

5922

2017-2018 Regular Sessions

I N S E N A T E

May 5, 2017

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to providing for compensation for injury or death cause by the negligent entrustment of a firearm

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

1 Section 1. Legislative intent. The federal Protection of Lawful
2 Commerce in Arms Act, 109 P.L. 92, 119 Stat. 2095, bars almost all civil
3 actions or proceedings against manufacturers and sellers of firearms,
4 but it provides an exemption for actions brought for negligent entrust-
5 ment. Negligent entrustment under the act means the supplying of a
6 firearm by a seller for use by another person when the seller knows, or
7 reasonably should know, the person to whom the product is supplied is
8 likely to, and does, use the product in a manner involving unreasonable
9 risk of physical injury to the person or others. It is the intent of the
10 legislature to extend the negligent entrustment liability of firearm
11 manufacturers and sellers to the maximum extent allowable under federal
12 law.

13 S 2. The general obligations law is amended by adding a new section
14 11-108 to read as follows:

15 S 11-108. COMPENSATION FOR INJURY OR DEATH CAUSED BY THE NEGLIGENT
16 ENTRUSTMENT OF A FIREARM. 1. ANY PERSON WHO IS INJURED IN PERSON, PROP-
17 ERTY, MEANS OF SUPPORT, OR OTHERWISE BY THE USE OF A FIREARM SHALL HAVE
18 A RIGHT OF ACTION AGAINST ANY PERSON OR ENTITY WHO CAUSED OR CONTRIBUTED
19 TO THE INJURY THROUGH THE NEGLIGENT ENTRUSTMENT OF A FIREARM. IN ANY
20 SUCH ACTION, THE INJURED PERSON SHALL HAVE A RIGHT TO RECOVER ACTUAL AND
21 PUNITIVE DAMAGES.

22 2. IN CASE OF THE DEATH OF THE PERSON INJURED, THE ACTION OR RIGHT OF
23 ACTION GIVEN BY THIS ACTION SHALL SURVIVE TO HIS OR HER EXECUTOR OR

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

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1 ADMINISTRATOR, AND THE AMOUNT SO RECOVERED BY EITHER A SPOUSE OR CHILD
2 SHALL BE HIS OR HER SOLE AND SEPARATE PROPERTY.

3 3. ACTIONS AS DESCRIBED IN SUBDIVISION ONE OR TWO OF THIS SECTION MAY
4 BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION.

5 4. IN ANY CASE WHERE PARENTS SHALL BE ENTITLED TO SUCH DAMAGES, EITHER
6 PARENT MAY SUE ALONE THEREFOR, BUT RECOVERY BY ONE OF SUCH PARTIES SHALL
7 BE A BAR TO SUIT BROUGHT BY THE OTHER.

8 5. AS USED IN THIS SECTION, "NEGLIGENT ENTRUSTMENT" MEANS THE SUPPLING
9 OF A FIREARM BY A SELLER FOR USE BY ANOTHER PERSON WHEN THE SELLER
10 KNOWS, OR REASONABLY SHOULD KNOW, THE PERSON TO WHOM THE PRODUCT IS
11 SUPPLIED IS LIKELY TO, AND DOES, USE THE PRODUCT IN A MANNER INVOLVING
12 UNREASONABLE RISK OF PHYSICAL INJURY TO THE PERSON OR OTHERS.

13 6. FOR THE PURPOSES OF THIS SECTION, THE DISTRIBUTION OF AN AUTOMATIC
14 OR SEMI-AUTOMATIC FIREARM NOT TYPICALLY USED FOR LAWFUL HUNTING
15 PURPOSES, INCLUDING BUT NOT LIMITED TO HANDGUNS AND ASSAULT WEAPONS, TO
16 THE PUBLIC, INCLUDING THOSE WITH A PERMIT TO POSSESS A FIREARM, INVOLVES
17 AN UNREASONABLE RISK OF PHYSICAL INJURY TO OTHERS.

18 S 3. This act shall take effect immediately and shall apply to all
19 claims arising on or after such effective date and to all claims pending
20 on such effective date.