

# STATE OF NEW YORK

6762

2021-2022 Regular Sessions

## IN ASSEMBLY

March 29, 2021

Introduced by M. of A. FAHY, ANDERSON, BURDICK, DINOWITZ, SEAWRIGHT, SILLITTI, TAYLOR -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to the dangers to safety and health and creation of a public nuisance caused by the sale, manufacturing, distribution, importing and marketing of firearms

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

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds that the illegal use of firearms not only constitutes a public  
3 nuisance as declared in article 400 of the penal law, but that the  
4 effects of such nuisance poses specific harm to New Yorkers based large-  
5 ly on their zip code and certain immutable characteristics such as race  
6 and ethnicity. Illegal firearm violence has disproportionately affected  
7 underserved black and brown neighborhoods in our cities and throughout  
8 the state despite stringent state and local laws against the illegal  
9 possession of firearms while, according to the Bureau of Alcohol, Tobac-  
10 co, Firearms and Explosives statistics, 74% of firearms used in crimes  
11 in New York are purchased outside of New York. Thus, the legislature  
12 further finds that given the ease at which legal firearms flow into the  
13 illegal market, and given the specific harm illegal firearm violence  
14 causes certain New Yorkers, those responsible for the illegal or unrea-  
15 sonable sale, manufacture, distribution, importing or marketing of  
16 firearms may be held liable for the public nuisance caused by such  
17 activities.

18 § 2. The general business law is amended by adding a new article  
19 39-DDDD to read as follows:

### ARTICLE 39-DDDD

#### SALE, MANUFACTURING, IMPORTING AND MARKETING OF FIREARMS

##### Section 898-a. Definitions.

##### 898-b. Dangers to safety and health.

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

LBD06691-01-1

1 898-c. Public nuisance.

2 898-d. Enforcement.

3 898-e. Private right of action.

4 § 898-a. Definitions. For purposes of this article, the following  
5 terms shall have the following meanings:

6 1. "Deceptive acts or practices" shall have the same meaning as  
7 defined in article twenty-two-A of this chapter.

8 2. "False advertising" shall have the same meaning as defined in arti-  
9 cle twenty-two-A of this chapter.

10 3. "Gun industry member" shall mean a person, firm, corporation or  
11 association engaged in the sale, manufacturing, distribution, importing  
12 or marketing of firearms.

13 4. The terms "knowingly" and "recklessly" shall have the same meaning  
14 as defined in section 15.05 of the penal law.

15 5. "Qualified product" shall have the same meaning as defined in 15  
16 U.S.C. section 7903(4).

17 § 898-b. Dangers to safety and health. No gun industry member, by  
18 conduct either unlawful in itself or unreasonable under all the circum-  
19 stances shall knowingly or recklessly create or maintain a condition  
20 that endangers the safety or health of the public through the sale,  
21 manufacturing, importing or marketing of a qualified product.

22 § 898-c. Public nuisance. 1. A violation of section eight hundred  
23 ninety-eight-b of this article that results in harm to the public shall  
24 hereby be declared to be a public nuisance.

25 2. The existence of a public nuisance shall not depend on whether the  
26 gun industry member acted for the purpose of causing harm to the public.

27 3. The acts or omissions of a gun industry member shall constitute a  
28 proximate cause of the public nuisance if the harm to the public was a  
29 reasonably foreseeable effect of such acts or omissions, notwithstanding  
30 any intervening actions, including but not limited to criminal actions  
31 by third parties.

32 4. In determining whether a nuisance exists, a finder of fact shall  
33 consider the totality of the evidence, which may include, but is not  
34 limited to:

35 (a) the distribution, importation, marketing or sales methods utilized  
36 by the gun industry member and their foreseeable effects on crimes in  
37 New York;

38 (b) the number of qualified products that have been diverted to the  
39 illegal market through the alleged illegal, irresponsible or unreason-  
40 able conduct of the gun industry member;

41 (c) the number of crimes that have been committed in New York with  
42 qualified products sold, manufactured, distributed, imported or marketed  
43 by the gun industry member in the alleged illegal, irresponsible or  
44 unreasonable manner;

45 (d) the total number of qualified products that the gun industry  
46 member manufactured, distributed or sold in the United States, through  
47 the alleged illegal, irresponsible or unreasonable conduct, which were  
48 recovered in, or destined for, New York;

49 (e) whether the alleged illegal, irresponsible or unreasonable conduct  
50 of the gun industry member constitutes deceptive acts or practices in  
51 the conduct of any business, trade or commerce or in the furnishing of  
52 any service;

53 (f) whether the alleged illegal, irresponsible or unreasonable conduct  
54 of the gun industry member constitutes false advertising in the conduct  
55 of any business, trade, or commerce or in the furnishing of any service;  
56 and

1     (g) any other illegal, irresponsible or unreasonable acts or omissions  
2     by the gun industry member that create, contribute to or maintain public  
3     harm.

4     § 898-d. Enforcement. The provisions of this article may be enforced  
5     by the attorney general in the name of the people of the state of New  
6     York, or by the town attorney, city corporation counsel, or other  
7     lawfully designated enforcement officer of a municipality or local  
8     government.

9     § 898-e. Private right of action. Any person, firm, corporation or  
10    association that has been damaged as a result of a gun industry member's  
11    acts or omissions in violation of this article shall be entitled to  
12    bring an action for recovery of damages or to enforce this article.

13    § 3. This act shall take effect immediately.