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:

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

ARTICLE 13-C

CIVIL REMEDIES; GUN SAFETY LAWS

Section 1360. Definition.
1361. Action to recover damages.
1362. Prohibited defenses.
1363. Affirmative defenses.
1364. Construction.

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

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

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

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

(b) aids and abets an individual or entity in manufacturing, distributing, or selling assault weapons or ghost guns, or parts for any such weapons or ghost guns within the state; or

(c) intends to manufacture, distribute, or sell assault weapons or ghost guns within the state or aid and abet an individual or entity in manufacturing, distributing, or selling assault weapons or ghost guns, 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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2. (a) If a plaintiff prevails in an action brought pursuant to this section, such plaintiff shall be awarded injunctive relief sufficient to prevent the defendant from continuing to aid and abet any violation the provisions of law set forth in subdivision one of this section, statutory damages in an amount not less than ten thousand dollars for each violation of such provisions and for any aiding and abetting of such provisions, and attorney's fees and other costs associated with bringing such cause of action.

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

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

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

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

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

1. ignorance or mistake of law;

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

3. 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;

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

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

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

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

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

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

2. The defendant shall have the burden of proving an affirmative defense under subdivision one of this section.

§ 1364. Construction. This article may not be construed to impose liability on any speech or conduct protected by the first amendment of the United States constitution.

§ 2. This act shall take effect immediately.