STATE OF NEW YORK

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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:

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

§ 400.25 Personalized pistols.

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

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

(b) "Commission" means the personalized pistol authorization commission established pursuant to the provisions of subdivision two of this section.

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

2. Personalized pistol authorization commission. (a) There is established a commission which shall be known as the personalized pistol authorization commission. The commission shall be responsible for establishing performance standards for personalized pistols and maintaining a roster of personalized pistols authorized for sale to the public pursuant to this act.

(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.

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

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

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

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

(v) one member to be appointed by the governor with substantial experience in radio frequency identification or biometric reading technology.

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

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

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

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

3. Personalized pistol performance standards. (a) The commission shall maintain a roster of all personalized pistols approved by such commission as meeting the personalized pistol performance standards and qualifying criteria established pursuant to this section. The roster of approved personalized pistols shall be published on a website maintained by the division of state police and shall be updated as necessary. A copy of such roster shall be made available every six months to dealers in firearms licensed pursuant to section 400.00 of this article.

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

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

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

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

(iv) the personalized pistol shall meet any other reliability standards generally used in the industry for other commercially available pistols.

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

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

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

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

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

(ii) at the expense of the gunsmith or other entity seeking to include the pistol on the approved personalized pistol roster established pursuant to paragraph (a) of subdivision three of this section.

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

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

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

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

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

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

(iii) for a third or subsequent offense, a six month license suspension following notice to the licensed dealer in firearms and opportunity to be heard.

(b) Any person who without license or privilege to do so, tampers or attempts to tamper with a personalized pistol by intentionally interfering with the user-authorized functionality of the personalized technology shall be guilty of a class A misdemeanor.

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