

# STATE OF NEW YORK

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6762--A

2021-2022 Regular Sessions

## IN ASSEMBLY

March 29, 2021

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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.