

STATE OF NEW YORK

4429

2023-2024 Regular Sessions

IN SENATE

February 8, 2023

Introduced by Sen. FERNANDEZ -- 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.

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

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

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

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

19 § 898-l. Enforcement. Notwithstanding any provision of law to the
20 contrary, the requirements of this article shall be enforced exclusively
21 through the private civil actions described in section eight hundred
22 ninety-eight-m of this article. No enforcement of this article may be
23 taken or threatened by the state, a political subdivision, a district,
24 county or city attorney, or an executive or administrative officer or
25 employee of the state or a political subdivision against any person,
26 except as provided in section eight hundred ninety-eight-m of this arti-
27 cle.

28 § 898-m. Private cause of action. 1. Any person, other than an officer
29 or employee of a state or local governmental entity in the state, shall
30 have a private cause of action against any person who does any of the
31 following:

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

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

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

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

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

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

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

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

1 (a) Injunctive relief sufficient to prevent the defendant from violat-
2 ing this article or engaging in acts that aid or abet violations of this
3 article.

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

8 (c) Attorneys' fees and costs, including fees upon fees, at the high-
9 est forum rates available in the state.

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

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

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

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

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

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

28 (e) Nonmutual issue preclusion or nonmutual claim preclusion.

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

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

37 § 898-n. Defenses. 1. A defendant against whom an action is brought
38 under section eight hundred ninety-eight-m of this article does not have
39 standing to assert the right to keep and bear arms under the Second
40 Amendment to the United States Constitution as a defense to liability
41 under such section unless either of the following is true:

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

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

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

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

55 (b) A person sued under paragraph (b) of subdivision one of section
56 eight hundred ninety-eight-m of this article reasonably believed, after

1 conducting a reasonable investigation, that the person was complying
2 with this article or was aiding or abetting another who was complying
3 with this article.

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

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

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

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