STATE OF NEW YORK

14--A

Cal. No. 312

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. HOYLMAN, KAPLAN, BIAGGI, COONEY, GAUGHRAN, GOUNARDES, HARCKHAM, JACKSON, KAVANAGH, LIU, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Section 265.00 of the penal law is amended by adding a new subdivision 8-a to read as follows:

8-a. "Serialized" means bearing a visible identification number and/or symbol 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 in effect at the time of assembly, except for antique firearms as defined in subdivision fourteen of 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.

§ 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.

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

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§ 4. Subdivision 8 of section 265.01 of the penal law, as amended by chapter 1 of the laws of 2013, is amended and a new subdivision 9 is added to read as follows:

(8) [~~He~~] **Such person** possesses any armor piercing ammunition with intent to use the same unlawfully against another.

(9) Such person is not required to be a gunsmith licensed pursuant to section 400.00 of this chapter and, knowing it is a ghost gun, such person possesses a ghost gun, provided that a person shall not be guilty under this subdivision when he or she (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) for a period of six months after the effective date of this section possesses a ghost gun prior to serialization and registration of such ghost gun 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.

(1) For the purposes of this section, "unfinished frame or receiver" means 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 material that has had its size or external shape altered to facilitate transportation or storage or has had its chemical composition altered.

(2) On or before the effective date of this section, and promptly upon taking possession thereof at any time thereafter, any person required to be a gunsmith licensed pursuant to section 400.00 of this chapter, who is in possession of an unserialized firearm, rifle, shotgun, finished frame or receiver, or unfinished frame or receiver shall:

(a) engrave, cast, stamp or otherwise conspicuously place both a unique serial number and his or her name (or recognized abbreviation) on such firearm, rifle, shotgun, finished frame or receiver, or unfinished frame or receiver, in a manner that satisfies or exceeds the requirements imposed on licensed importers and manufacturers pursuant to section (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto at the time of such assembly; and

(b) register with the division of state police any such firearm, rifle or shotgun, finished frame or receiver, or unfinished frame or receiver.

Any person required to be a gunsmith licensed pursuant to section 400.00 of this chapter who fails to comply with the provisions of this section shall be guilty of a class E felony.

§ 6. The penal law is amended by adding two new sections 265.60 and 265.61 to read as follows:

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

1. A person is guilty of criminal sale of a ghost gun in the second degree when, knowing or having reason to know it is a ghost gun, he or she sells, exchanges, gives or disposes of a ghost gun to another person.

2. Notwithstanding subdivision one of this section, 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 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 a period of six months after the effective date of this section sells, exchanges, gives, or disposes of such ghost gun to a gunsmith licensed pursuant to section 400.00 of this chapter.

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

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

1. A person is guilty of criminal sale of a ghost gun in the first degree when, knowing or having reason to know they are ghost guns, he or she sells, exchanges, gives or disposes of ten or more ghost guns to another person or persons.

2. Notwithstanding subdivision one of this section, a person shall not be guilty of criminal sale of a ghost gun in the first degree if he or she: (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 a period of six months after the effective date of this section sells, exchanges, gives, or disposes of such ghost guns to a gunsmith licensed pursuant to section 400.00 of this chapter.

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

§ 7. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 8. 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.