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:

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 (a) 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; or (b) 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. "Gunsmith" shall not include any person who performs routine cleaning or maintenance on a lawfully possessed firearm, rifle or shotgun for non-commercial purposes.

§ 3. Section 265.00 of the penal law is amended by adding a new subdivision 32 to read as follows:

32. "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

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

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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:

(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, finished frames or receivers, 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, finished frame or receiver, 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, finished frame or receiver, 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.

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, other than for the purposes of performing routine cleaning or maintenance on a lawfully possessed firearm, rifle or shotgun for non-commercial purposes, 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. Subdivisions 1, 2, 3, and 12-a of section 400.00 of the penal law, subdivision 1 and paragraph (a) of subdivision 3 as amended by

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

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

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

2. Types of licenses. A license for gunsmith shall be issued to engage in such business or to assemble, manufacture, fabricate, build, or fit together the component parts of a firearm, rifle or shotgun for non-commercial purposes, and a license for dealer in firearms shall be issued to engage in such business. A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before l898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica--

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

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

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

date of birth, residence, present occupation of each person or individual signing the same, whether or not he or she is a citizen of the United States, whether or not he or she complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, **if applicable,** or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual composing or intending to compose the same, and for such corporation, by each officer thereof. **In the case of a person applying for a license as gunsmith in order to assemble, manufacture, fabricate, build, or fit together the component parts of a firearm, rifle, or shotgun for non-commercial purposes, the applicant shall state the location of the place of the premises where the applicant intends to engage in such activities, specifying the name of the city, town or village, indicating the street and number and otherwise giving apt description as to point out reasonably the location thereof.**

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

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

12-a. State police regulations applicable to licensed gunsmiths engaged in the business of assembling or manufacturing firearms. The superintendent of state police is hereby authorized to issue such rules and regulations as he deems reasonably necessary to prevent the manufacture and assembly of unsafe firearms in the state. Such rules and regulations shall establish safety standards in regard to the manufacture and assembly of firearms in the state, including specifications as to materials and parts used, the proper storage and shipment of firearms, and minimum standards of quality control. Regulations issued by the state police pursuant to this subdivision shall apply to any person licensed as a gunsmith under this section [~~engaged in the business of manufacturing or assembling firearms,~~] and any violation thereof shall subject the licensee to revocation of license pursuant to subdivision eleven of this section.

§ 9. This act shall take effect on the one hundred eightieth 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.