

# STATE OF NEW YORK

6762--B

2021-2022 Regular Sessions

## IN ASSEMBLY

March 29, 2021

Introduced by M. of A. FAHY, ANDERSON, BURDICK, DINOWITZ, SEAWRIGHT, SILLITTI, TAYLOR, L. ROSENTHAL, CARROLL, JACOBSON, STECK, THIELE, PERRY, DARLING, EPSTEIN, OTIS, SIMON, DAVILA, MEEKS, BARRON, HEVESI, PAULIN, LAVINE, J. RIVERA, COLTON, DICKENS, DILAN, JEAN-PIERRE, PICHARDO, CRUZ, GRIFFIN, GOTTFRIED, SOLAGES, ABINANTI, GALEF, GONZALEZ-ROJAS, KELLES -- read once and referred to the Committee on Economic Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reference changed to the Committee on Codes -- 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

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

LBD06691-04-1

1 firearm violence causes certain New Yorkers, those responsible for the  
2 illegal or unreasonable sale, manufacture, distribution, importing or  
3 marketing of firearms may be held liable for the public nuisance caused  
4 by such activities. Additionally, many New Yorkers, including many  
5 children, are gravely injured or killed unintentionally due to the  
6 firearm industry's failure to implement reasonable safety measures and  
7 the legislature finds that this failure also warrants liability.

8 § 2. The general business law is amended by adding a new article  
9 39-DDDD to read as follows:

10 ARTICLE 39-DDDD

11 SALE, MANUFACTURING, IMPORTING AND MARKETING OF FIREARMS

12 Section 898-a. Definitions.

13 898-b. Prohibited activities.

14 898-c. Public nuisance.

15 898-d. Enforcement.

16 898-e. Private right of action.

17 § 898-a. Definitions. For purposes of this article, the following  
18 terms shall have the following meanings:

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

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

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

32 4. "Gun industry member" shall mean a person, firm, corporation,  
33 company, partnership, society, joint stock company or any other entity  
34 or association engaged in the sale, manufacturing, distribution, import-  
35 ing or marketing of firearms, ammunition, ammunition magazines, and  
36 firearms accessories.

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

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

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

47 2. All gun industry members who manufacture, market, import or offer  
48 for wholesale or retail sale any qualified product in New York state  
49 shall establish and utilize reasonable controls and procedures to  
50 prevent its qualified products from being possessed, used, marketed or  
51 sold unlawfully in New York state.

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

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

1 § 898-d. Enforcement. Whenever there shall be a violation of this  
2 article, the attorney general, in the name of the people of the state of  
3 New York, or a city corporation counsel on behalf of the locality, may  
4 bring an action in the supreme court or federal district court to enjoin  
5 and restrain such violations and to obtain restitution and damages.

6 § 898-e. Private right of action. Any person, firm, corporation or  
7 association that has been damaged as a result of a gun industry member's  
8 acts or omissions in violation of this article shall be entitled to  
9 bring an action for recovery of damages or to enforce this article in  
10 the supreme court or federal district court.

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

20 § 4. This act shall take effect immediately.