S T A T E O F N E W Y O R K

5237

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. ESPAILLAT, PEOPLES -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BENJAMIN, CLARK, TOWNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to authorizing a cause of action against the manufacturers of certain weapons illegally used to injure or kill persons in New York state

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general obligations law is amended by adding a new section 11-108 to read as follows:

S 11-108. CIVIL PENALTY FOR INJURY OR DEATH TO PERSONS IN NEW YORK STATE; MANUFACTURERS OF WEAPONS. 1. A PERSON, CORPORATION, FIRM, PARTNERSHIP, OR OTHER ENTITY THAT MANUFACTURES ANY WEAPON SHALL BE LIABLE FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, IF SUCH WEAPON IS USED BY A PERSON WHO IS NOT LAWFULLY AUTHORIZED TO POSSESS SUCH WEAPON IN THE STATE TO INJURE OR KILL ANOTHER PERSON WITHIN THE STATE. "WEAPON", FOR PURPOSES OF THIS SECTION, MEANS A FIREARM, RIFLE, SHOTGUN, MACHINE-GUN OR ASSAULT WEAPON, AS SUCH TERMS ARE DEFINED IN SECTION 265.00 OF THE PENAL LAW.

2. THE LIABILITY ESTABLISHED UNDER THIS SECTION DOES NOT APPLY TO PERSONS, CORPORATIONS, FIRMS, PARTNERSHIPS, OR OTHER ENTITIES THAT COMPLY WITH THE FOLLOWING PROVISIONS:

(A) DOES NOT SELL WEAPONS TO DEALERS WHO HAVE MORE THAN TWENTY WEAPONS SOLD WITHIN ANY CONTINUOUS TWELVE MONTH PERIOD IN THE PRECEDING FIVE YEARS TRACED TO USE IN A CRIME OR ILLEGAL POSSESSION, AS DETERMINED BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, OR WHO HAVE NOT, ON THEIR OWN, SOLD WEAPONS, TWENTY OR MORE OF WHICH ARE TRACED TO USE IN A CRIME OR ILLEGAL POSSESSION, AS DETERMINED BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES;

(B) MAKES NO SALES AT GUN SHOWS OR ALTERNATIVE VENUES UNLESS SUCH SALES AT THE GUN SHOW OR ALTERNATIVE VENUE ARE CONDUCTED ONLY UPON

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

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COMPLETION OF A BACKGROUND CHECK, AND ALL SELLERS AT THE GUN SHOW OR ALTERNATIVE VENUE AGREE TO CONDUCT SALES ONLY UPON COMPLETION OF A BACKGROUND CHECK AS DICTATED BY STATE AND FEDERAL LAW FOR SALE AT A RETAIL GUN STORE;

(C) ONLY SELL WEAPONS TO DEALERS WHO OPERATE A RETAIL SHOP LOCATED AT A FIXED ADDRESS WHERE:

(1) THE DEALER MAINTAINS AN ELECTRONIC DATABASE OF MAKE, MODEL, CALIBER OR GAUGE, AND SERIAL NUMBER OF ALL WEAPONS HELD IN INVENTORY OR OFFERED FOR SALE;

(2) THE DEALER MAINTAINS AN ELECTRONIC DATABASE OF MAKE, MODEL, CALIBER OR GAUGE, AND SERIAL NUMBER OF ALL WEAPONS SOLD AND THE NAME AND LICENSE NUMBER OF ALL PURCHASERS; AND

(3) THE DEALER MAKES VISIBLE ALL PERMITS AND LEGALLY REQUIRED SIGNAGE;

(D) PROVIDES FULL ACCESS TO THE RECORDS SPECIFIED IN PARAGRAPH (C) OF THIS SUBDIVISION TO LAW ENFORCEMENT PERSONNEL AND GOVERNMENT REGULATORS CONDUCTING COMPLIANCE INSPECTIONS;

(E) LIMITS PURCHASES BY ANY INDIVIDUAL IN ANY GIVEN THIRTY DAY PERIOD TO ONE WEAPON; AND

(F) IMPLEMENTS A SECURITY PLAN FOR SECURING WEAPONS IN TRANSIT.

3. (A) NO ACTION MAY BE COMMENCED PURSUANT TO THIS SECTION BY ANY PERSON WHO IS INJURED OR KILLED BY THE DISCHARGE OF A WEAPON WHILE SUCH PERSON IS COMMITTING OR ATTEMPTING TO COMMIT A CRIME (WHETHER OR NOT SUCH CRIME IS ACTUALLY CHARGED), OR WHILE SUCH PERSON IS ATTEMPTING TO EVADE ARREST BY A LAW ENFORCEMENT OFFICIAL. THIS EXEMPTION SHALL BE IN THE NATURE OF AN AFFIRMATIVE DEFENSE, AND SHALL BE PROVEN BY A PREPONDERANCE OF THE EVIDENCE.

(B) NO ACTION MAY BE COMMENCED PURSUANT TO THIS SECTION BY ANY PERSON INJURED OR KILLED BY THE DISCHARGE OF A WEAPON BY A LAW ENFORCEMENT OFFICIAL.

(C) THIS SECTION SHALL NOT LIMIT IN SCOPE ANY CAUSE OF ACTION, OTHER THAN THAT PROVIDED BY THIS SECTION, AVAILABLE TO A PERSON INJURED BY OR KILLED BY A WEAPON.

(D) NOTHING IN THIS SECTION SHALL PREVENT A MANUFACTURER, IMPORTER, OR DEALER FROM SEEKING WHOLE OR PARTIAL INDEMNITY OR CONTRIBUTION FOR ANY LIABILITY INCURRED UNDER THIS SECTION FROM ANY THIRD PARTY WHOLLY OR PARTIALLY RESPONSIBLE FOR THE INJURY OR DEATH.

(E) NO ACTION MAY BE COMMENCED PURSUANT TO THIS SECTION BY ANY PERSON FOR A SELF-INFLICTED INJURY.

4. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, THERE SHALL BE NO BASIS FOR LIABILITY UNDER THIS SECTION IF THE MANUFACTURER PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT:

(A) THE MANUFACTURER DISPOSED OF THE WEAPON TO THE ARMED FORCES OF THE UNITED STATES, OR A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY; OR

(B) PRIOR TO THE SEIZURE OF THE WEAPON, A LAWFUL POSSESSOR OF THE WEAPON HAS REPORTED ITS THEFT TO A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.