

# 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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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

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 subdivi-  
15 sion 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

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-

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.