

STATE OF NEW YORK

6762--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 29, 2021

Introduced by M. of A. FAHY, ANDERSON, BURDICK, DINOWITZ, SEAWRIGHT, SILLITTI, TAYLOR, L. ROSENTHAL -- read once and referred to the Committee on Economic Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 contribute to the public health crisis of gun
5 violence in this state as declared by the legislature in the 2021-2022
6 legislative session. This nuisance poses specific harm to New Yorkers
7 based largely on their zip code and certain immutable characteristics
8 such as race and ethnicity. Illegal firearm violence has disproportion-
9 ately affected underserved black and brown neighborhoods in our cities
10 and throughout the state despite stringent state and local laws against
11 the illegal possession of firearms while, according to the Bureau of
12 Alcohol, Tobacco, Firearms and Explosives statistics, 74% of firearms
13 used in crimes in New York are purchased outside of New York. Thus, the
14 legislature further finds that given the ease at which legal firearms
15 flow into the illegal market, and given the specific harm illegal
16 firearm violence causes certain New Yorkers, those responsible for the
17 illegal or unreasonable sale, manufacture, distribution, importing or
18 marketing of firearms may be held liable for the public nuisance caused
19 by such activities. Additionally, many New Yorkers, including many
20 children, are gravely injured or killed unintentionally due to the

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

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1 firearm industry's failure to implement reasonable safety measures and
2 the legislature finds that this failure also warrants liability.

3 § 2. The general business law is amended by adding a new article
4 39-DDDD to read as follows:

5 ARTICLE 39-DDDD

6 SALE, MANUFACTURING, IMPORTING AND MARKETING OF FIREARMS

7 Section 898-a. Definitions.

8 898-b. Prohibited activities.

9 898-c. Public nuisance.

10 898-d. Enforcement.

11 898-e. Private right of action.

12 § 898-a. Definitions. For purposes of this article, the following
13 terms shall have the following meanings:

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

16 2. "Reasonable controls and procedures" shall mean policies that
17 include, but are not limited to: (a) instituting screening, security,
18 inventory and other business practices to prevent thefts of qualified
19 products as well as sales of qualified products to straw purchasers,
20 traffickers, persons prohibited from possessing firearms under state or
21 federal law, or persons at risk of injuring themselves or others; and
22 (b) preventing deceptive acts and practices and false advertising and
23 otherwise ensuring compliance with all provisions of article
24 twenty-two-A of this chapter.

25 3. "False advertising" shall have the same meaning as defined in arti-
26 cle twenty-two-A of this chapter.

27 4. "Gun industry member" shall mean a person, firm, corporation,
28 company, partnership, society, joint stock company or any other entity
29 or association engaged in the sale, manufacturing, distribution, import-
30 ing or marketing of firearms, ammunition, ammunition magazines, and
31 firearms accessories.

32 5. The terms "knowingly" and "recklessly" shall have the same meaning
33 as defined in section 15.05 of the penal law.

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

36 § 898-b. Prohibited activities. 1. No gun industry member, by conduct
37 either unlawful in itself or unreasonable under all the circumstances
38 shall knowingly or recklessly create, maintain or contribute to a condi-
39 tion in New York state that endangers the safety or health of the public
40 through the sale, manufacturing, importing or marketing of a qualified
41 product.

42 2. All gun industry members who, either directly or indirectly, manu-
43 facture, market, import or offer for sale any qualified product in New
44 York state shall establish and utilize reasonable controls and proce-
45 dures to prevent its qualified products from being possessed, used,
46 marketed or sold unlawfully in New York state. All such gun industry
47 members shall also require downstream distributors and retailers of its
48 qualified products to institute reasonable controls and procedures and
49 take reasonable steps to ensure their implementation.

50 § 898-c. Public nuisance. 1. A violation of subdivision one or two of
51 section eight hundred ninety-eight-b of this article that results in
52 harm to the public shall hereby be declared to be a public nuisance.

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

55 3. The acts or omissions of a gun industry member shall constitute a
56 proximate cause of the public nuisance if the harm to the public was a

1 reasonably foreseeable effect of such acts or omissions, notwithstanding
2 any intervening actions, including but not limited to criminal actions
3 by third parties.

4 § 898-d. Enforcement. Whenever there shall be a violation of this
5 article, the attorney general, in the name of the people of the state of
6 New York, or the town attorney, city corporation counsel, or other
7 lawfully designated enforcement officer of a municipality or local
8 government, on behalf of the locality, may bring an action in a court of
9 competent jurisdiction to enjoin and restrain such violations and to
10 obtain restitution and damages.

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

15 § 3. Severability clause. If any clause, sentence, paragraph, subdi-
16 vision, section or part of this act shall be adjudged by any court of
17 competent jurisdiction to be invalid, such judgment shall not affect,
18 impair, or invalidate the remainder thereof, but shall be confined in
19 its operation to the clause, sentence, paragraph, subdivision, section
20 or part thereof directly involved in the controversy in which such judg-
21 ment shall have been rendered. It is hereby declared to be the intent of
22 the legislature that this act would have been enacted even if such
23 invalid provisions had not been included herein.

24 § 4. This act shall take effect immediately.