STATE OF NEW YORK

10545

IN ASSEMBLY

July 6, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Abinanti) -- read once and referred to the Committee on Codes

AN ACT to create a private right of action for any person against any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a serial number required by law, assault weapon, .50 BMG rifle, or firearm precursor part, subject to certain exceptions; and to amend the civil practice law and rules, in relation to the liability of a person who challenges a firearm restriction in court

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

Section 1. Legislative intent. (a) The Legislature hereby finds and declares that the proliferation of assault weapons, .50 BMG rifles, and unserialized firearms poses a threat to the health, safety, and security of all residents of, and visitors to, this state. All New Yorker residents are directly harmed by the proliferation of these weapons and this state has a compelling state interest in protecting its citizens from gun violence and from intimidation by persons brandishing these weapons. Further, this state has a compelling interest in enabling law enforcement authorities to trace firearms used, manufactured, distributed, or transported unlawfully.

(b) The Legislature has previously restricted assault weapons based upon finding that each such firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. The Legislature finds that .50 BMG rifles pose a clear and present threat to the health, safety, and security of all residents of, and visitors to, this state, because those firearms have such a high capacity for long-distance and highly destructive firepower that they pose an unacceptable risk of death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles,

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

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power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure. The Legislature further finds and declares that the manufacture, distribution, transport, importation, and sale of unserialized firearms poses a threat to the health, safety, and security of all residents of, and visitors to, this state, and impedes law enforcement activities, and that the manufacture, distribution, transport, importation, and sale of firearm precursor parts and kits is contributing to the proliferation of unserialized firearms in the state.

(c) It is the intent of the Legislature in enacting this act to restrict in this state the manufacture, distribution, transportation, importation, and sale of assault weapons, .50 BMG rifles, and unserialized firearms by creating new civil law prohibitions and a civil enforcement mechanism, independent of existing law. Nothing in this act shall be construed to limit in any way the enforceability of existing laws concerning firearms.

§ 2. For purposes of this act, the following definitions shall apply:

(a) ".50 BMG rifle" means a center fire rifle that can fire a .50 BMG cartridge and is not already an assault weapon or a machinegun. ".50 BMG rifle" does not include any antique firearm, nor any curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(b) (1) "Assault weapon" means the following designated semiautomatic firearms:

(A) All of the following specified rifles:

(i) All AK series, including, but not limited to, the models identified as follows:

(I) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.

(II) Norinco 56, 56S, 84S, and 86S.

(III) Poly Technologies AKS and AK47.

(IV) MAADI AK47 and ARM.

(ii) UZI and Galil.

(iii) Beretta AR-70.

(iv) CETME Sporter.

(v) Colt AR-15 series.

(vi) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.

(vii) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.

(viii) MAS 223.

(ix) HK-91, HK-93, HK-94, and HK-PSG-1.

(x) The following MAC types:

(I) RPB Industries Inc. sM10 and sM11.

(II) SWD Incorporated M11.

(xi) SKS with detachable magazine.

(xii) SIG AMT, PE-57, SG 550, and SG 551.

(xiii) Springfield Armory BM59 and SAR-48.

(xiv) Sterling MK-6.

(xv) Steyer AUG.

(xvi) Valmet M62S, M71S, and M78S.

(xvii) Armalite AR-180.

(xviii) Bushmaster Assault Rifle.

(xix) Calico M-900.

(xx) J&R ENG M-68.

(xxi) Weaver Arms Nighthawk.

(B) All of the following specified pistols:

(i) UZI.

(ii) Encom MP-9 and MP-45.

(iii) The following MAC types:
(I) RPB Industries Inc. sM10 and sM11.
(II) SWD Incorporated M-11.
(III) Advance Armament Inc. M-11.
(IV) Military Armament Corp. Ingram M-11.
(V) Intratec TEC-9.
(VI) Sites Spectre.
(VII) Sterling MK-7.
(VIII) Calico M-950.
(IX) Bushmaster Pistol.
(C) All of the following specified shotguns:
(i) Franchi SPAS 12 and LAW 12.
(ii) Striker 12.
(iii) The Streetsweeper type S/S Inc. SS/12.
(D) Any firearm declared to be an assault weapon by the court.
(E) Any firearm included in the list promulgated by the Attorney General pursuant to the Penal Law and any other models that are only variations of those weapons with minor differences, regardless of the manufacturer. The Legislature has defined assault weapons as the types, series, and models listed in this paragraph because it was the most effective way to identify and restrict a specific class of semiautomatic weapons.
(F) As used in this paragraph, "series" includes all other models that are only variations, with minor differences, of those models listed in subparagraph (A) of this paragraph, regardless of the manufacturer.
(2) (A) Notwithstanding paragraph (1) of this section, "assault weapon" also means any of the following:
(i) A semiautomatic, centerfire rifle that does not have a fixed magazine but has any one of the following:
(I) A pistol grip that protrudes conspicuously beneath the action of the weapon.
(II) A thumbhole stock.
(III) A folding or telescoping stock.
(IV) A grenade launcher or flare launcher.
(V) A flash suppressor.
(VI) A forward pistol grip.
(ii) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
(iii) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.
(iv) A semiautomatic pistol that does not have a fixed magazine but has any one of the following:
(I) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
(II) A second handgrip.
(III) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
(IV) The capacity to accept a detachable magazine at some location outside of the pistol grip.
(v) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.
(vi) A semiautomatic shotgun that has both of the following:
(I) A folding or telescoping stock.
(II) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(vii) A semiautomatic shotgun that does not have a fixed magazine.
(viii) Any shotgun with a revolving cylinder.
(ix) A semiautomatic, centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
(I) A pistol grip that protrudes conspicuously beneath the action of the weapon.
(II) A thumbhole stock.
(III) A folding or telescoping stock.
(IV) A grenade launcher or flare launcher.
(V) A flash suppressor.
(VI) A forward pistol grip.
(VII) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
(VIII) A second handgrip.
(IX) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
(X) The capacity to accept a detachable magazine at some location outside of the pistol grip.
(x) A semiautomatic, centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
(xi) A semiautomatic, centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.
(B) For purposes of this paragraph, "fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.
(C) The Legislature finds a significant public purpose in exempting from the definition of "assault weapon" pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that were used for Olympic target shooting purposes as of January 1, 2001, and that would otherwise fall within the definition of "assault weapon" pursuant to this section are exempt, as provided in subparagraph (D) of this paragraph.
(D) "Assault weapon" does not include either of the following:
(i) Any antique firearm.
(ii) Any of the following pistols, because they are consistent with the significant public purpose expressed in subparagraph (C) of this paragraph:

MANUFACTURER	MODEL	CALIBER
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W LONG
PARDINI	GPO	.22 SHORT
PARDINI	GP-SCHUMANN	.22 SHORT

PARDINI	HP	.32 S&W LONG
PARDINI	MP	.32 S&W LONG
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP-2000	.22 SHORT

(iii) The Division of Criminal Justice Services shall create a program that is consistent with the purposes stated in subparagraph (C) of this paragraph to exempt new models of competitive pistols that would otherwise fall within the definition of "assault weapon" pursuant to this section from being classified as an assault weapon. The exempt competitive pistols may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the division deems relevant.

(c) "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(d) (1) "Firearm precursor part" means a component of a firearm that is necessary to build or assemble a firearm and is described in either of the following categories:

(A) An unfinished receiver, including both a single part receiver and a multiple part receiver, such as a receiver in an AR-10- or AR-15-style firearm. An unfinished receiver includes a receiver tube, a molded or shaped polymer frame or receiver, a metallic casting, a metallic forging, and a receiver flat, such as a Kalashnikov-style weapons system, Kalashnikov-style receiver channel, or a Browning-style receiver side plate.

(B) An unfinished handgun frame.

(2) The Division of Criminal Justice Services, consistent with this subdivision, shall provide written guidance and pictorial diagrams demonstrating each category of firearm precursor part specified in paragraph (1) of this subdivision.

(3) Firearm parts that can only be used on antique firearms, as defined in section 265.00 of the Penal Law, are not firearm precursor parts.

(4) A firearm precursor part is not a firearm or the frame or receiver of a firearm.

(e) "Unserialized firearm" means a firearm that does not have a serial number as required by law or has had its serial number altered or obliterated.

§ 3. (a) Notwithstanding any other law, no person within this state may manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed, transported, or imported into the state, keep for sale, offer or expose for sale, or give or lend, any assault weapon, .50 BMG rifle, or unserialized firearm, except as provided in subdivisions (d) and (e) of section four of this act.

(b) No person within this state may manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed or transported or imported into the state, keep for sale, offer or expose for sale, or give or lend, any firearm precursor part. This subdivision shall not apply to a manufacturer or importer of

firearms licensed pursuant to Chapter 44 (commencing with Section 921) of Part I of Title 18 of the United States Code, and the regulations issued pursuant thereto, except that the manufacturer or importer shall not perform any of the acts prohibited by this subdivision with respect to a kit of firearm precursor parts containing all parts necessary to construct a functioning firearm.

(c) The prohibitions described in subdivisions (a) and (b) of this section apply whether or not the assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part is misused or is intended to be misused in a criminal or unlawful manner.

(d) Subdivisions (a) and (b) of this section do not apply to the sale of an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part to, or the purchase, transport, importation, sale or other transfer, or manufacture of, an assault weapon, a .50 BMG rifle, unserialized firearm, or firearm precursor part by, any law enforcement agency, public entity that employs peace officers, or any authorized law enforcement representative thereof, if that person or entity is not prohibited by law from possessing an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part, including, without limitation, the Division of Criminal Justice Services, a police department or sheriffs' or marshals' office, the Department of Corrections and Community Supervision, the Division of State Police, the Attorney General, a district attorneys' office, the Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, the Cannabis Control Board, the military or naval forces of this state or of the United States, a law enforcement or military agency of another state, any federal law enforcement agency, or any foreign government or agency approved by the United States Department of State, for use in the discharge of the official duties of such entities.

(e) Subdivisions (a) and (b) of this section do not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered in this state, or that was legally possessed within this state, or a firearm assigned a serial number that is disposed of as authorized by the probate court, if the disposition is otherwise permitted under the laws of New York State.

§ 4. (a) Notwithstanding the provisions of section three of this act, any licensed firearms dealer may take possession of any assault weapon or .50 BMG rifle from any person to whom it is legally registered or who has been issued a permit to possess it pursuant to New York State law, or of any firearm precursor part, for the purposes of servicing or repair.

(b) Notwithstanding the provisions of section three of this act, any licensed firearms dealer may transfer possession of any assault weapon, .50 BMG rifle, or firearm precursor part received pursuant to subdivision (a) of this section, to a gunsmith for purposes of repairing or servicing that weapon. A transfer is permissible only to the following persons:

(1) A gunsmith employed the dealer.

(2) A gunsmith with whom the dealer has contracted for gunsmithing services.

(c) Paragraph (2) of subdivision (b) of this section applies only if the gunsmith receiving the assault weapon, .50 BMG rifle, or firearm precursor part meets both of the following qualifications:

(1) The gunsmith holds a dealer license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(2) The gunsmith holds any business license required by a state or local governmental entity.

(d) In addition to the uses permitted under New York State law, any licensed gun dealer who lawfully possesses an assault weapon, .50 BMG rifle, or firearm precursor part pursuant to those provisions may do either of the following:

(1) Transport the firearm or firearm precursor part between dealers or out of the state if that person is permitted pursuant to the National Firearms Act. Any transporting allowed by this section or section three of this act shall be in compliance with the Penal Law.

(2) Sell the firearm or firearm precursor part to a resident outside the state.

(e) Notwithstanding the provisions of section three of this act, any individual may, provided that the assault weapon or .50 BMG rifle, unserialized firearm, or firearm precursor part is transported in compliance with the Penal Law, do any of the following:

(1) Arrange in advance to relinquish an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part to a police or sheriff's department.

(2) Sell, deliver, or transfer an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part to an authorized representative of a city, city and county, county, or state government, or of the federal government, provided that the entity is acquiring the weapon as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.

(3) Transfer, relinquish, or dispose of a firearm or precursor part in compliance with the requirements of the Penal Law.

§ 5. (a) Notwithstanding any other law, the requirements of this act shall be enforced exclusively through the private civil actions described in section six of this act. No enforcement of this act may be taken or threatened by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in section six of this act.

(b) The fact that conduct violates this act shall not be an independent basis for enforcement of any other law of this state, or the denial, revocation, suspension, or withholding of any right or privilege conferred by the law of this state or a political subdivision, or a threat to do the same, by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision, or a board, commission, or similar body assigned authority to do so under law, against any person, except as provided in section six of this act. Nor shall any civil action predicated upon a violation of this act be brought by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision. For avoidance of doubt, the rights and privileges described by this subdivision include, but are not limited to, any business licenses and permits issued pursuant to New York State law or any firearms, ammunition, or precursor parts dealer or vendor licenses issued pursuant to the Penal Law. This subdivision shall not be construed to prevent or limit enforcement of any other law regulating conduct that also violates this act.

(c) Subdivisions (a) and (b) of this section shall not be construed to do any of the following:

(1) Legalize the conduct prohibited by the Penal Law.

(2) Waive any requirements prescribed by the Penal Law.

(3) Limit or affect the availability of a remedy established by section six of this act.

(4) Limit the enforceability of any other laws that regulate or prohibit any conduct relating to assault weapons, .50 BMG rifles, or firearm precursor parts.

§ 6. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who does any of the following:

(1) Knowingly violates section three of this act.

(2) Knowingly engages in conduct that aids or abets a violation of section three of this act, regardless of whether the person knew or should have known that the person aided or abetted would be violating section three of this act.

(3) Knowingly commits an act with the intent to engage in the conduct described by paragraph (1) or (2) of this subdivision.

(b) If a claimant prevails in an action brought under this section, the court shall award all of the following:

(1) Injunctive relief sufficient to prevent the defendant from violating this act or engaging in acts that aid or abet violations of this act.

(2) (A) (i) Statutory damages in an amount of not less than ten thousand dollars ($10,000) for each weapon or firearm precursor part as to which the defendant violated section three of this act, and for each weapon or firearm precursor part as to which the defendant aided or abetted a violation of section three of this act.

(ii) This subparagraph shall remain in effect unless found by a court to be invalid or unconstitutional, in which case this subparagraph is repealed and subparagraph (B) of this paragraph shall become operational.

(B) (i) Statutory damages in an appropriate amount to be determined by the court for each violation of this act. In making that determination, the court shall consider factors that include, but are not limited to, the number of firearms or precursor parts involved in the defendant's violation of this act, the duration of the prohibited conduct, whether the defendant has previously violated this act or any other federal, state, or local law concerning the regulation of firearms, and any other factors tending to increase the risk to the public, such as proximity of the violations to sensitive places.

(ii) This subparagraph shall become effective only if a court finds subparagraph (A) of this paragraph to be invalid or unconstitutional.

(3) Attorney's fees and costs.

(c) Notwithstanding subdivision (b) of this section, a court shall not award relief under this section in response to a violation of subdivision (a) of this section if the defendant demonstrates that the defendant previously paid the full amount of any monetary award under subdivision (b) of this section in a previous action for each firearm or firearm precursor part as to which the defendant violated, or aided or abetted a violation of, section three of this act.

(d) Notwithstanding any other law, a cause of action under this section shall be extinguished unless the action is brought not later than four years after the cause of action accrues.

(e) An act or omission in violation of section three of this act shall be deemed an injury in fact to all residents of, and visitors to, this state, and any such person shall have standing to bring a civil action pursuant to this section.

(f) Notwithstanding any other law, none of the following is a defense to an action brought under this section:

(1) A defendant's ignorance or mistake of law.

(2) A defendant's belief that the requirements of this act are unconstitutional or were unconstitutional.

(3) A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this act.

(4) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought.

(5) Non-mutual issue preclusion or non-mutual claim preclusion.

(6) Any claim that the enforcement of this act or the imposition of civil liability against the defendant will violate a constitutional right of a third party.

(7) A defendant's assertion that this act proscribes conduct that is separately prohibited by the Penal Law or any other law of this state, or that this act proscribes conduct beyond that which is already prohibited by the Penal Law or any other law of this state.

(8) Any claim that the assault weapon, .50 BMG rifle, or firearm precursor part at issue was not misused, or was not intended to be misused, in a criminal or unlawful manner.

(g) (1) Both of the following are affirmative defenses to an action brought under this section:

(A) A person sued under paragraph (2) of subdivision (a) of this section reasonably believed, after conducting a reasonable investigation, that the person aided or abetted was complying with this act.

(B) A person sued under paragraph (3) of subdivision (a) of this section reasonably believed, after conducting a reasonable investigation, that the person was complying with this act or was aiding or abetting another who was complying with this act.

(2) The defendant has the burden of proving an affirmative defense under this subdivision by a preponderance of the evidence.

(h) This section shall not be construed to impose liability on any speech or conduct protected by the First Amendment to the United States Constitution, as made applicable to the states through the Fourteenth Amendment to the United States Constitution, or by the New York State Constitution.

(i) Notwithstanding any other law, this state, a state official, or a district, county, or city attorney shall not intervene in an action brought under this section. However, this subdivision does not prohibit a person described by this subdivision from filing an amicus curiae brief in the action.

(j) Notwithstanding any other law, a court shall not award attorney's fees or costs to a defendant in an action brought under this section.

(k) An action pursuant to this section shall not be brought against a federal government, state, political subdivision, or an employee of a federal government, state, or political subdivision on the basis of acts or omissions in the course of discharge of official duties.

§ 7. (a) A defendant against whom an action is brought under section six of this act does not have standing to assert the right of another individual to keep and bear arms under the Second Amendment to the United States Constitution as a defense to liability under that section unless either of the following is true:

(1) The United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party

rights of other individuals in state court as a matter of federal constitutional law.

(2) The defendant has standing to assert the rights of other individuals under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under section six of this act may assert an affirmative defense to liability under this section if both of the following are true:

(1) The defendant has standing to assert the third-party right of an individual to keep and bear arms in accordance with subdivision (a) of this section.

(2) The defendant demonstrates that the relief sought by the claimant will violate a third-party's rights under the Second Amendment to the United States Constitution right as defined by clearly established case law of the United States Supreme Court.

(c) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under section six of this act, and a court shall not award relief under section six of this act if the conduct for which the defendant has been sued was an exercise of a state or federal constitutional right that personally belongs to the defendant.

§ 8. This act shall not be construed to do any of the following:

(a) Authorize the initiation of a cause of action under this act against a person purchasing, obtaining, or attempting to purchase or obtain an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part from a person acting in violation of this act.

(b) Wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits any conduct relating to assault weapons, .50 BMG rifles, unserialized firearms, or firearm precursor parts, including the Penal Law.

(c) Restrict a political subdivision from regulating or prohibiting conduct relating to assault weapons, .50 BMG rifles, unserialized firearms, or firearm precursor parts in a manner that is at least as stringent as the laws of this state.

§ 9. (a) Notwithstanding any other law, a civil action brought under section six of this act shall be brought in any of the following:

(1) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

(2) The county of residence for any one of the natural person defendants at the time the cause of action occurred.

(3) The county of the principal office in this state of any one of the defendants that is not a natural person.

(4) The county of residence for the claimant if the claimant is a natural person residing in this state.

(b) Notwithstanding any other law, if a civil action is brought under section six of this act in one of the venues described by subdivision (a) of this section, the action shall not be transferred to a different venue without the written consent of all parties.

§ 10. (a) Notwithstanding any other law, this state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this act, on constitutional grounds or otherwise.

(b) A provision of state law shall not be construed to waive or abrogate an immunity described by subdivision (a) of this section unless it expressly waives immunity under this section.

§ 11. (a) It is the intent of the Legislature that every provision, section, subdivision, sentence, clause, phrase, and word in this act, and every application of the provisions in this act, are severable from each other.

(b) If any application of any provision in this act to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and shall not be affected. All constitutionally valid applications of this act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this act to impose an unconstitutional burden in a large or substantial fraction of relevant cases, the applications that do not present an unconstitutional burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the Legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an unconstitutional burden. If any court declares or finds a provision of this act facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and the New York State Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the Legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and the New York State Constitution.

(c) The Legislature further declares that it would have enacted this act, and each provision, section, subdivision, sentence, clause, phrase, and word, and all constitutional applications of this act, irrespective of the fact that any provision, section, subdivision, sentence, clause, phrase, or word, or application of this act, were to be declared unconstitutional or to represent an unconstitutional burden.

(d) If any provision of this act is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) A court shall not decline to enforce the severability requirements of this section on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision of this act does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. Each of the following is true about a judicial injunction or declaration of unconstitutionality of a provision of this act:

(1) It is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the New York State Constitution or the United States Constitution.

(2) It is not a formal amendment of the language in a statute.

(3) It no more rewrites a statute than a decision by the executive not to enforce a duly-enacted statute in a limited and defined set of circumstances.

§ 12. This act shall become inoperative upon invalidation of Subchapter H (commencing with Section 171.201) of Chapter 171 of the Texas Health and Safety Code in its entirety by a final decision of the United States Supreme Court or Texas Supreme Court, and is repealed on January 1 of the following year.

§ 13. The civil practice law and rules is amended by adding a new section 1503 to read as follows:

§ 1503. Firearm restriction challenge liability. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, a governmental entity or public official in this state, or a person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, in any state or federal court, or that represents any litigant seeking that relief in any state or federal court, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court does either of the following:

(1) dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by subdivision (a) of this section, regardless of the reason for the dismissal; or

(2) enters judgment in the party's favor on any claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover attorney's fees or costs in the underlying action, a prevailing party under this section may bring a civil action to recover attorney's fees and costs against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by subdivision (a) of this section not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by subdivision (b) of this section becomes final upon the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) None of the following are a defense to an action brought under subdivision (c) of this section:

(1) a prevailing party under this section failed to seek recovery of attorney's fees or costs in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; and/or

(3) the court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(e) Any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief as described in subdivision (a) of this section, shall not be deemed a prevailing party under this section or any other provision of this chapter.

§ 14. (a) A statute that regulates or prohibits firearms shall not be construed to repeal any other statute that regulates or prohibits firearms, either wholly or partly, unless the later-enacted statute explicitly states that it is repealing the other statute.

(b) A statute shall not be construed to restrict a political subdivision from regulating or prohibiting firearms in a manner that is at

least as stringent as the laws of this state, unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting firearms in the manner described by the statute.

(c) Every statute that regulates or prohibits firearms is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits firearms is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and New York State Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and New York State Constitution.

§ 15. This act shall take effect immediately.