

STATE OF NEW YORK

14

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. HOYLMAN, KAPLAN, BIAGGI, GAUGHRAN, GOUNARDES, KAVANAGH, LIU, MAY -- 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:

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 (a) 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; or (b) any person who assembles,
10 manufactures, fabricates, builds, or fits together the component parts
11 of a firearm, rifle or shotgun, regardless of whether the firearm, rifle
12 or shotgun is intended for personal use, commercial sale or for any
13 other purpose. "Gunsmith" shall not include any person who performs
14 routine cleaning or maintenance on a lawfully possessed firearm, rifle
15 or shotgun for non-commercial purposes.

16 § 3. Section 265.00 of the penal law is amended by adding a new subdi-
17 vision 32 to read as follows:

18 32. "Ghost gun" means a firearm, rifle or shotgun that does not comply
19 with the provisions of section 265.07 of this article and is not serial-
20 ized in accordance with the requirements imposed on licensed importers
21 and licensed manufacturers pursuant to subsection (i) of Section 923 of
22 Title 18 of the United States Code and regulations issued pursuant ther-
23 eto, except for antique firearms as defined in subdivision fourteen of

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

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1 this section, as added by chapter nine hundred eighty-six of the laws of
2 nineteen hundred seventy-four, or any firearm, rifle or shotgun manufac-
3 ted prior to nineteen hundred sixty-eight.

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

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

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

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

20 § 265.07 Registration and serialization of firearms, rifles, shotguns,
21 finished frames or receivers, and unfinished frames or
22 receivers by gunsmiths.

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

32 (2) 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, finished frame or receiv-
35 er, or unfinished frame or receiver that he or she manufactures, assem-
36 bles or causes to be manufactured or assembled after the effective date
37 of this section, regardless of the manner of manufacturing or assembly,
38 in a manner that satisfies or exceeds the requirements imposed on
39 licensed importers and licensed manufacturers pursuant to subsection (i)
40 of Section 923 of Title 18 of the United States Code and regulations
41 issued pursuant thereto.

42 (3) A gunsmith shall register with the division of state police any
43 firearm, rifle, shotgun, finished frame or receiver, or unfinished frame
44 or receiver that he or she manufactures, assembles or causes to be manu-
45 factured or assembled after the effective date of this section, regard-
46 less of the manner of manufacturing or assembly, that would not other-
47 wise be subject to the requirements imposed on licensed importers and
48 licensed manufacturers pursuant to subsection (i) of Section 923 of
49 Title 18 of the United States Code and regulations issued pursuant ther-
50 eto.

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

53 § 6. Section 265.10 of the penal law is amended by adding a new subdivi-
54 sion 8 to read as follows:

55 8. Any person other than a gunsmith duly licensed pursuant to section
56 400.00 of this chapter who assembles, manufactures, fabricates, builds

1 or fits together the component parts of a firearm, rifle or shotgun,
2 other than for the purposes of performing routine cleaning or mainte-
3 nance on a lawfully possessed firearm, rifle or shotgun for non-commer-
4 cial purposes, is guilty of a class C felony.

5 § 7. The penal law is amended by adding three new sections 265.60,
6 265.61 and 265.62 to read as follows:

7 § 265.60 Criminal sale of a ghost gun in the third degree.

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

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

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

16 (b) within six months after the effective date of this section,
17 provides such ghost gun to a gunsmith duly licensed pursuant to section
18 400.00 of this chapter for the purposes of having such ghost gun serial-
19 ized and registered pursuant to section 265.07 of this article.

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

21 § 265.61 Criminal sale of a ghost gun in the second degree.

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

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

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

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

33 (b) within six months after the effective date of this section,
34 provides such ghost guns to a gunsmith duly licensed pursuant to section
35 400.00 of this chapter for the purposes of having such ghost guns seri-
36 alized and registered pursuant to section 265.07 of this article.

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

38 § 265.62 Criminal sale of a ghost gun in the first degree.

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

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

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

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

50 (b) within six months after the effective date of this section,
51 provides such ghost guns to a gunsmith duly licensed pursuant to section
52 400.00 of this chapter for the purposes of having such ghost guns seri-
53 alized and registered pursuant to section 265.07 of this article.

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

55 § 8. Subdivisions 1, 2, 3, and 12-a of section 400.00 of the penal
56 law, subdivision 1 and paragraph (a) of subdivision 3 as amended by

1 chapter 1 of the laws of 2013, paragraph (c) of subdivision 1 as amended
2 by chapter 60 of the laws of 2018, subdivision 2 as amended by chapter
3 189 of the laws of 2000, paragraph (b) of subdivision 3 as added by
4 chapter 778 of the laws of 1985, and subdivision 12-a as added by chap-
5 ter 1042 of the laws of 1974, are amended to read as follows:

6 1. Eligibility. No license shall be issued or renewed pursuant to this
7 section except by the licensing officer, and then only after investi-
8 gation and finding that all statements in a proper application for a
9 license are true. No license shall be issued or renewed except for an
10 applicant (a) twenty-one years of age or older, provided, however, that
11 where such applicant has been honorably discharged from the United
12 States army, navy, marine corps, air force or coast guard, or the
13 national guard of the state of New York, no such age restriction shall
14 apply; (b) of good moral character; (c) who has not been convicted
15 anywhere of a felony or a serious offense or who is not the subject of
16 an outstanding warrant of arrest issued upon the alleged commission of a
17 felony or serious offense; (d) who is not a fugitive from justice; (e)
18 who is not an unlawful user of or addicted to any controlled substance
19 as defined in section 21 U.S.C. 802; (f) who being an alien (i) is not
20 illegally or unlawfully in the United States or (ii) has not been admit-
21 ted to the United States under a nonimmigrant visa subject to the excep-
22 tion in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the
23 Armed Forces under dishonorable conditions; (h) who, having been a citi-
24 zen of the United States, has not renounced his or her citizenship; (i)
25 who has stated whether he or she has ever suffered any mental illness;
26 (j) who has not been involuntarily committed to a facility under the
27 jurisdiction of an office of the department of mental hygiene pursuant
28 to article nine or fifteen of the mental hygiene law, article seven
29 hundred thirty or section 330.20 of the criminal procedure law, section
30 four hundred two or five hundred eight of the correction law, section
31 322.2 or 353.4 of the family court act, or has not been civilly confined
32 in a secure treatment facility pursuant to article ten of the mental
33 hygiene law; (k) who has not had a license revoked or who is not under a
34 suspension or ineligibility order issued pursuant to the provisions of
35 section 530.14 of the criminal procedure law or section eight hundred
36 forty-two-a of the family court act; (l) in the county of Westchester,
37 who has successfully completed a firearms safety course and test as
38 evidenced by a certificate of completion issued in his or her name and
39 endorsed and affirmed under the penalties of perjury by a duly author-
40 ized instructor, except that: (i) persons who are honorably discharged
41 from the United States army, navy, marine corps or coast guard, or of
42 the national guard of the state of New York, and produce evidence of
43 official qualification in firearms during the term of service are not
44 required to have completed those hours of a firearms safety course
45 pertaining to the safe use, carrying, possession, maintenance and stor-
46 age of a firearm; and (ii) persons who were licensed to possess a pistol
47 or revolver prior to the effective date of this paragraph are not
48 required to have completed a firearms safety course and test; (m) who
49 has not had a guardian appointed for him or her pursuant to any
50 provision of state law, based on a determination that as a result of
51 marked subnormal intelligence, mental illness, incapacity, condition or
52 disease, he or she lacks the mental capacity to contract or manage his
53 or her own affairs; and (n) concerning whom no good cause exists for the
54 denial of the license. No person shall engage in the business of
55 gunsmith or dealer in firearms, nor assemble, manufacture, fabricate,
56 build, or fit together the component parts of a firearm, rifle, or shot-

1 gun, other than for the purposes of performing routine cleaning or main-
2 tenance on a lawfully possessed firearm, rifle, or shotgun for non-com-
3 mercial purposes, unless licensed pursuant to this section. An applicant
4 to engage in such business shall also be a citizen of the United States,
5 more than twenty-one years of age and maintain a place of business in
6 the city or county where the license is issued. For such business, if
7 the applicant is a firm or partnership, each member thereof shall comply
8 with all of the requirements set forth in this subdivision and if the
9 applicant is a corporation, each officer thereof shall so comply.

10 2. Types of licenses. A license for gunsmith shall be issued to engage
11 in such business or to assemble, manufacture, fabricate, build, or fit
12 together the component parts of a firearm, rifle or shotgun for non-com-
13 mercial purposes, and a license for dealer in firearms shall be issued
14 to engage in such business. A license for a pistol or revolver, other
15 than an assault weapon or a disguised gun, shall be issued to (a) have
16 and possess in his dwelling by a householder; (b) have and possess in
17 his place of business by a merchant or storekeeper; (c) have and carry
18 concealed while so employed by a messenger employed by a banking insti-
19 tution or express company; (d) have and carry concealed by a justice of
20 the supreme court in the first or second judicial departments, or by a
21 judge of the New York city civil court or the New York city criminal
22 court; (e) have and carry concealed while so employed by a regular
23 employee of an institution of the state, or of any county, city, town or
24 village, under control of a commissioner of correction of the city or
25 any warden, superintendent or head keeper of any state prison, peniten-
26 tiary, workhouse, county jail or other institution for the detention of
27 persons convicted or accused of crime or held as witnesses in criminal
28 cases, provided that application is made therefor by such commissioner,
29 warden, superintendent or head keeper; (f) have and carry concealed,
30 without regard to employment or place of possession, by any person when
31 proper cause exists for the issuance thereof; and (g) have, possess,
32 collect and carry antique pistols which are defined as follows: (i) any
33 single shot, muzzle loading pistol with a matchlock, flintlock, percus-
34 sion cap, or similar type of ignition system manufactured in or before
35 1898, which is not designed for using rimfire or conventional centerfire
36 fixed ammunition; and (ii) any replica of any pistol described in clause
37 (i) hereof if such replica--

38 (1) is not designed or redesigned for using rimfire or conventional
39 centerfire fixed ammunition, or

40 (2) uses rimfire or conventional centerfire fixed ammunition which is
41 no longer manufactured in the United States and which is not readily
42 available in the ordinary channels of commercial trade.

43 3. Applications. (a) Applications shall be made and renewed, in the
44 case of a license to carry or possess a pistol or revolver, to the
45 licensing officer in the city or county, as the case may be, where the
46 applicant resides, is principally employed or has his or her principal
47 place of business as merchant or storekeeper; and, in the case of a
48 license as gunsmith or dealer in firearms, to the licensing officer
49 where such place of business is located, or for a person applying for a
50 license as gunsmith in order to assemble, manufacture, fabricate, build,
51 or fit together the component parts of a firearm, rifle, or shotgun for
52 non-commercial purposes, to the licensing officer in the city or county,
53 as the case may be, where the premises upon which the applicant intends
54 to engage in such activities is located. Blank applications shall,
55 except in the city of New York, be approved as to form by the super-
56 intendent of state police. An application shall state the full name,

1 date of birth, residence, present occupation of each person or individ-
2 ual signing the same, whether or not he or she is a citizen of the
3 United States, whether or not he or she complies with each requirement
4 for eligibility specified in subdivision one of this section and such
5 other facts as may be required to show the good character, competency
6 and integrity of each person or individual signing the application. An
7 application shall be signed and verified by the applicant. Each individ-
8 ual signing an application shall submit one photograph of himself or
9 herself and a duplicate for each required copy of the application. Such
10 photographs shall have been taken within thirty days prior to filing the
11 application. In case of a license as gunsmith or dealer in firearms, the
12 photographs submitted shall be two inches square, and the application
13 shall also state the previous occupation of each individual signing the
14 same and the location of the place of such business, if applicable, or
15 of the bureau, agency, subagency, office or branch office for which the
16 license is sought, specifying the name of the city, town or village,
17 indicating the street and number and otherwise giving such apt
18 description as to point out reasonably the location thereof. In such
19 case, if the applicant is a firm, partnership or corporation, its name,
20 date and place of formation, and principal place of business shall be
21 stated. For such firm or partnership, the application shall be signed
22 and verified by each individual composing or intending to compose the
23 same, and for such corporation, by each officer thereof. In the case of
24 a person applying for a license as gunsmith in order to assemble, manu-
25 facture, fabricate, build, or fit together the component parts of a
26 firearm, rifle, or shotgun for non-commercial purposes, the applicant
27 shall state the location of the place of the premises where the appli-
28 cant intends to engage in such activities, specifying the name of the
29 city, town or village, indicating the street and number and otherwise
30 giving apt description as to point out reasonably the location thereof.

31 (b) Application for an exemption under paragraph seven-b of subdivi-
32 sion a of section 265.20 of this chapter. Each applicant desiring to
33 obtain the exemption set forth in paragraph seven-b of subdivision a of
34 section 265.20 of this chapter shall make such request in writing of the
35 licensing officer with whom his application for a license is filed, at
36 the time of filing such application. Such request shall include a signed
37 and verified statement by the person authorized to instruct and super-
38 vise the applicant, that has met with the applicant and that he has
39 determined that, in his judgment, said applicant does not appear to be
40 or poses a threat to be, a danger to himself or to others. He shall
41 include a copy of his certificate as an instructor in small arms, if he
42 is required to be certified, and state his address and telephone number.
43 He shall specify the exact location by name, address and telephone
44 number where such instruction will take place. Such licensing officer
45 shall, no later than ten business days after such filing, request the
46 duly constituted police authorities of the locality where such applica-
47 tion is made to investigate and ascertain any previous criminal record
48 of the applicant pursuant to subdivision four of this section. Upon
49 completion of this investigation, the police authority shall report the
50 results to the licensing officer without unnecessary delay. The licens-
51 ing officer shall no later than ten business days after the receipt of
52 such investigation, determine if the applicant has been previously
53 denied a license, been convicted of a felony, or been convicted of a
54 serious offense, and either approve or disapprove the applicant for
55 exemption purposes based upon such determinations. If the applicant is
56 approved for the exemption, the licensing officer shall notify the

1 appropriate duly constituted police authorities and the applicant. Such
2 exemption shall terminate if the application for the license is denied,
3 or at any earlier time based upon any information obtained by the
4 licensing officer or the appropriate police authorities which would
5 cause the license to be denied. The applicant and appropriate police
6 authorities shall be notified of any such terminations.

7 12-a. State police regulations applicable to licensed gunsmiths
8 engaged in the business of assembling or manufacturing firearms. The
9 superintendent of state police is hereby authorized to issue such rules
10 and regulations as he deems reasonably necessary to prevent the manu-
11 facture and assembly of unsafe firearms in the state. Such rules and
12 regulations shall establish safety standards in regard to the manu-
13 facture and assembly of firearms in the state, including specifications
14 as to materials and parts used, the proper storage and shipment of
15 firearms, and minimum standards of quality control. Regulations issued
16 by the state police pursuant to this subdivision shall apply to any
17 person licensed as a gunsmith under this section [~~engaged in the busi-~~
18 ~~ness of manufacturing or assembling firearms,~~] and any violation thereof
19 shall subject the licensee to revocation of license pursuant to subdivi-
20 sion eleven of this section.

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