, belt or other means of storing and carrying ammunition  
39 which can be loaded into the firearm, mechanism or instrument and  
40 fired therefrom.

41 j. "Manufacturer" means any person who receives or obtains  
42 raw materials or parts and processes them into firearms or finished  
43 parts of firearms, except a person who exclusively processes grips,  
44 stocks and other nonmetal parts of firearms. The term does not  
45 include a person who repairs existing firearms or receives new and  
46 used raw materials or parts solely for the repair of existing firearms.

47 k. "Handgun" means any pistol, revolver or other firearm

1 originally designed or manufactured to be fired by the use of a  
2 single hand.

3 l. "Retail dealer" means any person including a gunsmith,  
4 except a manufacturer or a wholesale dealer, who sells, transfers or  
5 assigns for a fee or profit any firearm or parts of firearms or  
6 ammunition which he has purchased or obtained with the intention,  
7 or for the purpose, of reselling or reassigning to persons who are  
8 reasonably understood to be the ultimate consumers, and includes  
9 any person who is engaged in the business of repairing firearms or  
10 who sells any firearm to satisfy a debt secured by the pledge of a  
11 firearm.

12 m. "Rifle" means any firearm designed to be fired from the  
13 shoulder and using the energy of the explosive in a fixed metallic  
14 cartridge to fire a single projectile through a rifled bore for each  
15 single pull of the trigger.

16 n. "Shotgun" means any firearm designed to be fired from the  
17 shoulder and using the energy of the explosive in a fixed shotgun  
18 shell to fire through a smooth bore either a number of ball shots or a  
19 single projectile for each pull of the trigger, or any firearm designed  
20 to be fired from the shoulder which does not fire fixed ammunition.

21 o. "Sawed-off shotgun" means any shotgun having a barrel or  
22 barrels of less than 18 inches in length measured from the breech to  
23 the muzzle, or a rifle having a barrel or barrels of less than 16  
24 inches in length measured from the breech to the muzzle, or any  
25 firearm made from a rifle or a shotgun, whether by alteration, or  
26 otherwise, if such firearm as modified has an overall length of less  
27 than 26 inches.

28 p. "Switchblade knife" means any knife or similar device  
29 which has a blade which opens automatically by hand pressure  
30 applied to a button, spring or other device in the handle of the knife.

31 q. "Superintendent" means the Superintendent of the State  
32 Police.

33 r. "Weapon" means anything readily capable of lethal use or of  
34 inflicting serious bodily injury. The term includes, but is not  
35 limited to, all (1) firearms, even though not loaded or lacking a clip  
36 or other component to render them immediately operable; (2)  
37 components which can be readily assembled into a weapon; (3)  
38 gravity knives, switchblade knives, daggers, dirks, stiletos, or other  
39 dangerous knives, billies, blackjacks, bludgeons, metal knuckles,  
40 sandclubs, slingshots, cesti or similar leather bands studded with  
41 metal filings or razor blades imbedded in wood; and (4) stun guns;  
42 and any weapon or other device which projects, releases, or emits  
43 tear gas or any other substance intended to produce temporary  
44 physical discomfort or permanent injury through being vaporized or  
45 otherwise dispensed in the air.

46 s. "Wholesale dealer" means any person, except a  
47 manufacturer, who sells, transfers, or assigns firearms, or parts of  
48 firearms, to persons who are reasonably understood not to be the

1 ultimate consumers, and includes persons who receive finished  
2 parts of firearms and assemble them into completed or partially  
3 completed firearms, in furtherance of such purpose, except that it  
4 shall not include those persons dealing exclusively in grips, stocks  
5 and other nonmetal parts of firearms.

6 t. "Stun gun" means any weapon or other device which emits  
7 an electrical charge or current intended to temporarily or  
8 permanently disable a person.

9 u. "Ballistic knife" means any weapon or other device capable  
10 of lethal use and which can propel a knife blade.

11 v. "Imitation firearm" means an object or device reasonably  
12 capable of being mistaken for a firearm.

13 w. "Assault firearm" means:

14 (1) The following firearms:

15 Algimec AGM1 type

16 Any shotgun with a revolving cylinder such as the "Street  
17 Sweeper" or "Striker 12"

18 Armalite AR-180 type

19 Australian Automatic Arms SAR

20 Avtomat Kalashnikov type semi-automatic firearms

21 Beretta AR-70 and BM59 semi-automatic firearms

22 Bushmaster Assault Rifle

23 Calico M-900 Assault carbine and M-900

24 CETME G3

25 Chartered Industries of Singapore SR-88 type

26 Colt AR-15 and CAR-15 series

27 Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

28 Demro TAC-1 carbine type

29 Encom MP-9 and MP-45 carbine types

30 FAMAS MAS223 types

31 FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

32 Franchi SPAS 12 and LAW 12 shotguns

33 G3SA type

34 Galil type Heckler and Koch HK91, HK93, HK94, MP5, PSG-1

35 Intratec TEC 9 and 22 semi-automatic firearms

36 M1 carbine type

37 M14S type

38 MAC 10, MAC 11, MAC 11-9mm carbine type firearms

39 PJK M-68 carbine type

40 Plainfield Machine Company Carbine

41 Ruger K-Mini-14/5F and Mini-14/5RF

42 SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types

43 SKS with detachable magazine type

44 Spectre Auto carbine type

45 Springfield Armory BM59 and SAR-48 type

46 Sterling MK-6, MK-7 and SAR types

47 Steyr A.U.G. semi-automatic firearms

48 USAS 12 semi-automatic type shotgun

1 Uzi type semi-automatic firearms

2 Valmet M62, M71S, M76, or M78 type semi-automatic firearms

3 Weaver Arm Nighthawk.

4 (2) Any firearm manufactured under any designation which is  
5 substantially identical to any of the firearms listed above.

6 (3) A semi-automatic shotgun with either a magazine capacity  
7 exceeding six rounds, a pistol grip, or a folding stock.

8 (4) A semi-automatic rifle with a fixed magazine capacity  
9 exceeding 15 rounds.

10 (5) A part or combination of parts designed or intended to  
11 convert a firearm into an assault firearm, or any combination of  
12 parts from which an assault firearm may be readily assembled if  
13 those parts are in the possession or under the control of the same  
14 person.

15 x. "Semi-automatic" means a firearm which fires a single  
16 projectile for each single pull of the trigger and is self-reloading or  
17 automatically chambers a round, cartridge, or bullet.

18 y. "Large capacity ammunition magazine" means a box, drum,  
19 tube or other container which is capable of holding more than 15  
20 rounds of ammunition to be fed continuously and directly therefrom  
21 into a semi-automatic firearm.

22 z. "Pistol grip" means a well-defined handle, similar to that  
23 found on a handgun, that protrudes conspicuously beneath the  
24 action of the weapon, and which permits the shotgun to be held and  
25 fired with one hand.

26 aa. "Antique handgun" means a handgun manufactured before  
27 1898, or a replica thereof, which is recognized as being historical in  
28 nature or of historical significance and either (1) utilizes a match,  
29 friction, flint, or percussion ignition, or which utilizes a pin-fire  
30 cartridge in which the pin is part of the cartridge or (2) does not fire  
31 fixed ammunition or for which cartridge ammunition is not  
32 commercially available.

33 bb. "Trigger lock" means a commercially available device  
34 approved by the Superintendent of State Police which is operated  
35 with a key or combination lock that prevents a firearm from being  
36 discharged while the device is attached to the firearm. It may  
37 include, but need not be limited to, devices that obstruct the barrel  
38 or cylinder of the firearm, as well as devices that immobilize the  
39 trigger.

40 cc. "Trigger locking device" means a device that, if installed on  
41 a firearm and secured by means of a key or mechanically,  
42 electronically or electromechanically operated combination lock,  
43 prevents the firearm from being discharged without first  
44 deactivating or removing the device by means of a key or  
45 mechanically, electronically or electromechanically operated  
46 combination lock.

47 dd. "Personalized handgun" means a handgun which  
48 incorporates within its design, and as part of its original

1 manufacture, technology which automatically limits its operational  
2 use and which cannot be readily deactivated, so that it may only be  
3 fired by an authorized or recognized user. The technology limiting  
4 the handgun's operational use may include, but not be limited to:  
5 radio frequency tagging, touch memory, remote control, fingerprint,  
6 magnetic encoding and other automatic user identification systems  
7 utilizing biometric, mechanical or electronic systems. No make or  
8 model of a handgun shall be deemed to be a "personalized handgun"  
9 unless the Attorney General has determined, through testing or  
10 other reasonable means, that the handgun meets any reliability  
11 standards that the manufacturer may require for its commercially  
12 available handguns that are not personalized or, if the manufacturer  
13 has no such reliability standards, the handgun meets the reliability  
14 standards generally used in the industry for commercially available  
15 handguns.

16 ee. "Muzzleloader rifle" means a single shot, single barrel, side  
17 lock percussion or flintlock firearm with iron or peep sights, or with  
18 a fiber optic sight or scope, and a stock made of wood or any  
19 synthetic material.

20 (cf: P.L.2002, c.130, s.5)

21

22 2. (New section) a. The Superintendent of State Police shall  
23 establish a buyback program for firearms prohibited under the  
24 provisions of paragraph (3) of subsection c. of N.J.S.2C:39-1.  
25 Funding for the buyback program established pursuant to this  
26 section shall be provided by the Attorney General from the proceeds  
27 resulting from the forfeiture of any money or property seized  
28 pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

29 b. From the effective date of P.L. , c. (pending before the  
30 Legislature as this bill) until the implementation of the buyback  
31 program established pursuant to subsection a. of this section, no  
32 person shall be convicted of an offense under chapter 39 of Title 2C  
33 of the New Jersey Statutes for unlawfully possessing a firearm  
34 prohibited under the provisions of paragraph (3) of subsection c. of  
35 N.J.S.2C:39-1. Thereafter no person shall be convicted of an  
36 offense under chapter 39 of Title 2C of the New Jersey Statutes for  
37 unlawfully possessing or transporting a firearm prohibited under the  
38 provisions of paragraph (3) of subsection c. of N.J.S.2C:39-1 for  
39 any action associated with participation in the buyback program  
40 established pursuant to this section, provided those participatory  
41 actions are consistent with guidelines promulgated by the Attorney  
42 General, in consultation with the superintendent.

43 c. The immunity afforded under subsection b. of this section  
44 shall apply only to the possession and transport of a firearm  
45 surrendered as part of the buyback program established pursuant to  
46 subsection a. of this section, and shall not be construed as granting  
47 immunity from prosecution for any other crime or offense under  
48 chapter 39 or chapter 58 of Title 2C of the New Jersey Statutes.

1 3. (New section) a. A person who lawfully possesses a firearm  
2 prohibited under the provisions of paragraph (3) of subsection c. of  
3 N.J.S.2C:39-1 on the effective date of P.L. , c. (pending before  
4 the Legislature as this bill) may retain possession of that firearm for  
5 a period not to exceed one year from that effective date. During  
6 that time period, the owner of the prohibited firearm shall either:

7 (1) Transfer the prohibited firearm to a person or firm lawfully  
8 entitled to own or possess such firearm;

9 (2) Render the prohibited firearm inoperable; or

10 (3) Voluntarily surrender the prohibited firearm through  
11 participation in the buyback program established pursuant to section  
12 2 of P.L. , c. (C. ) (pending before the Legislature as this  
13 bill).

14 b. If the owner of the prohibited firearm elects to render the  
15 firearm inoperable, the owner shall file a certification on a form  
16 prescribed by the Superintendent of State Police indicating the date  
17 on which the firearm was rendered inoperable. This certification  
18 shall be filed with either the chief law enforcement officer of the  
19 municipality in which the owner resides or, in the case of an owner  
20 who resides outside this State but stores or possesses an assault  
21 firearm in this State, with the Superintendent of State Police.

22 c. As used in this section, "inoperable" means that the firearm  
23 is altered in such a manner that it cannot be immediately fired and  
24 that the owner or possessor of the firearm does not possess or have  
25 control over the parts necessary to make the firearm operable.

26  
27 4. This act shall take effect on the first day of the second month  
28 following enactment.

29  
30  
31 STATEMENT

32  
33 This bill amends N.J.S.2C:39-1 to revise the definition of  
34 "destructive device" so that it includes weapons of 50 caliber or  
35 greater.

36 Although it centers primarily on devices or instruments designed  
37 to explode or produce uncontrolled combustion, the current  
38 statutory definition of "destructive device" also includes weapons  
39 which fire projectiles of greater than 60 caliber.

40 Under the bill and subsection a. of N.J.S.2C:39-3, it would be  
41 unlawful to possess a firearm having a caliber of 50 or greater. A  
42 person violating this provision would be guilty of a crime of the  
43 third degree. A crime of the third degree is punishable by a fine of  
44 up to \$15,000, imprisonment for three to five years, or both.

45 The bill does, however, provide exemptions for 1) antique  
46 firearms; 2) antique handguns; 3) muzzleloader rifles; and 4) black  
47 powder muzzleloaders having in-line ignition, a center hammer or  
48 an under hammer which have been approved for hunting in this



1 State. These firearms would continue to be governed by the  
2 statute's current "greater than 60 caliber" restriction. Antique  
3 firearms and handguns are defined in the statutes as firearms which:

4 (1) do not fire fixed ammunition or were manufactured before  
5 1898 and for which fixed ammunition is not commercially  
6 available; and

7 (2) are possessed as a curiosity or ornament or for their  
8 historical significance or value. The statutory definition of "antique  
9 handgun" includes replicas; under this bill, "antique firearm" and  
10 "antique cannon" are also defined to include replicas.

11 The bill defines a muzzleloader rifle to mean a single shot, single  
12 barrel, side lock percussion or flintlock firearm with iron or peep  
13 sights, or with a fiber optic sight or scope, and a stock made of  
14 wood or any synthetic material.

15 The bill also excludes from the definition of a destructive device  
16 any firearm with a bore diameter larger than 60 caliber whose  
17 principle means of ignition are traditional flintlock or caplock and  
18 whose principle propellant is black powder. This would allow the  
19 possession of certain weapons greater than 60 caliber currently used  
20 by revolutionary war re-enactors.

21 Under the provisions of the bill, it would be unlawful for anyone  
22 to possess a prohibited firearm of 50 caliber or greater. The bill,  
23 however, grants individuals who lawfully own one of these  
24 prohibited firearms one year in which to dispose of them.

25 To facilitate the voluntary surrender of these firearms, the bill  
26 authorizes the Superintendent of State Police to establish a buyback  
27 program. Funding for this program is to be provided by the  
28 Attorney General from the proceeds acquired from the property and  
29 valuables forfeited by convicted criminals. Those not wishing to  
30 participate in this buyback program may (1) sell their prohibited  
31 firearm to someone who is authorized to lawfully possess it or (2)  
32 render the prohibited firearm inoperable and so notify the  
33 appropriate law enforcement agency.

34 Finally, the bill affords immunity from prosecution to individuals  
35 during the interim between the effective date of the bill and the  
36 actual establishment of the buyback program. Thereafter, the bill  
37 affords immunity from prosecution to individuals for their actions  
38 associated with their participation in the buyback programs.