

STATE OF NEW YORK

6762

2021-2022 Regular Sessions

IN ASSEMBLY

March 29, 2021

Introduced by M. of A. FAHY, ANDERSON, BURDICK, DINOWITZ, SEAWRIGHT, SILLITTI, TAYLOR -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to the dangers to safety and health and creation of a public nuisance caused by the sale, manufacturing, distribution, importing and marketing of firearms

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

1 Section 1. Legislative findings and intent. The legislature hereby
2 finds that the illegal use of firearms not only constitutes a public
3 nuisance as declared in article 400 of the penal law, but that the
4 effects of such nuisance poses specific harm to New Yorkers based large-
5 ly on their zip code and certain immutable characteristics such as race
6 and ethnicity. Illegal firearm violence has disproportionately affected
7 underserved black and brown neighborhoods in our cities and throughout
8 the state despite stringent state and local laws against the illegal
9 possession of firearms while, according to the Bureau of Alcohol, Tobac-
10 co, Firearms and Explosives statistics, 74% of firearms used in crimes
11 in New York are purchased outside of New York. Thus, the legislature
12 further finds that given the ease at which legal firearms flow into the
13 illegal market, and given the specific harm illegal firearm violence
14 causes certain New Yorkers, those responsible for the illegal or unrea-
15 sonable sale, manufacture, distribution, importing or marketing of
16 firearms may be held liable for the public nuisance caused by such
17 activities.

18 § 2. The general business law is amended by adding a new article
19 39-DDDD to read as follows:

ARTICLE 39-DDDD

SALE, MANUFACTURING, IMPORTING AND MARKETING OF FIREARMS

Section 898-a. Definitions.

898-b. Dangers to safety and health.

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

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1 898-c. Public nuisance.

2 898-d. Enforcement.

3 898-e. Private right of action.

4 § 898-a. Definitions. For purposes of this article, the following
5 terms shall have the following meanings:

6 1. "Deceptive acts or practices" shall have the same meaning as
7 defined in article twenty-two-A of this chapter.

8 2. "False advertising" shall have the same meaning as defined in arti-
9 cle twenty-two-A of this chapter.

10 3. "Gun industry member" shall mean a person, firm, corporation or
11 association engaged in the sale, manufacturing, distribution, importing
12 or marketing of firearms.

13 4. The terms "knowingly" and "recklessly" shall have the same meaning
14 as defined in section 15.05 of the penal law.

15 5. "Qualified product" shall have the same meaning as defined in 15
16 U.S.C. section 7903(4).

17 § 898-b. Dangers to safety and health. No gun industry member, by
18 conduct either unlawful in itself or unreasonable under all the circum-
19 stances shall knowingly or recklessly create or maintain a condition
20 that endangers the safety or health of the public through the sale,
21 manufacturing, importing or marketing of a qualified product.

22 § 898-c. Public nuisance. 1. A violation of section eight hundred
23 ninety-eight-b of this article that results in harm to the public shall
24 hereby be declared to be a public nuisance.

25 2. The existence of a public nuisance shall not depend on whether the
26 gun industry member acted for the purpose of causing harm to the public.

27 3. The acts or omissions of a gun industry member shall constitute a
28 proximate cause of the public nuisance if the harm to the public was a
29 reasonably foreseeable effect of such acts or omissions, notwithstanding
30 any intervening actions, including but not limited to criminal actions
31 by third parties.

32 4. In determining whether a nuisance exists, a finder of fact shall
33 consider the totality of the evidence, which may include, but is not
34 limited to:

35 (a) the distribution, importation, marketing or sales methods utilized
36 by the gun industry member and their foreseeable effects on crimes in
37 New York;

38 (b) the number of qualified products that have been diverted to the
39 illegal market through the alleged illegal, irresponsible or unreason-
40 able conduct of the gun industry member;

41 (c) the number of crimes that have been committed in New York with
42 qualified products sold, manufactured, distributed, imported or marketed
43 by the gun industry member in the alleged illegal, irresponsible or
44 unreasonable manner;

45 (d) the total number of qualified products that the gun industry
46 member manufactured, distributed or sold in the United States, through
47 the alleged illegal, irresponsible or unreasonable conduct, which were
48 recovered in, or destined for, New York;

49 (e) whether the alleged illegal, irresponsible or unreasonable conduct
50 of the gun industry member constitutes deceptive acts or practices in
51 the conduct of any business, trade or commerce or in the furnishing of
52 any service;

53 (f) whether the alleged illegal, irresponsible or unreasonable conduct
54 of the gun industry member constitutes false advertising in the conduct
55 of any business, trade, or commerce or in the furnishing of any service;
56 and

1 (g) any other illegal, irresponsible or unreasonable acts or omissions
2 by the gun industry member that create, contribute to or maintain public
3 harm.

4 § 898-d. Enforcement. The provisions of this article may be enforced
5 by the attorney general in the name of the people of the state of New
6 York, or by the town attorney, city corporation counsel, or other
7 lawfully designated enforcement officer of a municipality or local
8 government.

9 § 898-e. Private right of action. Any person, firm, corporation or
10 association that has been damaged as a result of a gun industry member's
11 acts or omissions in violation of this article shall be entitled to
12 bring an action for recovery of damages or to enforce this article.

13 § 3. This act shall take effect immediately.