# STATE OF NEW YORK

7763

# IN SENATE

February 14, 2020

Introduced by Sens. HOYLMAN, KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to enacting the Jose Webster untraceable firearms act

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

Section 1. This act shall be known and may be cited as the "Jose Webster untraceable firearms act".

§ 2. Subdivision 8 of section 265.00 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm, large capacity ammunition feeding device or machine-gun**. "Gunsmith" shall include any person who assembles, manufactures, fabricates, builds or fits together the component parts of a firearm, rifle or shotgun, regardless of whether the firearm, rifle or shotgun is intended for personal use, commercial sale or for any other purpose**.

§ 3. Section 265.00 of the penal law is amended by adding a new subdivision 31 to read as follows:

**31. "Ghost gun" means a firearm, rifle or shotgun that does not comply with the provisions of section 265.07 of this article and is not serialized in accordance with the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto, except for antique firearms as defined in subdivision fourteen of this section, as added by chapter nine hundred eighty-six of the laws of nineteen hundred seventy-four, or any firearm, rifle or shotgun manufactured prior to nineteen hundred sixty-eight.**

§ 4. Subdivision 10 of section 265.02 of the penal law, as added by chapter 1 of the laws of 2013, is amended and a new subdivision 11 is added to read as follows:

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

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(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in subdivision one of section 70.02 of this chapter as part of the same criminal transaction[.]; or

(11) Such person is not a gunsmith duly licensed pursuant to section 400.00 of this chapter and possesses a ghost gun, provided that for a period of six months after the effective date of this subdivision, a person shall not be guilty of criminal possession of a weapon in the third degree when such person possesses a ghost gun during the process of providing such ghost gun to a gunsmith duly licensed pursuant to section 400.00 of this chapter for the purposes of having such ghost gun serialized and registered pursuant to section 265.07 of this article.

§ 5. The penal law is amended by adding a new section 265.07 to read as follows:

§ 265.07 Registration and serialization of firearms, rifles, shotguns and unfinished frames or receivers by gunsmiths.

(1) For the purposes of this section, "unfinished frame or receiver" means a piece of any material that does not constitute the frame or receiver of a firearm, rifle or shotgun but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm, rifle or shotgun, and which may readily be made into a functional frame or receiver through milling, drilling or other means. The term shall not include a piece of material that has had its size or external shape altered to facilitate transportation or storage or has had its chemical composition altered.

(2) A gunsmith shall engrave, cast, stamp or otherwise conspicuously place both a unique serial number and his or her name (or recognized abbreviation) on any firearm, rifle, shotgun or unfinished frame or receiver that he or she manufactures, assembles or causes to be manufactured or assembled after the effective date of this section, regardless of the manner of manufacturing or assembly, in a manner that satisfies or exceeds the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto.

(3) A gunsmith shall register with the division of state police any firearm, rifle, shotgun or unfinished frame or receiver that he or she manufactures, assembles or causes to be manufactured or assembled after the effective date of this section, regardless of the manner of manufacturing or assembly, that would not otherwise be subject to the requirements imposed on licensed importers and licensed manufacturers pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto. For each firearm, rifle, shotgun or unfinished frame or receiver so registered, records reflecting the identity of the manufacturing or assembling gunsmith and the serial number of such firearm, rifle, shotgun or unfinished frame or receiver shall be included in the statewide license and record database established pursuant to section 400.02 of this chapter.

Any gunsmith who fails to comply with the provisions of this section shall be guilty of a class C felony.

§ 6. Section 265.10 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. Any person other than a gunsmith duly licensed pursuant to section 400.00 of this chapter who assembles, manufactures, fabricates, builds or fits together the component parts of a firearm, rifle or shotgun is guilty of a class C felony.

§ 7. The penal law is amended by adding three new sections 265.60, 265.61 and 265.62 to read as follows:

§ 265.60 Criminal sale of a ghost gun in the third degree.

1. Except as otherwise provided in subdivision two of this section, a person is guilty of criminal sale of a ghost gun in the third degree when such person sells, exchanges, gives or disposes of a ghost gun.

2. A person shall not be guilty of criminal sale of a ghost gun in the third degree when such person:

(a) voluntarily surrenders such ghost gun to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 of this article; or

(b) within six months after the effective date of this section, provides such ghost gun to a gunsmith duly licensed pursuant to section 400.00 of this chapter for the purposes of having such ghost gun serialized and registered pursuant to section 265.07 of this article.

Criminal sale of a ghost gun in the third degree is a class D felony.

§ 265.61 Criminal sale of a ghost gun in the second degree.

1. Except as otherwise provided in subdivision two of this section, a person is guilty of criminal sale of a ghost gun in the second degree when such person:

(a) sells, exchanges, gives or disposes of five or more ghost guns; or

(b) sells, exchanges, gives or disposes of a total of five or more ghost guns in a period of not more than one year.

2. A person shall not be guilty of criminal sale of a ghost gun in the second degree when such person:

(a) voluntarily surrenders such ghost guns to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 of this article; or

(b) within six months after the effective date of this section, provides such ghost guns to a gunsmith duly licensed pursuant to section 400.00 of this chapter for the purposes of having such ghost guns serialized and registered pursuant to section 265.07 of this article.

Criminal sale of a ghost gun in the second degree is a class C felony.

§ 265.62 Criminal sale of a ghost gun in the first degree.

1. Except as otherwise provided in subdivision two of this section, a person is guilty of criminal sale of a ghost gun in the first degree when such person:

(a) sells, exchanges, gives or disposes of ten or more ghost guns; or

(b) sells, exchanges, gives or disposes of a total of ten or more ghost guns in a period of not more than one year.

2. A person shall not be guilty of criminal sale of a ghost gun in the first degree if such person:

(a) voluntarily surrenders such ghost guns to any law enforcement official designated pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 of this article; or

(b) within six months after the effective date of this section, provides such ghost guns to a gunsmith duly licensed pursuant to section 400.00 of this chapter for the purposes of having such ghost guns serialized and registered pursuant to section 265.07 of this article.

Criminal sale of a ghost gun in the first degree is a class B felony.

§ 8. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.