

Proposes a constitutional amendment protecting the right of the people to keep and bear arms for traditionally recognized purposes.

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**Sponsor:** [SALAND](#) / **Co-sponsor(s):** [BONACIC](#), [GALLIVAN](#), [GRIFFO](#), [LARKIN](#), [MAZIARZ](#), [NOZZOLIO](#), [O'MARA](#), [RANZENHOFER](#), [RITCHIE](#), [SEWARD](#), [YOUNG](#) /  
**Committee:** [RULES](#)

**Law Section:** [Constitution, Concurrent Resolutions to Amend](#) / **Law:** Ren Art 20 to be Art 21, add Art 20, Constn

## **S1427-2011 Actions**

- Jun 21, 2012: COMMITTED TO RULES
- May 21, 2012: ADVANCED TO THIRD READING
- May 16, 2012: 2ND REPORT CAL.
- May 15, 2012: 1ST REPORT CAL.784
- Jan 9, 2012: TO ATTORNEY-GENERAL FOR OPINION
- Jan 4, 2012: REFERRED TO JUDICIARY
- Apr 27, 2011: OPINION REFERRED TO JUDICIARY
- Jan 14, 2011: TO ATTORNEY-GENERAL FOR OPINION
- Jan 7, 2011: REFERRED TO JUDICIARY

## **S1427-2011 Meetings**

[Judiciary: May 15, 2012](#)

## **S1427-2011 Calendars**

[Floor Calendar: May 16, 2012](#) , [Floor Calendar: May 21, 2012](#) , [Floor Calendar: May 22, 2012](#) , [Floor Calendar: May 23, 2012](#) , [Floor Calendar: May 30, 2012](#) , [Floor Calendar: May 31, 2012](#) , [Floor Calendar: Jun 4, 2012](#) , [Floor Calendar: Jun 5, 2012](#) , [Floor Calendar: Jun 6, 2012](#) , [Floor Calendar: Jun 11, 2012](#) , [Floor Calendar: Jun 12, 2012](#) , [Floor Calendar: Jun 13, 2012](#) , [Floor Calendar: Jun 14, 2012](#) , [Floor Calendar: Jun 18, 2012](#) , [Floor Calendar: Jun 19, 2012](#) , [Floor Calendar: Jun 20, 2012](#) , [Floor Calendar: Jun 21, 2012](#)

## **S1427-2011 Votes**

**VOTE: COMMITTEE VOTE: - Judiciary - May 15, 2012**

**Ayes (11):** [Bonacic](#), [DeFrancisco](#), [Flanagan](#), [Fuschillo](#), [Lanza](#), [Little](#), [Nozzolio](#), [O'Mara](#), [Ranzenhofer](#), [Saland](#), [Zeldin](#)

**Ayes W/R (2):** [LaValle](#), [Breslin](#)

**Nays (10):** [Hassell-Thompson](#), [Adams](#), [Dilan](#), [Espaillat](#), [Gianaris](#), [Krueger](#), [Perkins](#), [Serrano](#), [Squadron](#), [Stavisky](#)

## **S1427-2011 Memo**

BILL NUMBER:S1427

TITLE OF BILL:

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY  
proposing an amendment to the constitution  
in relation to the right to keep and  
bear arms

PURPOSE:

This proposed constitutional amendment would provide within  
the New York State Constitution for a right of the people to keep and  
bear arms for traditionally recognized purposes.

SUMMARY OF PROVISIONS:

A new Article Twenty would be added to the State Constitution to  
ensure the individual right of the law-abiding citizen to keep and  
bear arms for the purposes of defense of self, state, hunting and  
recreation.

JUSTIFICATION:

The proposed language is an approximate conglomeration of the language  
of the Oregon and New Mexico State constitutions. It seeks to protect  
activities involving lawfully held arms, which have been  
traditionally recognized by the constitutions of the various states.  
The language also places with the State all authority over the  
regulation of arms and arms accouterments. This is something of  
particularly great need in New York State as a patchwork of local  
regulations and administrative practices have created tremendous  
confusion over and disparity between, applicable regulations from  
county to county.

In recent years, there has been considerable dispute as to whether the  
right of the people to keep and bear arms, (as guaranteed by the  
United States Constitution, Amendment II), protects an individual  
right to arms, or only state power over militias. Recently, in the  
landmark case of *D. C. v. Heller* the Supreme Court held that the  
Second Amendment does in fact protect an individual right to possess  
a firearm for traditionally lawful purposes such as self-defense. (*D.C.  
v. Heller*, 554 U.S. 290 (2008)). In reaching this holding, the Court  
cited historical scholarship and linguistic evidence which amply  
demonstrates that what the Second Amendment to the United States  
Constitution guarantees is a right of law-abiding, responsible adults  
to acquire and possess arms for lawful uses. (See, e.g. 4  
*Encyclopedia of the American Constitution*, 1639-40, Karst & Levi eds.  
(1986); Levinson, *The Embarrassing Second Amendment*, 99 *Yale Law  
Journal* 637, (1991); Khates, *Handgun Prohibition and the Original  
Meaning of the Second Amendment*, 82 *Michigan Law Review* 204, 244-52,  
(1983); Shalhope, *The Ideological Origins of the Second Amendment*, 69  
*Journal of American History* 599, (1982)). The Court further cited the  
many state constitutions containing provisions protecting an  
individual right to bear  
arms for self-defense. (*D.C. v. Heller*, 554 U.S. 590). Thus, the  
amendment proposed puts to a  
final rest whatever remains of the now largely discredited states'  
rights position. However, as the proposed amendment explicitly  
provides for a right to keep and bear arms for the purpose of defense

of the State, it is clear that the ability of the State to maintain its traditional militia is not in any way impaired by enactment of the amendment.

The proposal here is for a guarantee of individual rights in a state constitution, and this necessarily means that the guarantee is to the individual rather than the State. Indeed, the State would have no reason to guarantee rights of the state, possessed under the state Constitution, against prohibition by the State itself. Civil rights provisions, such as the proposal here, have been generally interpreted as broadly guaranteeing a right of individuals to possess various kinds of ordinary arms to law-abiding, responsible adults. (See, *State v. Kessler*, 614 P. 2d 94, (Or. S.Ct. 1980); see also, S. Halbrook, *A Right To Bear Arms: State and Federal Bills of Right and Constitutional Guarantees* 1989); Dowle, *The Right to Arms*, 36 *Oklahoma Law Review* 789 (1982); Dowle, *Federal and State Constitutional Guarantees To Arms*. 15 *university of Dayton Law Review* 1 1989); Chaplain, *The Right of the Individual to Bear Arms*, *bet. Coll. Law Review* 789 (1982). There is no provision currently in the New York State constitution providing for a guarantee of the right to keep and bear arms. This puts New York into a small minority of states lacking such traditional state constitutional protection for citizens. This is especially surprising when it is considered that it was New York's own delegation which prevented ratification of the original Federal Constitution until assurances were given that, upon ratification, work would begin on a Bill of Rights guaranteeing individual freedoms against government encroachment. It would seem a gross oversight that the very same protections against governmental excess which the New York delegation sought to prevent would nevertheless be found lacking in the New York State Constitution.

LEGISLATIVE HISTORY:

2009-2010: S.1256 - Opinion referred to Judiciary  
2007-2008: S.1079 - Opinion referred to Judiciary  
2005-2006: S.463 - Opinion referred to Judiciary  
2003-2004: S.2824 - Opinion referred to Judiciary  
2001-2002: S.5059 - Opinion referred to Judiciary  
1999-2000: S.3079 - Opinion referred to Judiciary  
1997-1998: S.677 - Opinion referred to Judiciary  
1995-1996: S.1420 - Opinion referred to Judiciary

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

RESOLVED (if the Assembly concur), That the foregoing amendments be referred to the first regular legisaltive session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

**S1427-2011 Text**

2011-2012 Regular Sessions  
I N   S E N A T E  
January 7, 2011

Introduced by Sens. SALAND, BONACIC, LARKIN, MAZIARZ, RANZENHOFER,  
SEWARD -- read twice and ordered printed, and when printed to be  
committed to the Committee on Judiciary  
CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY  
proposing an amendment to the constitution in relation to the right to  
keep and bear arms

Section 1. RESOLVED (if the Assembly concur), That article 20 of the  
constitution be renumbered article 21 and a new article 20 be added to  
read as follows:

ARTICLE XX

RIGHT TO KEEP AND BEAR ARMS

SECTION 1. THE PEOPLE SHALL HAVE THE RIGHT TO KEEP AND BEAR ARMS FOR  
THE DEFENSE OF THEMSELVES AND THE STATE, FOR LAWFUL HUNTING AND RECRE  
ATIONAL USE, AND FOR ANY OTHER LAWFUL PURPOSES, AND NO COUNTY, MUNICI  
PALITY OR OTHER POLITICAL SUBDIVISION OF THE STATE SHALL REGULATE, IN  
ANY WAY, AN INCIDENT OF THE RIGHT TO KEEP AND BEAR ARMS.

S 2. RESOLVED (if the Assembly concur), That the foregoing amendment  
be referred to the first regular legislative session convening after the  
next succeeding general election of members of the Assembly, and, in  
conformity with section 1 of article 19 of the constitution be published  
for 3 months previous to the time of such election.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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