

# STATE OF NEW YORK

9783

## IN ASSEMBLY

February 11, 2020

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to personalized pistols

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 400.25 to  
2 read as follows:

3 § 400.25 Personalized pistols.

4 1. Definitions. As used in this section, the following terms shall  
5 have the following meanings:

6 (a) "Authorized user" means the lawful owner of a personalized pistol  
7 or person to whom the owner has given consent to use the personalized  
8 pistol.

9 (b) "Commission" means the personalized pistol authorization commis-  
10 sion established pursuant to the provisions of subdivision two of this  
11 section.

12 (c) "Personalized pistol" means a pistol which incorporates within its  
13 design a permanent programmable feature as part of its manufacture that  
14 cannot be deactivated and renders the personalized pistol reasonably  
15 resistant to being fired except when activated by the lawful owner or  
16 other authorized user. No make or model of a pistol shall be deemed to  
17 be a "personalized pistol" unless the personalized pistol authorization  
18 commission has placed such pistol on the roster of authorized personal-  
19 ized pistols pursuant to the provisions of subdivision three of this  
20 section.

21 2. Personalized pistol authorization commission. (a) There is estab-  
22 lished a commission which shall be known as the personalized pistol  
23 authorization commission. The commission shall be responsible for estab-  
24 lishing performance standards for personalized pistols and maintaining a  
25 roster of personalized pistols authorized for sale to the public pursu-  
26 ant to this act.

27 (b) The commission shall consist of seven members as follows:

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

LBD15028-01-0

1 (i) three members who shall be the attorney general or his or her  
2 designee, the superintendent of state police or his or her designee and  
3 the commissioner of health or his or her designee;

4 (ii) one member to be appointed by the governor who is a member of the  
5 American academy of pediatrics;

6 (iii) one member to be appointed by the governor who shall be a resi-  
7 dent of this state who is a gunsmith or dealer in firearms as defined in  
8 section 265.00 of this chapter, or a resident of this state who is a  
9 representative of a New York chapter of an organization that advocates  
10 for second amendment rights;

11 (iv) one member to be appointed by the governor who shall be a repre-  
12 sentative of an organization that advocates against pistol violence; and

13 (v) one member to be appointed by the governor with substantial expe-  
14 rience in radio frequency identification or biometric reading technolo-  
15 gy.

16 (c) All appointments to the commission shall be made within six months  
17 of the effective date of this section. The chair of the commission shall  
18 be selected from among its members by the governor. Members of the  
19 commission shall serve a term of four years from the date of their  
20 appointment and until their successors are appointed. Vacancies in the  
21 membership of the commission shall be filled in the same manner as the  
22 original appointments were made.

23 (d) Members of the commission shall serve without compensation, but  
24 shall be reimbursed for necessary expenses incurred in the performance  
25 of their duties as members of such commission, and within the limits of  
26 funds appropriated or otherwise made available to the commission for its  
27 purpose.

28 (e) The commission shall be entitled to call to its assistance and  
29 avail itself of the services of the employees of any state, county, or  
30 municipal department, board, bureau, commission, or agency as it may  
31 require and as may be available to it for its purposes.

32 (f) During the first year following the establishment of the commis-  
33 sion, such commission shall meet monthly; thereafter, the commission  
34 shall meet once every six months or at the call of the chairman of the  
35 commission or the majority of its members.

36 3. Personalized pistol performance standards. (a) The commission shall  
37 maintain a roster of all personalized pistols approved by such commis-  
38 sion as meeting the personalized pistol performance standards and quali-  
39 fying criteria established pursuant to this section. The roster of  
40 approved personalized pistols shall be published on a website maintained  
41 by the division of state police and shall be updated as necessary. A  
42 copy of such roster shall be made available every six months to dealers  
43 in firearms licensed pursuant to section 400.00 of this article.

44 (b) Within one year of organizing, the commission shall develop  
45 personalized pistol performance standards and qualifying criteria which  
46 a personalized pistol shall meet in order to be placed on the personal-  
47 ized pistol roster. The personalized pistol performance standards and  
48 qualifying criteria shall include, but not be limited to:

49 (i) the pistol shall be reasonably resistant to being fired by anyone  
50 other than such pistol's authorized user as defined in subdivision one  
51 of this section;

52 (ii) the personalized technology shall be incorporated into the design  
53 of the personalized pistol and shall be a permanent, irremovable part of  
54 such pistol and any device or object necessary for the authorized user  
55 to fire such pistol;

1 (iii) the personalized pistol shall not be manufactured so as to  
2 permit the personalized characteristics of such pistol to be readily  
3 deactivated; and

4 (iv) the personalized pistol shall meet any other reliability stand-  
5 ards generally used in the industry for other commercially available  
6 pistols.

7 (c) The commission shall recommend to the attorney general any rule,  
8 regulation, guideline or revision thereto, or legislation which it deems  
9 necessary to establish a process by which pistol manufactures may  
10 request that their pistols be added to the roster established pursuant  
11 this subdivision.

12 4. Approval of personalized pistols. (a) A gunsmith or other entity  
13 seeking to include a pistol on the approved personalized pistol roster  
14 established pursuant to paragraph (a) of subdivision three of this  
15 section shall apply to the commission for a determination of whether the  
16 make and model of such pistol proposed by such applicant would meet the  
17 personalized pistol performance standards established pursuant to para-  
18 graph (b) of such subdivision. The determination of the commission shall  
19 be based upon testing conducted by an independent laboratory proposed by  
20 the applicant which has been accredited for the testing of firearms by  
21 the national voluntary accreditation or other national certifying body  
22 approved by the commission or, if the applicant does not propose an  
23 independent laboratory or if one is not approved or available, by the  
24 division of state police.

25 (b) The commission shall approve an independent laboratory proposed by  
26 an applicant to perform the determination pursuant to paragraph (a) of  
27 this subdivision if the commission finds that such laboratory is capable  
28 of performing the determination and will be sufficiently objective  
29 making such determination, provided that the laboratory shall not be  
30 owned or operated by a gunsmith or any other organization that seeks to  
31 either promote or restrict pistol ownership. The application for  
32 approval of an independent laboratory to perform the determination  
33 pursuant to paragraph (a) of this subdivision shall be in a form  
34 prescribed by the attorney general, in consultation with the commission,  
35 and shall provide information regarding the capabilities and objectivity  
36 of such laboratory.

37 (c) An independent laboratory or the division of state police, as the  
38 case may be, shall test a pistol within a reasonable amount of time  
39 following the approval of an application made pursuant to paragraph (a)  
40 of this subdivision. Such test shall be conducted:

41 (i) in accordance with the testing requirements formulated by the  
42 commission; and

43 (ii) at the expense of the gunsmith or other entity seeking to include  
44 the pistol on the approved personalized pistol roster established pursu-  
45 ant to paragraph (a) of subdivision three of this section.

46 The independent laboratory or the division of state police, as the  
47 case may be, shall issue a final test report to the commission at the  
48 conclusion of the test. The report shall state whether the pistol meets  
49 the performance standards and qualifying criteria established by the  
50 commission pursuant to paragraph (b) of subdivision three of this  
51 section.

52 (d) The commission shall review the final test report and based on  
53 findings of such report shall issue a final decision by majority vote as  
54 to whether the pistol should be included on the roster. Such final deci-  
55 sions shall be issued within forty-five days of receiving the final test  
56 report.

(e) Upon making a final determination pursuant to paragraph (d) of this subdivision the commission shall notify the applicant in writing as to whether the pistol has been approved or denied for inclusion on the roster. A notification informing the applicant that a firearm has been denied shall be provided along with a written description of the reasons for which such pistol failed to meet the performance standards and qualifying criteria established by the commission as documented in the final test report issued pursuant to paragraph (c) of this subdivision. Any alteration to the design of a make and model of pistol that has been approved for addition on the roster shall require a determination that such pistol continues to meet the performance standards and qualifying criteria established by the commission in accordance with the requirements of this section in order to include the altered design model of the pistol on the roster.

5. Personalized pistol availability requirements. (a) Within sixty days of the first personalized pistol being included on the roster established pursuant to subdivision three of this section, each dealer in firearms licensed pursuant to section 400.00 of this article shall:

(i) make available for purchase at least one personalized pistol approved by the commission and listed on the roster as eligible for sale.

(ii) post in a conspicuous manner in one or more locations in the place or places of business of such dealer in firearms:

(1) copies of the personalized pistol roster; and

(2) a sign, to be promulgated by the commission, that includes a statement disclosing the features of personalized pistols that are not offered by traditional pistols and advises customers that such firearms may be purchased through the dealer in firearms.

(iii) accept and process orders to enable customers to purchase through the licensed retail dealer any of the personalized pistols included on the roster.

(b) A personalized pistol offered for sale by a dealer in firearms pursuant to this subdivision shall be displayed in a conspicuous manner that makes it easily visible to customers and distinguishable from other traditional pistols. A dealer in firearms shall post a copy of the sign required pursuant to clause two of subparagraph (ii) of paragraph (a) of this subdivision in close proximity to each personalized pistol.

(c) In the event that the inventory of personalized pistols of a dealer in firearms is depleted and there are no personalized pistols available for purchase on the premises, such dealer in firearms shall:

(i) place an order for at least one personalized pistol within twenty-one days of the sale of the last personalized pistol in the inventory of such dealer in firearms;

(ii) maintain written records of the efforts of such dealer in firearms to place an order and maintain such records on the premises and allow them to be open for inspection at all times; and

(iii) post a sign on the premises of such dealer in firearms indicating that personalized pistols are routinely sold on the premises and will soon be available for purchase.

(d) A dealer in firearms shall not make any claim that a pistol has been approved by the commission as meeting the performance standards or qualifying criteria for a personalized pistol if such pistol is not included on the roster established pursuant to subdivision three of this section.

(e) The superintendent of state police shall designate officers to inspect the personalized pistol inventory and records of all licensed

1 dealers in firearms. Such inspections shall be conducted at least once  
2 every two years at any time during the normal business hours of the  
3 dealer in firearms.

4 6. Violations and penalties. (a) A licensed retail dealer who violates  
5 any provision of subdivision five of this section shall be subject to  
6 the following penalties:

7 (i) for a first offense, a fine not to exceed five hundred dollars;

8 (ii) for a second offense, a fine not to exceed one thousand dollars;  
9 and

10 (iii) for a third or subsequent offense, a six month license suspen-  
11 sion following notice to the licensed dealer in firearms and opportunity  
12 to be heard.

13 (b) Any person who without license or privilege to do so, tampers or  
14 attempts to tamper with a personalized pistol by intentionally interfer-  
15 ing with the user-authorized functionality of the personalized technolo-  
16 gy shall be guilty of a class A misdemeanor.

17 § 2. This act shall take effect on the ninetieth day after it shall  
18 have become a law.