STATE OF NEW YORK

9481

IN SENATE

June 3, 2022

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the general business law and the civil practice law and rules, in relation to establishing a private cause of action for certain violations regarding semiautomatic rifles

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 39-DDDDD to read as follows:

ARTICLE 39-DDDDD
SEMIAUTOMATIC RIFLES

Section 898-j. Definition.
898-k. Prohibitions.
898-l. Enforcement.
898-m. Private cause of action.
898-n. Defenses.

§ 898-j. Definition. As used in this article, "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge or shell.

§ 898-k. Prohibitions. 1. Notwithstanding any provision of law to the contrary, no person within the state shall manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed, transported, or imported into the state, keep for sale, offer or expose for sale, or give or lend, a semiautomatic rifle, except as provided in subdivision four of this section.

2. The prohibitions described in subdivision one of this section applies whether or not the semiautomatic rifle is misused or is intended to be misused in a criminal or unlawful manner.

3. Each instance of carrying, distributing, or selling a particular semiautomatic rifle, or aiding and abetting thereof, shall be an independent, free-standing violation of this section.

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

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4. Subdivision one of this section does not apply to the sale of a semiautomatic rifle to, or the purchase, transport, importation, sale or other transfer, or manufacture of, a semiautomatic rifle by, any law enforcement agency, public entity that employs peace officers, or any authorized law enforcement representative thereof, if that person or entity is not prohibited by law from possessing a semiautomatic rifle, including, without limitation, any state or local law enforcement agency, the department of corrections and community supervision, the department of corrections of any municipality, the military or naval forces of this state or of the United States, a law enforcement or military agency of another state, any federal law enforcement agency, or any foreign government or agency approved by the United States Department of State, for use in the discharge of the official duties of such entities.

5. This law is intended to be remedial, and therefore it shall be retroactive.

§ 898-l. Enforcement. Notwithstanding any provision of law to the contrary, the requirements of this article shall be enforced exclusively through the private civil actions described in section eight hundred ninety-eight-m of this article. No enforcement of this article may be taken or threatened by the state, a political subdivision, a district, county or city attorney, or an executive or administrative officer or employee of the state or a political subdivision against any person, except as provided in section eight hundred ninety-eight-m of this article.

§ 898-m. Private cause of action. 1. Any person, other than an officer or employee of a state or local governmental entity in the state, shall have a private cause of action against any person who does any of the following:

(a) Knowingly violates section eight hundred ninety-eight-k of this article.

(b) Knowingly engages in conduct that aids or abets a violation of section eight hundred ninety-eight-k of this article, regardless of whether the person knew or should have known that the person aided or abetted would be violating such section.

(c) Knowingly commits an act with the intent to engage in the conduct described by paragraph (a) or (b) of this subdivision.

2. An action pursuant to this section shall not be brought against a federal government, state, political subdivision, or an employee of a federal government, state, or political subdivision on the basis of acts or omissions in the course of discharge of official duties.

3. All actions brought under this section shall not be subject to the special procedural and substantive requirements described in subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, or sections seventy-a and seventy-six-a of the civil rights law.

4. Filing fees and motion fees shall be waived in all courts of this state for any person or persons affirmatively bringing claims under this section.

5. Any person defending an action under this section shall be required to pay triple the applicable ordinary filing and motion fees.

6. If a claimant prevails in an action brought under this section, the court shall award all of the following:

(a) Injunctive relief sufficient to prevent the defendant from violating this article or engaging in acts that aid or abet violations of this article.

(b) Statutory damages in an amount of not less than ten thousand dollars for each separate violation of this article, and for each violation of this article to which the defendant aided or abetted such violation.

(c) Attorneys' fees and costs, including fees upon fees, at the highest forum rates available in the state.

7. Notwithstanding subdivision six of this section, a court shall not award relief under this section in response to a violation of this article if the defendant demonstrates that such defendant previously paid the full amount of any monetary award under subdivision six of this section in a previous action for each violation of this article, or for each violation of this article to which the defendant aided or abetted such violation.

8. Notwithstanding any other provision of law to the contrary, none of the following is a defense to an action brought under this section:

(a) A defendant's ignorance or mistake of law.

(b) A defendant's belief that the requirements of this article are unconstitutional or were unconstitutional.

(c) A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this article.

(d) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought.

(e) Nonmutual issue preclusion or nonmutual claim preclusion.

(f) Any claim that the enforcement of this article or the imposition of civil liability against the defendant will violate a constitutional right of a third-party.

9. Notwithstanding any other provision of law to the contrary, the state, a state official, or a district, county, or city attorney shall not intervene in an action brought under this section. However, this subdivision does not prohibit a person described by this subdivision from filing an amicus curiae brief in the action.

§ 898-n. Defenses. 1. A defendant against whom an action is brought under section eight hundred ninety-eight-m of this article does not have standing to assert the right to keep and bear arms under the Second Amendment to the United States Constitution as a defense to liability under such section unless either of the following is true:

(a) The United States supreme court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of other individuals in state court as a matter of federal constitutional law; or

(b) The defendant has standing to assert the rights of other individuals under the tests for third-party standing established by the United States supreme court.

2. A defendant in an action brought under Section 3 may only assert an affirmative defense to liability under this section if:

(a) A person sued under paragraph (a) of subdivision one of section eight hundred ninety-eight-m of this article reasonably believed, after conducting a reasonable investigation, that the person aided or abetted was complying with this article.

(b) A person sued under paragraph (b) of subdivision one of section eight hundred ninety-eight-m of this article reasonably believed, after conducting a reasonable investigation, that the person was complying with this article or was aiding or abetting another who was complying with this article.

§ 2. Section 213 of the civil practice law and rules is amended by adding a new subdivision 10 to read as follows:

10. an action pursuant to section eight hundred ninety-eight-m of the general business law; the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or five years from the time the plaintiff or the person under whom the plaintiff claims discovered the cause of action, or could with reasonable diligence have discovered it.

§ 3. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 4. This act shall take effect on the thirtieth day after it shall have become a law.