

FIREARMS (AMENDMENT) BILL, 2011

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OBJECTS AND REASONS



FIREARMS (AMENDMENT) BILL, 2011

A BILL FOR AN ACT TO AMEND THE FIREARMS ACT TO PROVIDE FOR INCREASES IN THE PENALTIES FOR OFFENCES RELATING TO THE IMPORTATION AND POSSESSION OF FIREARMS AND TO PROVIDE FOR A SENTENCING RANGE FOR THESE OFFENCES AND MATTERS CONNECTED THEREWITH.

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Firearms Act (*Ch. 213*), may be cited as the Firearms (Amendment) Act, 2011.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by inserting in the appropriate alphabetical sequence, the following expressions and their definitions —

“**import**” means to bring or cause to be brought into The Bahamas or any other country, as the case may be, by land, air or water;

“**rifle**” means a firearm that has a rifled barrel and is designed to be discharged from the shoulder and includes a rifle that is so modified to be discharged otherwise;”.

3. Amendment of section 3 of the principal Act.

Subsection (3) of section 3 of the principal Act is amended by deleting the words “two years” and substituting therefor the words “a term in the range of two years to four years”.

4. Insertion of new section 3A into principal Act.

The principal Act is amended by inserting next after section 3 the following as section 3A —

“3A. Importation of firearms and ammunition.

- (1) Subject to subsection (3), no person shall import, cause to be imported or take any steps preparatory to importing any firearm or ammunition into The Bahamas except in pursuance of and in accordance with the provisions of this Act.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable —
 - (a) on conviction on information to a term of imprisonment in the range of ten to fifteen years;
 - (b) on summary conviction to a term of imprisonment in the range of four to seven years,and in addition to such term of imprisonment, every such firearm or ammunition shall be forfeited to the Crown.
- (3) This section does not apply to the importation of revolvers which are provided for otherwise under this Act.”.

5. Amendment to section 4 of the principal Act.

Section 4 of the principal Act is amended by deleting the word “introduce” wherever it appears and substituting therefor the word “import”.

6. Repeal and replacement of sections 5 of the principal Act.

The principal Act is amended by deleting section 5 and substituting therefor the following —

“5. Penalties for revolvers.

- Any person importing a revolver into The Bahamas or being found in possession of a revolver in contravention of this Part shall be liable —
- (a) on conviction on information to imprisonment for a term in the range of ten years to fifteen years;
 - (b) on summary conviction, to imprisonment for a term in the range of four years to seven years,
- and in addition to such term of imprisonment every such revolver shall be forfeited to the Crown:

Provided that where the court is satisfied that such person was the holder of a special licence issued under this Part and did not renew such licence during the period specified in the proviso to subsection (3) of section 4, or during the period of six months next following that period, the court may, in lieu of passing a sentence of imprisonment, impose on such person a fine not exceeding five thousand dollars.”.

7. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended by deleting the words “during the period of three months following the arrival of such vessel at her first port of call on any visit to The Bahamas,”.

8. Amendment of section 8 of the principal Act.

Subsection (2) of section 8 of the principal Act is amended by deleting paragraph (a).

9. Insertion of new section 8A into the principal Act.

The principal Act is amended by inserting immediately after section 8, the following new section 8A —

“8A. Occupier of house, building, premises, vehicle or vessel.

- (1) The occupier of any house, building, or premises or the person who has control of any privately operated vehicle, aircraft or vessel in which a firearm is found shall, for the purposes of this Act be deemed to be in possession of such firearm unless the contrary is proved
- (2) For the purposes of this section, “**privately operated vehicle, aircraft or vessel**” does not include a vehicle, aircraft or vessel that is operated as public transportation.”.

10. Amendment of section 9 of the principal Act.

Section 9 of the principal Act is amended by —

- (a) deleting subparagraphs (i) and (ii) of paragraph (2)(b) and substituting therefor the following —
 - “(i) on conviction on information, to imprisonment for a term being in the range of ten years to fifteen years;
 - (ii) on summary conviction, to imprisonment for a term in the range of four years to seven years.”;
- (b) by deleting from the proviso to subsection (2) the words one thousand”and substituting therefor the words “five thousand”.

11. Insertion of new section 9A into the principal Act.

The principal Act is amended by inserting immediately after section 9, the following new section 9A —

“9A. Possession of firearm and ammunition with intent to supply.

- (1) It is an offence for a person to have a firearm or ammunition in his possession with intent to supply it to another in contravention of the provisions of this Act.
- (2) A person who contravenes this section commits an offence and is liable —
 - (a) on conviction on information to a term of imprisonment in the range of ten years to fifteen years;
 - (b) on summary conviction to imprisonment to a term in the range of four years to seven years.
- (3) For the purposes of subsection (1), where a person is found in possession of two or more firearms or twenty-five or more rounds of ammunition without a firearm certificate, it shall be presumed, unless the contrary is proved, that he is in possession of the said firearm or said ammunition with intent to supply it to another person irrespective of whether that person is within The Bahamas or elsewhere.
- (4) For the purposes of this Act, “**supply**” includes sell, transfer or otherwise distribute.”.

12. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended in subsection (3) by deleting the words “six months” and substituting therefor the words “a term in the range of five years to seven years”.

13. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is amended —

- (a) by deleting paragraphs (a) and (b) of subsection (2) and substituting therefor the following —
 - “(a) on conviction on information, to imprisonment for a term being in the range of ten years to fifteen years;
 - (b) on summary conviction, to imprisonment for a term being in the range of four years to seven years.”;

- (b) in the proviso to subsection (2) by deleting the words “one thousand” and substituting therefor the words “five thousand”.

14. Amendment of section 22 of the principal Act.

Section 22 of the principal Act is amended in subsection (2) by deleting the words “three months” and substituting therefor the words “a term in the range of five years to seven years”.

15. Amendment of section 23 of the principal Act.

Section 23 of the principal Act is amended in subsection (8) by deleting the words “three months” and substituting therefor the words “a term in the range of five years to seven years”.

16. Amendment of section 25 of the principal Act.

Section 25 of the principal Act is amended in subsection (5) by deleting the words “three months” and substituting therefor the words “a term in the range of five years to seven years”.

17. Amendment of section 26 of the principal Act.

Section 26 of the principal Act is amended in subsection (5) by deleting the words “six months” and substituting therefor the words “a term in the range of five years to seven years”.

18. Amendment of section 28 of the principal Act.

Section 28 of the principal Act is amended in subsection (4) by deleting the words “six months” and substituting therefor the words “a term in the range of five years to seven years”.

19. Amendment of section 29 of the principal Act.

Section 29 of the principal Act is amended —

- (a) in subsection (2) by deleting the words “three months” and substituting therefor the words “a term in the range of five years to seven years;
- (b) in paragraph (3) by deleting the words “person of or over the age of twenty-one years and substituting therefor the words “a parent or guardian or a person over twenty-one years who has the permission of the said parent or guardian.”.

20. Amendment of section 30 of the principal Act.

Section 30 of the principal Act is amended —

- (a) in subsection (1), by inserting next after paragraph (d) the following as the new paragraph (e) and re-lettering the remaining paragraph accordingly —
 - “(e) any rifle designed to discharge ammunition of 22 calibre and above except 22 long rifle calibre and 22 short calibre;”;
- (b) deleting subsection (2) and substituting therefor the following —
 - “(2) Where any person contravenes the provisions of subsection (1) he shall be liable —
 - (a) on conviction on information to imprisonment for a term in the range of ten years to twenty-five years;
 - (b) on summary conviction to imprisonment for a term in the range of four years to seven years.”.

21. Amendment of section 31 of the principal Act.

Section 31 of the principal Act is amended in subsection (2) by deleting the words “six months” and substituting therefor the words “a term in the range of five years to seven years”.

22. Amendment of section 32 of the principal Act.

Section 32 of the principal Act is amended in subsection (5) by deleting paragraphs (a) and (b) and substituting therefor the following —

- “(a) on conviction on information, to imprisonment for a term in the range of ten years to fifteen years;
- (b) on summary conviction, to imprisonment for a term in the range of four years to seven years.”.

23. Amendment of section 33 of the principal Act.

Section 33 of the principal Act is amended by deleting the words “fourteen years” and substituting therefor the words “a term in the range of fourteen years to twenty years”.

24. Amendment of section 34 of the principal Act.

Section 34 of the principal Act is amended in —

- (a) subsection (1) by deleting the words “not exceeding fourteen years” and substituting therefor the words “in the range of fourteen years to twenty years”;

- (b) subsection (4) by deleting the words “seven years” and substituting therefor the words “a term in the range of five years to seven years”.

25. Amendment of section 35 of the principal Act.

Section 35 of the principal Act is amended by deleting the words “not exceeding six years” and substituting therefor the words “in the range of five years to seven years”.

26. Amendment of section 36 of the principal Act.

Section 36 of the principal Act is amended —

- (a) in subsection (3) by —
 - (i) deleting the words “eighteen months” and substituting therefor the words “a term in the range of five years to seven years”;
 - (ii) deleting the words “six months” and substituting therefor the words “a term in the range of twelve months to three years”;
- (b) in subsection (4) by —
 - (i) deleting the words “of twenty years” and substituting therefor the words “in the range of fifteen years to twenty-five years”;
 - (ii) deleting the words “of five years” and substituting therefor the words “in the range of five years to seven years”.

27. Amendment of section 37 of the principal Act.

Section 37 of the principal Act is amended by deleting the words “twelve months” and substituting therefor the words “a term in the range of four years to seven years”.

28. Insertion of new sections 37A and 37B into the principal Act.

The principal Act is amended by inserting immediately after section 37 of the following new sections 37A and 37B —

“37A. Conspiracy, attempt, aiding and abetting.

- (1) Where two or more persons agree or act together with a common purpose in committing or abetting an offence under this Act whether with or without any previous concert or deliberation, each of them commits conspiracy to commit or abet that offence as the case may be, and shall be liable —
 - (a) on conviction on information to a term of imprisonment in the range of twenty years to twenty-five years;

- (b) on summary conviction to a term of imprisonment in the range of four years to seven years.
- (2) A person in the jurisdiction of the courts may be found guilty of conspiracy by agreeing with another person who is beyond the jurisdiction for the commission or abetment of any offence under this Act to be committed by them together or by either of them or by any other person, either within or beyond the jurisdiction.
- (3) For the purposes of subsection (2), with regard to the offence to be committed beyond the jurisdiction, “offence” means any act which, if done within the jurisdiction would be an offence under this Act.
- (4) Where any person commits an offence under this Act, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable —
 - (a) on conviction on information to a term of imprisonment in the range of ten years to twenty years;
 - (b) on summary conviction to a term of imprisonment in the range of four years to seven years.
- (5) A person who in The Bahamas aids, abets, counsels or procures the commission in any place outside of The Bahamas of any offence punishable under the provisions of any corresponding law in force in that place or does any act preparatory to, or in furtherance of any act which, if committed in The Bahamas, would constitute an offence under this Act is liable —
 - (a) on conviction on information to a term of imprisonment in the range of ten years to twenty years;
 - (b) on summary conviction to a term of imprisonment in the range of four years to seven years.

37B. Unauthorized possession of body armour.

- (1) The Licensing Authority may, subject to such conditions as it thinks fit, give approval to a person or class of persons and may revoke an approval or vary the conditions of such approval.
- (2) A person who without the approval in writing of the Licensing Authority —

- (a) manufactures, sells, distributes, supplies or otherwise deals in body armour; or
 - (b) has possession of or uses body armour,
- commits an offence and is liable on conviction on information to a term of imprisonment in the range of ten years to fifteen years.
- (3) In this section, “**body armour**” means a bulletproof vest, protective jacket or other article of apparel designed to resist the penetration of ammunition discharged from a firearm.”.

29. Amendment of section 38 of the principal Act.

Subsection (1) of section 38 of the principal Act is amended by deleting the words “may, if it thinks fit,” and substituting therefor the words “shall, unless the court is satisfied that the person was, at the time of the commission of the offence, not the owner and not acting with the authority of the owner of such firearm or ammunition”.

30. Amendment of section 45 of the principal Act.

Section 45 of the principal Act is amended by deleting the words “section 5, 9(2), 15, 30 or 36 undergoes” and substituting therefor the words “this Act”.

OBJECTS AND REASONS

The amendments to the Firearms Act (*Ch. 213*) are to provide for increases in the custodial penalties for offences relating to the importation and the possession of firearms and ammunition. Further, the amendments are to provide for a range of sentences for these offences in both the Magistrate's Courts and in the Supreme Courts.

Clause 2 of the Bill seeks to amend section 2 of the principal Act to provide definitions for the words “import” and “rifle”. “Import” means to bring or cause to be brought into The Bahamas or any other country, as the case may be, by land, air or water. “Rifle” means a firearm that has a rifled barrel and is designed to be discharged from the shoulder and includes a rifle that is so modified to be discharged otherwise.

Clause 3 of the Bill seeks to amend subsection (3) of section 3 of the principal Act to provide for a sentence ranging from two years to four years where a person withdraws or removes a firearm from a warehouse or such place appointed by the Licensing Authority for the deposit of firearms upon importation into The Bahamas.

Clause 4 of the Bill inserts the new section 3A into the Act. The section prohibits the importation of firearms and ammunition into The Bahamas except in accordance with the provisions of the Firearms Act. The new section also provides that the penalty on contravention of the provision is a term of imprisonment in the range of seven to fourteen years on conviction on information. On summary conviction to a term of imprisonment in the range of four to seven years.

Clause 5 of the Bill seeks to amend section 4 of the Act to delete the word “introduce” wherever it appears and substitute the word “import” in its place.

Clause 6 seeks to repeal and replace sections 5 of the principal Act. Section 5 provides for the penalties for the importation of a revolver in The Bahamas in contravention of the principal Act. The replacement provision provides for sentencing in the range of ten years to fifteen years in the Supreme Court and a range of four to seven years in Magistrates Court where a person is found in possession of a revolver in contravention of section 5.

The new section 5 also provides that the court may, in lieu of imprisonment, impose a fine of five thousand dollars where a person is convicted under this section but such person was the holder of the special licence issued under Part II but failed to renew the licence during the time periods specified by the Act.

Clause 7 of the Bill seeks to amend section 6 of the principal Act to remove the words “during the period of three months following the arrival of such vessel at her first port of call on any visit to The Bahamas” from the provision.

Clause 8 of the Bill seeks to amend section 8(2) of the principal Act to make the provisions in section 8 of the Act applicable to cartridges containing five or more shots, none of which exceeds nine twenty-fifths of an inch in diameter.

Clause 9 of the Bill seeks to insert the new section 8A. This amendment

provides that the occupier of any house, building or premises or the person in control of any privately operated vehicle, aircraft or vessel in which a firearm is found shall be deemed to be in possession of the firearm unless the contrary is proved.

Clause 10 of Bill seeks to amend section 9 of the principal Act. It increases the penalties for the purchase and possession of a firearm without a certificate to a sentence within the range of ten years to fifteen years in the case of conviction on information and in the case of summary convictions to a sentence in the range of four to seven years.

The clause also provides that the court may, in lieu of imprisonment, impose a fine where a person who is convicted under this section but such person was the holder of the special licence issued under Part III but failed to renew the licence during the time period specified by the Act. This clause increases the fine to five thousand dollars.

Clause 11 of the Bill inserts the new section 9A. This provision creates the offence of possession of a firearm and ammunition with intent to supply. A person who contravenes this provision will be liable on conviction on information to a term of imprisonment in the range of ten years to fifteen years and on summary conviction to a term in the range of four years to seven years. The provision defines “supply” as including sells, transfers or otherwise distributes”.

Clause 12 of the Bill seeks to amend 13 of the principal Act which provides the penalty for the taking of firearms or ammunitions as security for a debt.. The penalty for contravening the provision is increased from imprisonment for a period of six months to imprisonment for a term in the range of five years to seven years.

Clause 13 of the Bill amends section 15 of the principal Act. It increases the sentence for purchasing and possessing a gun without a licence to a term within the range of ten years to fifteen years in the case of conviction on information and in the case of summary convictions before a Stipendiary and Circuit magistrate to a sentence in the range of four to seven years.

The clause also provides that the court may, in lieu of imprisonment, impose a fine of five thousand dollars where a person who is convicted under this section but such person was the holder of a gun licence issued under Part IV of the Act but failed to renew the licence during the time periods specified by the Act.

Clause 14 of the Bill amends section 22 of the principal Act. It increases the penalty for manufacturing or otherwise dealing in firearms without the requisite registration as a firearms dealer from three months to a term in the range of five years to seven years.

Clause 15 of the Bill amends section 23 of the principal Act. It increases the penalty for making false statements in an application for registration as a firearms dealer from three months to a term in the range of five years to seven years.

Clause 16 of the Bill amends section 25 of the principal Act. It increases the penalty for a registered firearms dealer who carries on business in place that is not

entered in the register and for a person who makes false statements with a view to procuring the registration of a any place of business in the register of firearms dealers. The penalty is increased from a period of three months to a term in the range of five years to seven years.

Clause 17 of the Bill amends section 26 of the principal Act. It increases the penalty for failing to comply with the administrative requirements of the said section or making a false entry in the register required under that section. The penalty is increased from three months to a term in the range of five years to seven years.

Clause 18 of the Bill amends section 28 of the principal Act. It increases the penalty for, among other things, failing to comply with the administrative requirements of the said section or producing a false firearm certificate from a period of six months to a term in the range of five years to seven years.

Clause 19 of the Bill amends section 29 of the principal Act. It increases the penalty for, among other things, the selling or hiring any firearm or ammunition to person who is under the age of eighteen years. The penalty is increased from three months to a term in the range of five years to seven years.

Clause 20 of the Bill seeks to amend section 30 of the principal Act. The provision includes in the list of prohibited weapons and ammunition any rifle designed to discharged ammunition of 22 calibre and above, except a 22 long rifle calibre and 22 short calibre. It amends the penalty for the provisions relating to the unlawful manufacture, sale, transfer, purchase or possession of prohibited weapons from twenty years to a term in the range of ten years to twenty-five years where convicted on information and to a term in the range of four years to seven years where convicted before a Stipendiary and Circuit Magistrate.

Clause 21 of the Bill seeks to amend section 31 of the principal Act. It amends the penalty for the provisions prohibiting the sale of firearms to drunk or insane persons. The penalty is increased from six months to a term in the range of five years to seven years.

Clause 22 of the Bill amends section 32 of the principal Act. It amends the penalty for contravening the prohibition on the purchase or possession of firearms or ammunition by a convict who has served a sentence of three months or more within five years of his release from custody. The penalty is amended from ten years to a term in the range of ten years to fifteen years where there is a conviction on information and from five years where there is conviction to a range of four to seven years.

Clause 23 of the Bill seeks to amend section 33 of the principal Act by amending the penalty for possessing firearms with intent to injure. The penalty is amended from fourteen years to a term in the range of fourteen years to twenty years.

Clause 24 of the Bill seeks to amend section subsections (1) and (4) of section 34 of the principal Act. The clause seeks to amend subsection (1) that provides for the use or possession of firearms or imitation firearms with an intent to commit an

indictable offence or to prevent the lawful detention or arrest of himself or another person. The penalty in this instance is amended from fourteen years to term in the range of fourteen to twenty years. The clause also seeks to amend subsection (4) to amend the penalty for having a firearm in one's possession while committing an offence listed in the Second Schedule to the Firearms Act (assault, aggravated assault, causing wound, causing grievous harm, among others) from seven years to a term in the range of five to seven years.

Clause 25 of the Bill seeks to amend section 35 of the principal Act to modify the penalty for trespassing while in possession of a firearm from a term of six years to a term in the range of five years to seven years.

Clause 26 of the Bill seeks to amend section 36 of the principal Act by increasing the penalty for the unauthorised shortening of the barrel of smooth bore gun from eighteen months to a term within the range of five years to seven years where there is a conviction on information. The penalty is increased from six months to a term in the range of twelve months to three years where there is summary conviction.

The clause also increases the penalty for the unauthorised possession of a smooth bore gun that has been shortened or a firearm that has been converted from twenty years to a term in the range of twenty years to twenty-five years where there is conviction on indictment. The penalty is increased from five years to a term in the range of five years to seven years where there is conviction before a Stipendiary and Circuit Magistrate.

Clause 27 of the Bill seeks to amend section 37 of the principal Act amend the penalty for the discharge of the wanton discharge of a firearm from twelve months to a term in the range of four years to seven years.

Clause 28 of the Bill seeks to amend the principal Act to insert two new sections 37A and 37B. The new section 37A inserts of the offences of conspiracy, attempt and aiding and abetting an offence under the Firearms Act. The provision makes it an offence for a person in The Bahamas to aid, abet, counsel or procure the commission in any place outside of The Bahamas the commission of any offence punishable under the provisions of any corresponding law in that place.

The new section 37B creates the offence of unauthorised possession of body armour. It provides that any person who has any form of body armour in his possession without lawful authority commits an offence and is liable on conviction on information to imprisonment for a term in the range of ten years to fifteen years.

Clause 29 of the principal Act amends section 38 of the principal Act to provide that the court before which a person is convicted shall order that any firearm or ammunition found in the possession of the convicted person be forfeited to the Crown except where the court is satisfied that the convicted person was not at the time of the commission of the offence the owner, nor acting on the authority of the owner of the firearm.

Clause 30 of the Bill seeks to amend section 45 of the principal Act to make the provision applicable to all offences under the Act. As such, the term of incarceration that the court imposes for any offence under the Firearms Act shall not be modified on the basis of good conduct and industry notwithstanding any law to that effect.