STATE OF NEW YORK

1048--A

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. MYRIE, KENNEDY, BAILEY, BENJAMIN, BRISPORT, COMRIE, GIANARIS, GOUNARDES, HOYLMAN, JACKSON, KAPLAN, KRUEGER, LIU, MAYER, PARKER, RAMOS, RIVERA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- 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:

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 contribute to the public health crisis of gun violence in this state as declared by the legislature in the 2021-2022 legislative session. This 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. Additionally, many New Yorkers, including many 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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firearm industry's failure to implement reasonable safety measures and the legislature finds that this failure also warrants liability.

§ 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. Prohibited activities.

898-c. Public nuisance.

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

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

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

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

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

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

2. All gun industry members who, either directly or indirectly, manufacture, market, import or offer for sale any qualified product in New York state shall establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed or sold unlawfully in New York state. All such gun industry members shall also require downstream distributors and retailers of its qualified products to institute reasonable controls and procedures and take reasonable steps to ensure their implementation.

§ 898-c. Public nuisance. 1. A violation of subdivision one or two 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.

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

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

§ 4. This act shall take effect immediately.