

# STATE OF NEW YORK

9227

## IN SENATE

May 12, 2022

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

AN ACT to amend the general business law and the civil practice law and rules, in relation to establishing a private cause of action for certain violations regarding machine-guns, assault weapons, disguised guns, ghost guns, and unfinished frames or receivers

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

1 Section 1. The general business law is amended by adding a new article  
2 39-DDDDD to read as follows:

3 ARTICLE 39-DDDDD

4 MACHINE-GUNS, ASSAULT WEAPONS, DISGUISED GUNS, GHOST GUNS AND UNFINISHED  
5 FRAMES OR RECEIVERS

6 Section 898-j. Definitions.

7 898-k. Prohibitions.

8 898-l. Exceptions.

9 898-m. Enforcement.

10 898-n. Private cause of action.

11 898-o. Defenses.

12 898-p. Construction.

13 898-q. Venue.

14 898-r. Sovereign immunity.

15 898-s. Severability.

16 § 898-j. Definitions. As used in this article, the following terms  
17 shall have the following meanings:

18 1. "Assault weapon" shall have the same meaning as defined in section  
19 265.00 of the penal law.

20 2. "Disguised gun" shall have the same meaning as defined in section  
21 265.00 of the penal law.

22 3. "Ghost gun" shall have the same meaning as defined in section  
23 265.00 of the penal law.

24 4. "Machine-gun" shall have the same meaning as defined in section  
25 265.00 of the penal law.

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

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1 5. "Unfinished frame or receiver" shall have the same meaning as  
2 defined in section 265.00 of the penal law.

3 § 898-k. Prohibitions. 1. Notwithstanding any provision of law to the  
4 contrary, no person within the state shall manufacture or cause to be  
5 manufactured, distribute, transport, or import into the state, or cause  
6 to be distributed, transported, or imported into the state, keep for  
7 sale, offer or expose for sale, or give or lend, any machine-gun,  
8 assault weapon, disguised gun or ghost gun, except as provided in subdivi-  
9 sions four and five of this section and in section eight hundred ninety-  
10 eight-1 of this article.

11 2. No person within the state may manufacture or cause to be manufac-  
12 tured, distribute, transport, or import into the state, or cause to be  
13 distributed or transported or imported into the state, keep for sale,  
14 offer or expose for sale, or give or lend, any unfinished frame or  
15 receiver. This subdivision shall not apply to a manufacturer or importer  
16 of firearms licensed pursuant to Chapter 44 (commencing with Section  
17 921) of Part I of Title 18 of the United States Code, and the regu-  
18 lations issued pursuant thereto, except that the manufacturer or import-  
19 er shall not perform any of the acts prohibited by this subdivision with  
20 respect to a kit of firearm precursor parts containing all parts neces-  
21 sary to construct a functioning firearm.

22 3. The prohibitions described in subdivisions one and two of this  
23 section apply whether or not the machine-gun, assault weapon, disguised  
24 gun, ghost gun or unfinished frame or receiver is misused or is intended  
25 to be misused in a criminal or unlawful manner.

26 4. Subdivisions one and two of this section do not apply to the sale  
27 of a machine-gun, assault weapon, disguised gun, ghost gun or unfinished  
28 frame or receiver to, or the purchase, transport, importation, sale or  
29 other transfer, or manufacture of, a machine-gun, assault weapon,  
30 disguised gun, ghost gun or unfinished frame or receiver by, any law  
31 enforcement agency, public entity that employs peace officers, or any  
32 authorized law enforcement representative thereof, if that person or  
33 entity is not prohibited by law from possessing a machine-gun, assault  
34 weapon, disguised gun, ghost gun or unfinished frame or receiver,  
35 including, without limitation, any state or local law enforcement agen-  
36 cy, the department of corrections and community supervision, the depart-  
37 ment of corrections of any municipality, the military or naval forces of  
38 this state or of the United States, a law enforcement or military agency  
39 of another state, any federal law enforcement agency, or any foreign  
40 government or agency approved by the United States Department of State,  
41 for use in the discharge of the official duties of such entities.

42 5. Subdivisions one and two of this section do not apply to a person  
43 who is the executor or administrator of an estate that includes a  
44 machine-gun, assault weapon, disguised gun, ghost gun or unfinished  
45 frame or receiver, that is disposed of as authorized by the probate  
46 court, if the disposition is otherwise permitted pursuant to the  
47 provisions of section 265.20 of the penal law.

48 § 898-l. Exceptions. 1. Notwithstanding section eight hundred ninety-  
49 eight-k of this article, any gunsmith or dealer in firearms licensed  
50 pursuant to section 400.00 of the penal law may take possession of any  
51 machine-gun or assault weapon from any person to whom it is legally  
52 registered or who has been issued a permit to possess it pursuant to  
53 article four hundred of the penal law, or of any unfinished frame or  
54 receiver, for the purposes of servicing or repair.

55 2. Notwithstanding section eight hundred ninety-eight-k of this arti-  
56 cle, any gunsmith or dealer in firearms licensed pursuant to section

1 400.00 of the penal law may transfer possession of any machine-gun,  
2 assault weapon, or unfinished frame or receiver received pursuant to  
3 subdivision one of this section, to a gunsmith licensed pursuant to  
4 section 400.00 of the penal law for purposes of repairing or servicing  
5 such machine-gun, assault weapon, or unfinished frame or receiver. A  
6 transfer is permissible only to the following persons:

7 (a) A gunsmith employed by the dealer.

8 (b) A gunsmith with whom the dealer has contracted for gunsmithing  
9 services.

10 3. Paragraph (b) of subdivision two of this section applies only if  
11 the gunsmith receiving the machine-gun, assault weapon, or unfinished  
12 frame or receiver part meets both of the following qualifications:

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

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

18 4. In addition to the uses permitted in section 265.20 or article four  
19 hundred of the penal law, any gunsmith or dealer in firearms licensed  
20 pursuant to section 400.00 of the penal law who lawfully possesses a  
21 machine-gun, assault weapon, or unfinished frame or receiver part pursu-  
22 ant to those provisions may do either of the following:

23 (a) Transport the machine-gun, assault weapon, or unfinished frame or  
24 receiver between dealers or out of the state if that person is permitted  
25 pursuant to the National Firearms Act. Any transporting allowed by this  
26 section or section eight hundred ninety-eight-k of this article shall be  
27 in compliance with articles two hundred sixty-five and four hundred of  
28 the penal law.

29 (b) Sell the machine-gun, assault weapon, or unfinished frame or  
30 receiver to a resident outside the state.

31 5. Notwithstanding section eight hundred ninety-eight-k of this arti-  
32 cle, any individual may, provided that the machine-gun, assault weapon,  
33 disguised gun, ghost gun or unfinished frame or receiver is transported  
34 in compliance with articles two hundred sixty-five and four hundred of  
35 the penal law, do any of the following:

36 (a) Arrange in advance to relinquish a machine-gun, assault weapon,  
37 disguised gun, ghost gun or unfinished frame or receiver to a police or  
38 sheriff's department.

39 (b) Sell, deliver, or transfer a machine-gun, assault weapon,  
40 disguised gun, ghost gun or unfinished frame or receiver to an author-  
41 ized representative of a city, city and county, county, or state govern-  
42 ment, or of the federal government, provided that the entity is acquir-  
43 ing the weapon as part of an authorized, voluntary program in which the  
44 entity is buying or receiving weapons from private individuals.

45 (c) Transfer, relinquish, or dispose of a machine-gun, assault weapon,  
46 disguised gun, ghost gun or unfinished frame or receiver in compliance  
47 with the requirements of section 370.25 of the criminal procedure law.

48 § 898-m. Enforcement. 1. Notwithstanding any provision of law to the  
49 contrary, the requirements of this article shall be enforced exclusively  
50 through the private civil actions described in section eight hundred  
51 ninety-eight-n of this article. No enforcement of this article may be  
52 taken or threatened by the state, a political subdivision, a district,  
53 county or city attorney, or an executive or administrative officer or  
54 employee of the state or a political subdivision against any person,  
55 except as provided in section eight hundred ninety-eight-n of this arti-  
56 cle.

1 2. The fact that conduct violates this article shall not be an inde-  
2 pendent basis for enforcement of any other law of this state, or the  
3 denial, revocation, suspension, or withholding of any right or privilege  
4 conferred by the law of this state or a political subdivision, or a  
5 threat to do the same, by the state, a political subdivision, a district  
6 or county or city attorney, or an executive or administrative officer or  
7 employee of the state or a political subdivision, or a board, commis-  
8 sion, or similar body assigned authority to do so under law, against any  
9 person, except as provided in section eight hundred ninety-eight-n of  
10 this article. Nor shall any civil action predicated upon a violation of  
11 this article be brought by the state, a political subdivision, a  
12 district, county or city attorney, or an executive or administrative  
13 officer or employee of the state or a political subdivision. For avoid-  
14 ance of doubt, the rights and privileges described by this subdivision  
15 include, but are not limited to, any business licenses and permits  
16 issued pursuant to this chapter or any licenses issued pursuant to arti-  
17 cle four hundred of the penal law. This subdivision shall not be  
18 construed to prevent or limit enforcement of any other law regulating  
19 conduct that also violates this article, including, but not limited to,  
20 articles two hundred sixty-five and four hundred of the penal law.

21 3. Subdivisions one and two of this section shall not be construed to  
22 do any of the following:

23 (a) Legalize the conduct prohibited by this chapter or by the penal  
24 law.

25 (b) Waive any requirements prescribed in article four hundred of the  
26 penal law.

27 (c) Limit or affect the availability of a remedy established by  
28 section eight hundred ninety-eight-n of this article.

29 (d) Limit the enforceability of any other laws that regulate or  
30 prohibit any conduct relating to machine-guns, assault weapons,  
31 disguised guns, ghost guns, or unfinished frames or receivers.

32 § 898-n. Private cause of action. 1. Any person, other than an officer  
33 or employee of a state or local governmental entity in the state, shall  
34 have a private cause of action against any person who does any of the  
35 following:

36 (a) Knowingly violates section eight hundred ninety-eight-k of this  
37 article.

38 (b) Knowingly engages in conduct that aids or abets a violation of  
39 section eight hundred ninety-eight-k of this article, regardless of  
40 whether the person knew or should have known that the person aided or  
41 abetted would be violating such section.

42 (c) Knowingly commits an act with the intent to engage in the conduct  
43 described by paragraph (a) or (b) of this subdivision.

44 2. If a claimant prevails in an action brought under this section, the  
45 court shall award all of the following:

46 (a) Injunctive relief sufficient to prevent the defendant from violat-  
47 ing this article or engaging in acts that aid or abet violations of this  
48 article.

49 (b) Statutory damages in an amount of not less than ten thousand  
50 dollars for each machine-gun, assault weapon, disguised gun, ghost gun,  
51 or unfinished frame or receiver as to which the defendant violated  
52 section eight hundred ninety-eight-k of this article, and for each  
53 machine-gun, assault weapon, disguised gun, ghost gun, or unfinished  
54 frame or receiver as to which the defendant aided or abetted a violation  
55 of section eight hundred ninety-eight-k of this article.

56 (c) Attorney's fees and costs.

1 3. Notwithstanding subdivision two of this section, a court shall not  
2 award relief under this section in response to a violation of this arti-  
3 cle if the defendant demonstrates that such defendant previously paid  
4 the full amount of any monetary award under subdivision two of this  
5 section in a previous action for each machine-gun, assault weapon,  
6 disguised gun, ghost gun, or unfinished frame or receiver as to which  
7 the defendant violated, or aided or abetted a violation of, section  
8 eight hundred ninety-eight-k of this article.

9 4. Notwithstanding any other provision of law to the contrary, a cause  
10 of action under this section shall be extinguished unless the action is  
11 brought not later than four years after such cause of action accrues.

12 5. An act or omission in violation of section eight hundred ninety-  
13 eight-k of this article shall be deemed an injury in fact to all resi-  
14 dents of, and visitors to, this state, and any such person shall have  
15 standing to bring a civil action pursuant to this section.

16 6. Notwithstanding any other provision of law to the contrary, none of  
17 the following is a defense to an action brought under this section:

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

19 (b) A defendant's belief that the requirements of this article are  
20 unconstitutional or were unconstitutional.

21 (c) A defendant's reliance on any court decision that has been over-  
22 ruled on appeal or by a subsequent court, even if that court decision  
23 had not been overruled when the defendant engaged in conduct that  
24 violates this article.

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

27 (e) Nonmutual issue preclusion or nonmutual claim preclusion.

28 (f) Any claim that the enforcement of this article or the imposition  
29 of civil liability against the defendant will violate a constitutional  
30 right of a third party.

31 (g) A defendant's assertion that this article proscribes conduct that  
32 is separately prohibited by the penal law or any other law of this  
33 state, or that this article proscribes conduct beyond that which is  
34 already prohibited by the penal law or any other law of this state.

35 (h) Any claim that the machine-gun, assault weapon, disguised gun,  
36 ghost gun, or unfinished frame or receiver at issue was not misused, or  
37 was not intended to be misused, in a criminal or unlawful manner.

38 7. (a) Both of the following are affirmative defenses to an action  
39 brought under this section:

40 (i) A person sued under paragraph (b) of subdivision one of this  
41 section reasonably believed, after conducting a reasonable investi-  
42 gation, that the person aided or abetted was complying with this arti-  
43 cle.

44 (ii) A person sued under paragraph (c) of subdivision one of this  
45 section reasonably believed, after conducting a reasonable investi-  
46 gation, that the person was complying with this article or was aiding or  
47 abetting another who was complying with this article.

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

50 8. This section shall not be construed to impose liability on any  
51 speech or conduct protected by the First Amendment to the United States  
52 Constitution, as made applicable to the states through the Fourteenth  
53 Amendment to the United States Constitution, or by Section 8 of Article  
54 I of the New York Constitution.

55 9. Notwithstanding any other provision of law to the contrary, the  
56 state, a state official, or a district, county, or city attorney shall

1 not intervene in an action brought under this section. However, this  
2 subdivision does not prohibit a person described by this subdivision  
3 from filing an amicus curiae brief in the action.

4 10. Notwithstanding any other provision of law to the contrary, a  
5 court shall not award attorney's fees or costs to a defendant in an  
6 action brought under this section.

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

11 § 898-o. Defenses. 1. A defendant against whom an action is brought  
12 under section eight hundred ninety-eight-n of this article does not have  
13 standing to assert the right of another individual to keep and bear arms  
14 under the Second Amendment to the United States Constitution as a  
15 defense to liability under such section unless either of the following  
16 is true:

17 (a) The United States supreme court holds that the courts of this  
18 state must confer standing on that defendant to assert the third-party  
19 rights of other individuals in state court as a matter of federal  
20 constitutional law; or

21 (b) The defendant has standing to assert the rights of other individ-  
22 uals under the tests for third-party standing established by the United  
23 States supreme court.

24 2. A defendant in an action brought under section eight hundred nine-  
25 ty-eight-n of this article may assert an affirmative defense to liabil-  
26 ity under this section if both of the following are true:

27 (a) The defendant has standing to assert the third-party right of an  
28 individual to keep and bear arms in accordance with subdivision one of  
29 this section; and

30 (b) The defendant demonstrates that the relief sought by the claimant  
31 will violate a third-party's rights under the Second Amendment to the  
32 United States Constitution right as defined by clearly established case  
33 law of the United States supreme court.

34 3. Nothing in this section shall in any way limit or preclude a  
35 defendant from asserting the defendant's personal constitutional rights  
36 as a defense to liability under section eight hundred ninety-eight-n of  
37 this article, and a court shall not award relief under such section if  
38 the conduct for which the defendant has been sued was an exercise of a  
39 state or federal constitutional right that personally belongs to the  
40 defendant.

41 § 898-p. Construction. This article shall not be construed to do any  
42 of the following:

43 1. Authorize the initiation of a cause of action under this article  
44 against a person purchasing, obtaining, or attempting to purchase or  
45 obtain a machine-gun, assault weapon, disguised gun, ghost gun, or  
46 unfinished frame or receiver from a person acting in violation of this  
47 article.

48 2. Wholly or partly repeal, either expressly or by implication, any  
49 other statute that regulates or prohibits any conduct relating to  
50 machine-guns, assault weapons, disguised guns, ghost guns, or unfinished  
51 frames or receivers.

52 3. Restrict a political subdivision from regulating or prohibiting  
53 conduct relating to machine-guns, assault weapons, disguised guns, ghost  
54 guns, or unfinished frames or receivers in a manner that is at least as  
55 stringent as the laws of this state.

1 § 898-g. Venue. 1. Notwithstanding any other provision of law to the  
2 contrary, a civil action brought under section eight hundred ninety-  
3 eight-n of this article shall be brought in any of the following:

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

6 (b) The county of residence for any one of the natural person defend-  
7 ants at the time the cause of action accrued;

8 (c) The county of the principal office in this state of any one of the  
9 defendants that is not a natural person; or

10 (d) The county of residence for the claimant if the claimant is a  
11 natural person residing in the state.

12 2. Notwithstanding any other provision of law to the contrary, if a  
13 civil action is brought under section eight hundred ninety-eight-n of  
14 this article in one of the venues described by subdivision one of this  
15 section, such action shall not be transferred to a different venue with-  
16 out the written consent of all parties.

17 § 898-r. Sovereign immunity. 1. Notwithstanding any other provision of  
18 law to the contrary, the state has sovereign immunity, a political  
19 subdivision has governmental immunity, and each officer and employee of  
20 the state or a political subdivision has official immunity in any  
21 action, claim, or counterclaim or any type of legal or equitable action  
22 that challenges the validity of any provision or application of this  
23 article, on constitutional grounds or otherwise.

24 2. A provision of state law shall not be construed to waive or abro-  
25 gate an immunity described by subdivision one of this section unless it  
26 expressly waives immunity under this section.

27 § 898-s. Severability. 1. It is the intent of the legislature that  
28 every provision, section, subdivision, sentence, clause, phrase, and  
29 word in this chapter, and every application of the provisions in this  
30 article, are severable from each other.

31 2. If any application of any provision in this article to any person,  
32 group of persons, or circumstances is found by a court to be invalid or  
33 unconstitutional, the remaining applications of that provision to all  
34 other persons and circumstances shall be severed and shall not be  
35 affected. All constitutionally valid applications of this article shall  
36 be severed from any applications that a court finds to be invalid, leav-  
37 ing the valid applications in force, because it is the legislature's  
38 intent and priority that the valid applications be allowed to stand  
39 alone. Even if a reviewing court finds a provision of this article to  
40 impose an unconstitutional burden in a large or substantial fraction of  
41 relevant cases, the applications that do not present an unconstitutional  
42 burden shall be severed from the remaining applications and shall remain  
43 in force, and shall be treated as if the legislature had enacted a stat-  
44 ute limited to the persons, group of persons, or circumstances for which  
45 the statute's application does not present an unconstitutional burden.  
46 If any court declares or finds a provision of this article facially  
47 unconstitutional, when discrete applications of that provision can be  
48 enforced against a person, group of persons, or circumstances without  
49 violating the United States Constitution and the state constitution,  
50 such applications shall be severed from all remaining applications of  
51 the provision, and the provision shall be interpreted as if the legisla-  
52 ture had enacted a provision limited to the persons, group of persons,  
53 or circumstances for which the provision's application will not violate  
54 the United States Constitution and the state constitution.

55 3. The legislature further declares that it would have enacted this  
56 article, and each provision, section, subdivision, sentence, clause,

1 phrase, and word, and all constitutional applications of this article,  
2 irrespective of the fact that any provision, section, subdivision,  
3 sentence, clause, phrase, or word, or application of this article, were  
4 to be declared unconstitutional or to represent an unconstitutional  
5 burden.

6 4. If any provision of this article is found by any court to be uncon-  
7 stitutionally vague, then the applications of that provision that do not  
8 present constitutional vagueness problems shall be severed and remain in  
9 force.

10 5. A court shall not decline to enforce the severability requirements  
11 of this section on the ground that severance would rewrite the statute  
12 or involve the court in legislative or lawmaking activity. A court that  
13 declines to enforce or enjoins a state official from enforcing a statu-  
14 tory provision of this article does not rewrite a statute, as the statu-  
15 te continues to contain the same words as before the court's decision.  
16 Each of the following is true about a judicial injunction or declaration  
17 of unconstitutionality of a provision of this article:

18 (a) It is nothing more than an edict prohibiting enforcement that may  
19 subsequently be vacated by a later court if that court has a different  
20 understanding of the requirements of the state constitution or the  
21 United States Constitution.

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

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

26 § 2. Paragraph (b) of subdivision 2 of section 898-n of the general  
27 business law, as added by section one of this act, is amended to read as  
28 follows:

29 (b) Statutory damages in an appropriate amount [~~of not less than ten~~  
30 ~~thousand dollars for each machine-gun, assault weapon, disguised gun,~~  
31 ~~ghost gun, or unfinished frame or receiver as to which the defendant~~  
32 ~~violated section eight hundred ninety-eight k of this article, and for~~  
33 ~~each machine-gun, assault weapon, disguised gun, ghost gun, or unfin-~~  
34 ~~ished frame or receiver as to which the defendant aided or abetted a~~  
35 ~~violation of section eight hundred ninety-eight k of this article] to be  
36 determined by the court for each violation of this article. In making  
37 that determination, the court shall consider factors that include, but  
38 are not limited to, the number of machine-guns, assault weapons,  
39 disguised guns, ghost guns, or unfinished frames or receivers involved  
40 in the defendant's violation of this article, the duration of the  
41 prohibited conduct, whether the defendant has previously violated this  
42 article or any other federal, state, or local law concerning the regu-  
43 lation of firearms, and any other factors tending to increase the risk  
44 to the public, such as proximity of the violations to sensitive places.~~

45 § 3. The civil practice law and rules is amended by adding a new  
46 section 8111 to read as follows:

47 § 8111. Costs in certain actions related to firearms. (a) Notwith-  
48 standing any other provision of law to the contrary, any person, includ-  
49 ing an entity, attorney, or law firm, who seeks declaratory or injunc-  
50 tive relief to prevent the state, a political subdivision, a  
51 governmental entity or public official in the state, or a person in the  
52 state from enforcing any statute, ordinance, rule, regulation, or any  
53 other type of law that regulates or restricts firearms as defined in  
54 section 265.00 of the penal law, in any state or federal court, or that  
55 represents any litigant seeking that relief in any state or federal

1 court, is jointly and severally liable to pay the attorney's fees and  
2 costs of the prevailing party.

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

5 (1) Dismisses any claim or cause of action brought by the party seek-  
6 ing the declaratory or injunctive relief described by subdivision (a) of  
7 this section, regardless of the reason for the dismissal.

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

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

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

19 (2) The time for seeking appellate review expires.

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

22 (1) A prevailing party under this section failed to seek recovery of  
23 attorney's fees or costs in the underlying action.

24 (2) The court in the underlying action declined to recognize or  
25 enforce the requirements of this section.

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

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

33 (f) As used in this section the term "firearm" shall mean a device,  
34 designed to be used as a weapon, from which is expelled through a  
35 barrel, a projectile by the force of an explosion or other form of  
36 combustion.

37 § 4. 1. A statute that regulates or prohibits firearms shall not be  
38 construed to repeal any other statute that regulates or prohibits  
39 firearms, either wholly or partly, unless the later-enacted statute  
40 explicitly states that it is repealing the other statute.

41 2. A statute shall not be construed to restrict a political subdivi-  
42 sion from regulating or prohibiting firearms in a manner that is at  
43 least as stringent as the laws of this state, unless the statute explic-  
44 itly states that political subdivisions are prohibited from regulating  
45 or prohibiting firearms in the manner described by the statute.

46 3. Every statute that regulates or prohibits firearms is severable in  
47 each of its applications to every person and circumstance. If any stat-  
48 ute that regulates or prohibits firearms is found by any court to be  
49 unconstitutional, either on its face or as applied, then all applica-  
50 tions of that statute that do not violate the United States Constitution  
51 and the state constitution shall be severed from the unconstitutional  
52 applications and shall remain enforceable, notwithstanding any other  
53 law, and the statute shall be interpreted as if containing language  
54 limiting the statute's application to the persons, group of persons, or  
55 circumstances for which the statute's application will not violate the  
56 United States Constitution and the state constitution.

1 4. As used in this section the term "firearm" shall mean a device,  
2 designed to be used as a weapon, from which is expelled through a  
3 barrel, a projectile by the force of an explosion or other form of  
4 combustion.

5 § 5. This act shall take effect on the thirtieth day after it shall  
6 have become a law; provided, however, that section two of this act shall  
7 take effect upon the final determination of a court of competent juris-  
8 diction that the provisions of paragraph (b) of subdivision 2 of section  
9 eight hundred ninety-eight-n of the general business law as added by  
10 section one of this act are invalid or unconstitutional; provided that  
11 the attorney general shall notify the legislative bill drafting commis-  
12 sion upon the occurrence of such a final determination by a court in  
13 order that the commission may maintain an accurate and timely effective  
14 data base of the official text of the laws of the state of New York in  
15 furtherance of effectuating the provisions of section 44 of the legisla-  
16 tive law and section 70-b of the public officers law.