

# STATE OF NEW YORK

8163

## IN SENATE

January 27, 2022

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

AN ACT to amend the civil practice law and rules, in relation to creating a civil cause of action for the manufacture, sale, or distribution of assault weapons or ghost guns within the state

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

1 Section 1. The civil practice law and rules is amended by adding a new  
2 article 13-C to read as follows:

### ARTICLE 13-C

#### CIVIL REMEDIES; GUN SAFETY LAWS

##### Section 1360. Definition.

6 1361. Action to recover damages.

7 1362. Prohibited defenses.

8 1363. Affirmative defenses.

9 1364. Construction.

10 § 1360. Definition. For the purposes of this article: 1. "Assault  
11 weapon" shall have the same meaning as such term is defined in subdivi-  
12 sion twenty-two of section 265.00 of the penal law.

13 2. "Ghost gun" shall have the same meaning as such term is defined in  
14 subdivision thirty-two of section 265.00 of the penal law.

15 § 1361. Action to recover damages. 1. Any person, other than an offi-  
16 cer or employee of a state or local government entity in this state may  
17 bring a civil cause of action against any person or entity who:

18 (a) manufactures, distributes, or sells assault weapons or ghost guns,  
19 or parts for any such weapons or ghost guns within the state;

20 (b) aids and abets an individual or entity in manufacturing, distrib-  
21 uting, or selling assault weapons or ghost guns, or parts for any such  
22 weapons or ghost guns within the state; or

23 (c) intends to manufacture, distribute, or sell assault weapons or  
24 ghost guns within the state or aid and abet an individual or entity in  
25 manufacturing, distributing, or selling assault weapons or ghost guns,  
26 or parts for any such weapons or ghost guns within the state.

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

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1 2. (a) If a plaintiff prevails in an action brought pursuant to this  
2 section, such plaintiff shall be awarded injunctive relief sufficient to  
3 prevent the defendant from continuing to aid and abet any violation the  
4 provisions of law set forth in subdivision one of this section, statuto-  
5 ry damages in an amount not less than ten thousand dollars for each  
6 violation of such provisions and for any aiding and abetting of such  
7 provisions, and attorney's fees and other costs associated with bringing  
8 such cause of action.

9 (b) A court may not award relief under paragraph (a) of this subdivi-  
10 sion in response to a cause of action brought pursuant to this section  
11 if the defendant demonstrates that he or she previously paid the full  
12 amount of statutory damages pursuant to paragraph (a) of this subdivi-  
13 sion in a previous action for that particular violation of a provision  
14 of law as set forth in subdivision one of this section or for the  
15 particular aiding and abetting the violation of a provision of law set  
16 forth in subdivision one of this section.

17 3. A plaintiff may bring a cause of action pursuant to this section  
18 within four years of the date of the violation or aiding and abetting of  
19 the violation of the provisions of law.

20 4. Notwithstanding any other law, this state, a state official, or a  
21 district or county attorney may not intervene in an action brought under  
22 this section. This subdivision does not prohibit any such person from  
23 filing an amicus curiae brief in the action.

24 5. Notwithstanding any other law, a court may not award costs or  
25 attorney's fees to a defendant in an action brought pursuant to this  
26 section.

27 § 1362. Prohibited defenses. The following shall not be a defense to  
28 an action brought pursuant to section thirteen hundred sixty-one of this  
29 article:

30 1. ignorance or mistake of law;

31 2. a defendant's belief that the requirements of this section are or  
32 were unconstitutional;

33 3. a defendant's reliance on any state or federal court decision that  
34 is not binding on the court in which the action has been brought;

35 4. a defendant's reliance on any court decision that has been over-  
36 ruled on appeal or by a subsequent court, even if such decision has not  
37 been overruled when the defendant violated, aided or abetted in violat-  
38 ing, or intended to violate the provisions of subdivision one of section  
39 thirteen hundred sixty-one of this article;

40 5. non-mutual preclusion or non-mutual claim preclusion; or

41 6. any claim that the enforcement of the provisions of this section or  
42 the imposition of civil liability against the defendant will violate the  
43 constitutional rights of third parties.

44 § 1363. Affirmative defenses. 1. The following shall be affirmative  
45 defenses to an action brought pursuant to section thirteen hundred  
46 sixty-one of this article:

47 (a) a defendant who aided or abetted a violation of one or more of the  
48 provisions of subdivision one of section thirteen hundred sixty-one of  
49 this article reasonably believed, after conducting a reasonable investi-  
50 gation, that an individual violating such provision or provisions had  
51 complied or would comply with such laws; or

52 (b) a defendant who intended to violate or aid and abet a violation of  
53 one or more of the provisions of subdivision one of section thirteen  
54 hundred sixty-one of this article reasonably believed, after conducting  
55 a reasonable investigation, that an individual violating such provision  
56 or provisions would comply with such laws.

1 2. The defendant shall have the burden of proving an affirmative  
2 defense under subdivision one of this section.  
3 § 1364. Construction. This article may not be construed to impose  
4 liability on any speech or conduct protected by the first amendment of  
5 the United States constitution.  
6 § 2. This act shall take effect immediately.