

# STATE OF NEW YORK

9903

## IN ASSEMBLY

February 26, 2020

Introduced by M. of A. L. ROSENTHAL -- read once and referred 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:

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

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

5 8. "Gunsmith" means any person, firm, partnership, corporation or  
6 company who engages in the business of repairing, altering, assembling,  
7 manufacturing, cleaning, polishing, engraving or trueing, or who  
8 performs any mechanical operation on, any firearm, large capacity ammu-  
9 nition feeding device or machine-gun. "Gunsmith" shall include any  
10 person who assembles, manufactures, fabricates, builds or fits together  
11 the component parts of a firearm, rifle or shotgun, regardless of wheth-  
12 er the firearm, rifle or shotgun is intended for personal use, commer-  
13 cial sale or for any other purpose.

14 § 3. Section 265.00 of the penal law is amended by adding a new subdi-  
15 vision 31 to read as follows:

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

25 § 4. Subdivision 10 of section 265.02 of the penal law, as added by  
26 chapter 1 of the laws of 2013, is amended and a new subdivision 11 is  
27 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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1 (10) Such person possesses an unloaded firearm and also commits any  
2 violent felony offense as defined in subdivision one of section 70.02 of  
3 this chapter as part of the same criminal transaction[-]; or

4 (11) Such person is not a gunsmith duly licensed pursuant to section  
5 400.00 of this chapter and possesses a ghost gun, provided that for a  
6 period of six months after the effective date of this subdivision, a  
7 person shall not be guilty of criminal possession of a weapon in the  
8 third degree when such person possesses a ghost gun during the process  
9 of providing such ghost gun to a gunsmith duly licensed pursuant to  
10 section 400.00 of this chapter for the purposes of having such ghost gun  
11 serialized and registered pursuant to section 265.07 of this article.

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

14 § 265.07 Registration and serialization of firearms, rifles, shotguns  
15 and unfinished frames or receivers by gunsmiths.

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

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

34 (3) A gunsmith shall register with the division of state police any  
35 firearm, rifle, shotgun or unfinished frame or receiver that he or she  
36 manufactures, assembles or causes to be manufactured or assembled after  
37 the effective date of this section, regardless of the manner of manufac-  
38 turing or assembly, that would not otherwise be subject to the require-  
39 ments imposed on licensed importers and licensed manufacturers pursuant  
40 to subsection (i) of Section 923 of Title 18 of the United States Code  
41 and regulations issued pursuant thereto. For each firearm, rifle, shot-  
42 gun or unfinished frame or receiver so registered, records reflecting  
43 the identity of the manufacturing or assembling gunsmith and the serial  
44 number of such firearm, rifle, shotgun or unfinished frame or receiver  
45 shall be included in the statewide license and record database estab-  
46 lished pursuant to section 400.02 of this chapter.

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

49 § 6. Section 265.10 of the penal law is amended by adding a new subdi-  
50 vision 8 to read as follows:

51 8. Any person other than a gunsmith duly licensed pursuant to section  
52 400.00 of this chapter who assembles, manufactures, fabricates, builds  
53 or fits together the component parts of a firearm, rifle or shotgun is  
54 guilty of a class C felony.

55 § 7. The penal law is amended by adding three new sections 265.60,  
56 265.61 and 265.62 to read as follows:

1 § 265.60 Criminal sale of a ghost gun in the third degree.

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

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

7 (a) voluntarily surrenders such ghost gun to any law enforcement offi-  
8 cial designated pursuant to subparagraph (f) of paragraph one of subdi-  
9 vision a of section 265.20 of this article; or

10 (b) within six months after the effective date of this section,  
11 provides such ghost gun to a gunsmith duly licensed pursuant to section  
12 400.00 of this chapter for the purposes of having such ghost gun serial-  
13 ized and registered pursuant to section 265.07 of this article.

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

15 § 265.61 Criminal sale of a ghost gun in the second degree.

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

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

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

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

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

27 (b) within six months after the effective date of this section,  
28 provides such ghost guns to a gunsmith duly licensed pursuant to section  
29 400.00 of this chapter for the purposes of having such ghost guns seri-  
30 alized and registered pursuant to section 265.07 of this article.

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

32 § 265.62 Criminal sale of a ghost gun in the first degree.

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

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

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

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

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

44 (b) within six months after the effective date of this section,  
45 provides such ghost guns to a gunsmith duly licensed pursuant to section  
46 400.00 of this chapter for the purposes of having such ghost guns seri-  
47 alized and registered pursuant to section 265.07 of this article.

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

49 § 8. This act shall take effect on the one hundred twentieth day after  
50 it shall have become a law. Effective immediately, the addition, amend-  
51 ment and/or repeal of any rule or regulation necessary for the implemen-  
52 tation of this act on its effective date are authorized to be made and  
53 completed on or before such effective date.