

# STATE OF NEW YORK

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2143--A

2019-2020 Regular Sessions

## IN SENATE

January 22, 2019

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Introduced by Sens. HOYLMAN, PARKER, BAILEY, BROOKS, CARLUCCI, GAUGHRAN, GOUNARDES, KAMINSKY, KENNEDY, KRUEGER, LIU, MONTGOMERY, PERSAUD, SERRANO, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to the manufacture, assembly, possession, license and disposal of ghost guns and the sentencing for certain offenses regarding ghost guns

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

1 Section 1. Subdivision 8 of section 265.00 of the penal law, as  
2 amended by chapter 189 of the laws of 2000, is amended to read as  
3 follows:

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

13 § 2. Section 265.00 of the penal law is amended by adding two new  
14 subdivisions 31 and 32 to read as follows:

15 31. "Unfinished firearm frame or receiver" means a piece of any mate-  
16 rial that does not constitute the frame or receiver of a firearm, rifle  
17 or shotgun but that has been shaped or formed in any way for the purpose  
18 of becoming the frame or receiver of a firearm, rifle or shotgun, and  
19 which may readily be made into a functional frame or receiver through  
20 milling, drilling or other means. The term shall not include a piece of

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

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1 material that has had its size or external shape altered to facilitate  
2 transportation or storage or has had its chemical composition altered.

3 32. "Ghost gun" means a firearm, rifle or shotgun that does not comply  
4 with the provisions of section 265.07 of this article and is not serial-  
5 ized in accordance with the requirements imposed on licensed importers  
6 and licensed manufacturers pursuant to subsection (i) of Section 923 of  
7 Title 18 of the United States Code and regulations issued pursuant ther-  
8 eto, except for antique firearms as defined in subdivision fourteen of  
9 this section, or any firearm, rifle or shotgun manufactured prior to  
10 1968.

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

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

17 (11) Such person is not a gunsmith duly licensed pursuant to section  
18 400.00 of this chapter and possesses an unfinished firearm frame or  
19 receiver or a ghost gun, provided that for a period of six months after  
20 the effective date of this subdivision, a person shall not be guilty of  
21 criminal possession of a weapon in the third degree when such person  
22 possesses an unfinished firearm frame or receiver or a ghost gun during  
23 the process of providing such unfinished firearm frame or receiver or  
24 ghost gun to a gunsmith duly licensed pursuant to section 400.00 of this  
25 chapter for the purposes of having such unfinished firearm frame or  
26 receiver or ghost gun serialized and registered pursuant to section  
27 265.07 of this chapter.

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

30 § 265.07 Registration and serialization of firearms, rifles, shotguns,  
31 and unfinished firearm frames or receivers by gunsmiths.

32 (1) A gunsmith shall engrave, cast, stamp or otherwise conspicuously  
33 place both a unique serial number and his or her name (or recognized  
34 abbreviation) on any firearm, rifle, shotgun or unfinished firearm frame  
35 or receiver that he or she manufactures, assembles or causes to be manu-  
36 factured or assembled after the effective date of this section, regard-  
37 less of the manner of manufacturing or assembly, in a manner that satis-  
38 fies or exceeds the requirements imposed on licensed importers and  
39 licensed manufacturers pursuant to subsection (i) of Section 923 of  
40 Title 18 of the United States Code and regulations issued pursuant ther-  
41 eto.

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

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

3 § 5. Section 265.10 of the penal law is amended by adding a new subdi-  
4 vision 8 to read as follows:

5 8. Any person other than a gunsmith duly licensed pursuant to section  
6 400.00 of this chapter who assembles, manufactures or causes to be  
7 assembled or manufactured, a firearm, rifle, shotgun or unfinished  
8 firearm frame or receiver is guilty of a class C felony.

9 § 6. The penal law is amended by adding six new sections 265.60,  
10 265.61, 265.62, 265.63, 265.64 and 265.65 to read as follows:

11 § 265.60 Criminal sale of a ghost gun in the third degree.

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

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

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

20 (b) within six months after the effective date of this section,  
21 provides such ghost gun to a gunsmith duly licensed pursuant to section  
22 400.00 of this chapter for the purposes of having such ghost gun serial-  
23 ized and registered pursuant to section 265.07 of this article.

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

25 § 265.61 Criminal sale of a ghost gun in the second degree.

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

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

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

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

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

37 (b) within six months after the effective date of this section,  
38 provides such ghost guns to a gunsmith duly licensed pursuant to section  
39 400.00 of this chapter for the purposes of having such ghost guns seri-  
40 alized and registered pursuant to section 265.07 of this article.

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

42 § 265.62 Criminal sale of a ghost gun in the first degree.

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

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

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

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

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

54 (b) within six months after the effective date of this section,  
55 provides such ghost guns to a gunsmith duly licensed pursuant to section

1 400.00 of this chapter for the purposes of having such ghost guns seri-  
2 alized and registered pursuant to section 265.07 of this article.

3 Criminal sale of a ghost gun in the first degree is a class B felony.  
4 § 265.63 Criminal sale of an unfinished firearm frame or receiver in the  
5 third degree.

6 1. Except as otherwise provided in subdivision two of this section, a  
7 person is guilty of criminal sale of an unfinished firearm frame or  
8 receiver in the third degree when such person sells, exchanges, gives or  
9 disposes of an unfinished firearm frame or receiver.

10 2. A person shall not be guilty of criminal sale of an unfinished  
11 firearm frame or receiver in the third degree if such person:

12 (a) sells, exchanges, gives or disposes of such unfinished firearm  
13 frame or receiver to a gunsmith duly licensed pursuant to section 400.00  
14 of this chapter;

15 (b) voluntarily surrenders such unfinished firearm frame or receiver  
16 to any law enforcement official designated pursuant to subparagraph (f)  
17 of paragraph one of subdivision a of section 265.20 of this article; or

18 (c) within six months after the effective date of this section,  
19 provides such unfinished firearm frame or receiver to a gunsmith duly  
20 licensed pursuant to section 400.00 of this chapter for the purposes of  
21 having such unfinished firearm frame or receiver serialized and regis-  
22 tered pursuant to section 265.07 of this article.

23 Criminal sale of an unfinished firearm frame or receiver in the third  
24 degree is a class E felony.

25 § 265.64 Criminal sale of an unfinished firearm frame or receiver in the  
26 second degree.

27 1. Except as otherwise provided in subdivision two of this section, a  
28 person is guilty of criminal sale of an unfinished firearm frame or  
29 receiver in the second degree when such person:

30 (a) sells, exchanges, gives or disposes of five or more unfinished  
31 firearm frames or receivers; or

32 (b) sells, exchanges, gives or disposes of a total of five or more  
33 unfinished firearm frames or receivers in a period of not more than one  
34 year.

35 2. A person shall not be guilty of criminal sale of an unfinished  
36 firearm frame or receiver in the second degree if such person:

37 (a) sells, exchanges, gives or disposes of such unfinished firearm  
38 frames or receivers to a gunsmith duly licensed pursuant to section  
39 400.00 of this chapter;

40 (b) voluntarily surrenders such unfinished firearm frames or receivers  
41 to any law enforcement official designated pursuant to subparagraph (f)  
42 of paragraph one of subdivision a of section 265.20 of this article; or

43 (c) within six months after the effective date of this section,  
44 provides such unfinished firearm frames or receivers to a gunsmith duly  
45 licensed pursuant to section 400.00 of this chapter for the purposes of  
46 having such unfinished firearm frames or receivers serialized and regis-  
47 tered pursuant to section 265.07 of this article.

48 Criminal sale of an unfinished firearm frame or receiver in the second  
49 degree is a class D felony.

50 § 265.65 Criminal sale of an unfinished firearm frame or receiver in the  
51 first degree.

52 1. A person is guilty of criminal sale of an unfinished firearm frame  
53 or receiver in the first degree when such person:

54 (a) sells, exchanges, gives or disposes of ten or more unfinished  
55 firearm frames or receivers; or

1 (b) sells, exchanges, gives or disposes of a total of ten or more  
2 unfinished firearm frames or receivers in a period of not more than one  
3 year.

4 2. A person shall not be guilty of criminal sale of an unfinished  
5 firearm frame or receiver in the first degree if such person:

6 (a) sells, exchanges, gives, or disposes of such unfinished firearm  
7 frames or receivers to a gunsmith duly licensed pursuant to section  
8 400.00 of this chapter;

9 (b) voluntarily surrenders such unfinished firearm frames or receivers  
10 to any law enforcement official designated pursuant to subparagraph (f)  
11 of paragraph one of subdivision a of section 265.20 of this article; or

12 (c) within six months after the effective date of this section,  
13 provides such unfinished firearm frames or receivers to a gunsmith duly  
14 licensed pursuant to section 400.00 of this chapter for the purposes of  
15 having such unfinished firearm frames or receivers serialized and regis-  
16 tered pursuant to section 265.07 of this article.

17 Criminal sale of an unfinished firearm frame or receiver in the first  
18 degree is a class C felony.

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