STATE OF NEW YORK

1048

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

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

§ 2. The general business law is amended by adding a new article 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.
898-c. Public nuisance.

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

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898-d. Enforcement.
898-e. Private right of action.

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

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

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

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

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

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

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

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

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

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

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

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

(b) the number of qualified products that have been diverted to the illegal market through the alleged illegal, irresponsible or unreasonable conduct of the gun industry member;

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

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

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

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

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

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

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

§ 3. This act shall take effect immediately.