

# STATE OF NEW YORK

5628

2023-2024 Regular Sessions

## IN SENATE

March 9, 2023

Introduced by Sen. JACKSON -- 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 machine-guns, assault weapons, disguised guns, ghost guns, and unfinished frames or receivers

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

1 Section 1. The general business law is amended by adding a new article  
2 39-DDDDD to read as follows:

3 ARTICLE 39-DDDDD

4 MACHINE-GUNS, ASSAULT WEAPONS, DISGUISED GUNS, GHOST GUNS AND UNFINISHED  
5 FRAMES OR RECEIVERS

6 Section 898-j. Definitions.

7 898-k. Prohibitions.

8 898-l. Exceptions.

9 898-m. Enforcement.

10 898-n. Private cause of action.

11 898-o. Defenses.

12 898-p. Construction.

13 898-q. Venue.

14 898-r. Sovereign immunity.

15 898-s. Severability.

16 § 898-j. Definitions. As used in this article, the following terms  
17 shall have the following meanings:

18 1. "Assault weapon" shall have the same meaning as defined in section  
19 265.00 of the penal law.

20 2. "Disguised gun" shall have the same meaning as defined in section  
21 265.00 of the penal law.

22 3. "Ghost gun" shall have the same meaning as defined in section  
23 265.00 of the penal law.

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

LBD09488-01-3

1 4. "Machine-gun" shall have the same meaning as defined in section  
2 265.00 of the penal law.

3 5. "Unfinished frame or receiver" shall have the same meaning as  
4 defined in section 265.00 of the penal law.

5 § 898-k. Prohibitions. 1. Notwithstanding any provision of law to the  
6 contrary, no person within the state shall manufacture or cause to be  
7 manufactured, distribute, transport, or import into the state, or cause  
8 to be distributed, transported, or imported into the state, keep for  
9 sale, offer or expose for sale, or give or lend, any machine-gun,  
10 assault weapon, disguised gun or ghost gun, except as provided in subdi-  
11 visions four and five of this section and in section eight hundred ninety-  
12 eight-1 of this article.

13 2. No person within the state may manufacture or cause to be manufac-  
14 tured, distribute, transport, or import into the state, or cause to be  
15 distributed or transported or imported into the state, keep for sale,  
16 offer or expose for sale, or give or lend, any unfinished frame or  
17 receiver. This subdivision shall not apply to a manufacturer or importer  
18 of firearms licensed pursuant to Chapter 44 (commencing with Section  
19 921) of Part I of Title 18 of the United States Code, and the regu-  
20 lations issued pursuant thereto, except that the manufacturer or import-  
21 er shall not perform any of the acts prohibited by this subdivision with  
22 respect to a kit of firearm precursor parts containing all parts neces-  
23 sary to construct a functioning firearm.

24 3. The prohibitions described in subdivisions one and two of this  
25 section apply whether or not the machine-gun, assault weapon, disguised  
26 gun, ghost gun or unfinished frame or receiver is misused or is intended  
27 to be misused in a criminal or unlawful manner.

28 4. Subdivisions one and two of this section do not apply to the sale  
29 of a machine-gun, assault weapon, disguised gun, ghost gun or unfinished  
30 frame or receiver to, or the purchase, transport, importation, sale or  
31 other transfer, or manufacture of, a machine-gun, assault weapon,  
32 disguised gun, ghost gun or unfinished frame or receiver by, any law  
33 enforcement agency, public entity that employs peace officers, or any  
34 authorized law enforcement representative thereof, if that person or  
35 entity is not prohibited by law from possessing a machine-gun, assault  
36 weapon, disguised gun, ghost gun or unfinished frame or receiver,  
37 including, without limitation, any state or local law enforcement agen-  
38 cy, the department of corrections and community supervision, the depart-  
39 ment of corrections of any municipality, the military or naval forces of  
40 this state or of the United States, a law enforcement or military agency  
41 of another state, any federal law enforcement agency, or any foreign  
42 government or agency approved by the United States Department of State,  
43 for use in the discharge of the official duties of such entities.

44 5. Subdivisions one and two of this section do not apply to a person  
45 who is the executor or administrator of an estate that includes a  
46 machine-gun, assault weapon, disguised gun, ghost gun or unfinished  
47 frame or receiver, that is disposed of as authorized by the probate  
48 court, if the disposition is otherwise permitted pursuant to the  
49 provisions of section 265.20 of the penal law.

50 § 898-l. Exceptions. 1. Notwithstanding section eight hundred ninety-  
51 eight-k of this article, any gunsmith or dealer in firearms licensed  
52 pursuant to section 400.00 of the penal law may take possession of any  
53 machine-gun or assault weapon from any person to whom it is legally  
54 registered or who has been issued a permit to possess it pursuant to  
55 article four hundred of the penal law, or of any unfinished frame or  
56 receiver, for the purposes of servicing or repair.

1 2. Notwithstanding section eight hundred ninety-eight-k of this arti-  
2 cle, any gunsmith or dealer in firearms licensed pursuant to section  
3 400.00 of the penal law may transfer possession of any machine-gun,  
4 assault weapon, or unfinished frame or receiver received pursuant to  
5 subdivision one of this section, to a gunsmith licensed pursuant to  
6 section 400.00 of the penal law for purposes of repairing or servicing  
7 such machine-gun, assault weapon, or unfinished frame or receiver. A  
8 transfer is permissible only to the following persons:

9 (a) A gunsmith employed by the dealer.

10 (b) A gunsmith with whom the dealer has contracted for gunsmithing  
11 services.

12 3. Paragraph (b) of subdivision two of this section applies only if  
13 the gunsmith receiving the machine-gun, assault weapon, or unfinished  
14 frame or receiver part meets both of the following qualifications:

15 (a) The gunsmith holds a dealer license issued pursuant to Chapter 44  
16 (commencing with Section 921) of Title 18 of the United States Code  
17 and the regulations issued pursuant thereto.

18 (b) The gunsmith holds any business license required by a state or  
19 local governmental entity.

20 4. In addition to the uses permitted in section 265.20 or article four  
21 hundred of the penal law, any gunsmith or dealer in firearms licensed  
22 pursuant to section 400.00 of the penal law who lawfully possesses a  
23 machine-gun, assault weapon, or unfinished frame or receiver part pursu-  
24 ant to those provisions may do either of the following:

25 (a) Transport the machine-gun, assault weapon, or unfinished frame or  
26 receiver between dealers or out of the state if that person is permitted  
27 pursuant to the National Firearms Act. Any transporting allowed by this  
28 section or section eight hundred ninety-eight-k of this article shall be  
29 in compliance with articles two hundred sixty-five and four hundred of  
30 the penal law.

31 (b) Sell the machine-gun, assault weapon, or unfinished frame or  
32 receiver to a resident outside the state.

33 5. Notwithstanding section eight hundred ninety-eight-k of this arti-  
34 cle, any individual may, provided that the machine-gun, assault weapon,  
35 disguised gun, ghost gun or unfinished frame or receiver is transported  
36 in compliance with articles two hundred sixty-five and four hundred of  
37 the penal law, do any of the following:

38 (a) Arrange in advance to relinquish a machine-gun, assault weapon,  
39 disguised gun, ghost gun or unfinished frame or receiver to a police or  
40 sheriff's department.

41 (b) Sell, deliver, or transfer a machine-gun, assault weapon,  
42 disguised gun, ghost gun or unfinished frame or receiver to an author-  
43 ized representative of a city, city and county, county, or state govern-  
44 ment, or of the federal government, provided that the entity is acquir-  
45 ing the weapon as part of an authorized, voluntary program in which the  
46 entity is buying or receiving weapons from private individuals.

47 (c) Transfer, relinquish, or dispose of a machine-gun, assault weapon,  
48 disguised gun, ghost gun or unfinished frame or receiver in compliance  
49 with the requirements of section 370.25 of the criminal procedure law.

50 § 898-m. Enforcement. 1. Notwithstanding any provision of law to the  
51 contrary, the requirements of this article shall be enforced exclusively  
52 through the private civil actions described in section eight hundred  
53 ninety-eight-n of this article. No enforcement of this article may be  
54 taken or threatened by the state, a political subdivision, a district,  
55 county or city attorney, or an executive or administrative officer or  
56 employee of the state or a political subdivision against any person,

1 except as provided in section eight hundred ninety-eight-n of this arti-  
2 cle.

3 2. The fact that conduct violates this article shall not be an inde-  
4 pendent basis for enforcement of any other law of this state, or the  
5 denial, revocation, suspension, or withholding of any right or privilege  
6 conferred by the law of this state or a political subdivision, or a  
7 threat to do the same, by the state, a political subdivision, a district  
8 or county or city attorney, or an executive or administrative officer or  
9 employee of the state or a political subdivision, or a board, commis-  
10 sion, or similar body assigned authority to do so under law, against any  
11 person, except as provided in section eight hundred ninety-eight-n of  
12 this article. Nor shall any civil action predicated upon a violation of  
13 this article be brought by the state, a political subdivision, a  
14 district, county or city attorney, or an executive or administrative  
15 officer or employee of the state or a political subdivision. For avoid-  
16 ance of doubt, the rights and privileges described by this subdivision  
17 include, but are not limited to, any business licenses and permits  
18 issued pursuant to this chapter or any licenses issued pursuant to arti-  
19 cle four hundred of the penal law. This subdivision shall not be  
20 construed to prevent or limit enforcement of any other law regulating  
21 conduct that also violates this article, including, but not limited to,  
22 articles two hundred sixty-five and four hundred of the penal law.

23 3. Subdivisions one and two of this section shall not be construed to  
24 do any of the following:

25 (a) Legalize the conduct prohibited by this chapter or by the penal  
26 law.

27 (b) Waive any requirements prescribed in article four hundred of the  
28 penal law.

29 (c) Limit or affect the availability of a remedy established by  
30 section eight hundred ninety-eight-n of this article.

31 (d) Limit the enforceability of any other laws that regulate or  
32 prohibit any conduct relating to machine-guns, assault weapons,  
33 disguised guns, ghost guns, or unfinished frames or receivers.

34 § 898-n. Private cause of action. 1. Any person, other than an officer  
35 or employee of a state or local governmental entity in the state, shall  
36 have a private cause of action against any person who does any of the  
37 following:

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

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

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

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

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

51 (b) Statutory damages in an amount of not less than ten thousand  
52 dollars for each machine-gun, assault weapon, disguised gun, ghost gun,  
53 or unfinished frame or receiver as to which the defendant violated  
54 section eight hundred ninety-eight-k of this article, and for each  
55 machine-gun, assault weapon, disguised gun, ghost gun, or unfinished

1 frame or receiver as to which the defendant aided or abetted a violation  
2 of section eight hundred ninety-eight-k of this article.

3 (c) Attorney's fees and costs.

4 3. Notwithstanding subdivision two of this section, a court shall not  
5 award relief under this section in response to a violation of this arti-  
6 cle if the defendant demonstrates that such defendant previously paid  
7 the full amount of any monetary award under subdivision two of this  
8 section in a previous action for each machine-gun, assault weapon,  
9 disguised gun, ghost gun, or unfinished frame or receiver as to which  
10 the defendant violated, or aided or abetted a violation of, section  
11 eight hundred ninety-eight-k of this article.

12 4. Notwithstanding any other provision of law to the contrary, a cause  
13 of action under this section shall be extinguished unless the action is  
14 brought not later than four years after such cause of action accrues.

15 5. An act or omission in violation of section eight hundred ninety-  
16 eight-k of this article shall be deemed an injury in fact to all resi-  
17 dents of, and visitors to, this state, and any such person shall have  
18 standing to bring a civil action pursuant to this section.

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

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

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

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

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

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

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

34 (g) A defendant's assertion that this article proscribes conduct that  
35 is separately prohibited by the penal law or any other law of this  
36 state, or that this article proscribes conduct beyond that which is  
37 already prohibited by the penal law or any other law of this state.

38 (h) Any claim that the machine-gun, assault weapon, disguised gun,  
39 ghost gun, or unfinished frame or receiver at issue was not misused, or  
40 was not intended to be misused, in a criminal or unlawful manner.

41 7. (a) Both of the following are affirmative defenses to an action  
42 brought under this section:

43 (i) A person sued under paragraph (b) of subdivision one of this  
44 section reasonably believed, after conducting a reasonable investi-  
45 gation, that the person aided or abetted was complying with this arti-  
46 cle.

47 (ii) A person sued under paragraph (c) of subdivision one of this  
48 section reasonably believed, after conducting a reasonable investi-  
49 gation, that the person was complying with this article or was aiding or  
50 abetting another who was complying with this article.

51 (b) The defendant has the burden of proving an affirmative defense  
52 under this subdivision by a preponderance of the evidence.

53 8. This section shall not be construed to impose liability on any  
54 speech or conduct protected by the First Amendment to the United States  
55 Constitution, as made applicable to the states through the Fourteenth

1 Amendment to the United States Constitution, or by Section 8 of Article  
2 I of the New York Constitution.

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

8 10. Notwithstanding any other provision of law to the contrary, a  
9 court shall not award attorney's fees or costs to a defendant in an  
10 action brought under this section.

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

15 § 898-o. Defenses. 1. A defendant against whom an action is brought  
16 under section eight hundred ninety-eight-n of this article does not have  
17 standing to assert the right of another individual to keep and bear arms  
18 under the Second Amendment to the United States Constitution as a  
19 defense to liability under such section unless either of the following  
20 is true:

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

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

28 2. A defendant in an action brought under section eight hundred nine-  
29 ty-eight-n of this article may assert an affirmative defense to liabil-  
30 ity under this section if both of the following are true:

31 (a) The defendant has standing to assert the third-party right of an  
32 individual to keep and bear arms in accordance with subdivision one of  
33 this section; and

34 (b) The defendant demonstrates that the relief sought by the claimant  
35 will violate a third-party's rights under the Second Amendment to the  
36 United States Constitution right as defined by clearly established case  
37 law of the United States supreme court.

38 3. Nothing in this section shall in any way limit or preclude a  
39 defendant from asserting the defendant's personal constitutional rights  
40 as a defense to liability under section eight hundred ninety-eight-n of  
41 this article, and a court shall not award relief under such section if  
42 the conduct for which the defendant has been sued was an exercise of a  
43 state or federal constitutional right that personally belongs to the  
44 defendant.

45 § 898-p. Construction. This article shall not be construed to do any  
46 of the following:

47 1. Authorize the initiation of a cause of action under this article  
48 against a person purchasing, obtaining, or attempting to purchase or  
49 obtain a machine-gun, assault weapon, disguised gun, ghost gun, or  
50 unfinished frame or receiver from a person acting in violation of this  
51 article.

52 2. Wholly or partly repeal, either expressly or by implication, any  
53 other statute that regulates or prohibits any conduct relating to  
54 machine-guns, assault weapons, disguised guns, ghost guns, or unfinished  
55 frames or receivers.

1 3. Restrict a political subdivision from regulating or prohibiting  
2 conduct relating to machine-guns, assault weapons, disguised guns, ghost  
3 guns, or unfinished frames or receivers in a manner that is at least as  
4 stringent as the laws of this state.

5 § 898-q. Venue. 1. Notwithstanding any other provision of law to the  
6 contrary, a civil action brought under section eight hundred ninety-  
7 eight-n of this article shall be brought in any of the following:

8 (a) The county in which all or a substantial part of the events or  
9 omissions giving rise to the claim occurred;

10 (b) The county of residence for any one of the natural person defend-  
11 ants at the time the cause of action accrued;

12 (c) The county of the principal office in this state of any one of the  
13 defendants that is not a natural person; or

14 (d) The county of residence for the claimant if the claimant is a  
15 natural person residing in the state.

16 2. Notwithstanding any other provision of law to the contrary, if a  
17 civil action is brought under section eight hundred ninety-eight-n of  
18 this article in one of the venues described by subdivision one of this  
19 section, such action shall not be transferred to a different venue with-  
20 out the written consent of all parties.

21 § 898-r. Sovereign immunity. 1. Notwithstanding any other provision of  
22 law to the contrary, the state has sovereign immunity, a political  
23 subdivision has governmental immunity, and each officer and employee of  
24 the state or a political subdivision has official immunity in any  
25 action, claim, or counterclaim or any type of legal or equitable action  
26 that challenges the validity of any provision or application of this  
27 article, on constitutional grounds or otherwise.

28 2. A provision of state law shall not be construed to waive or abro-  
29 gate an immunity described by subdivision one of this section unless it  
30 expressly waives immunity under this section.

31 § 898-s. Severability. 1. It is the intent of the legislature that  
32 every provision, section, subdivision, sentence, clause, phrase, and  
33 word in this chapter, and every application of the provisions in this  
34 article, are severable from each other.

35 2. If any application of any provision in this article to any person,  
36 group of persons, or circumstances is found by a court to be invalid or  
37 unconstitutional, the remaining applications of that provision to all  
38 other persons and circumstances shall be severed and shall not be  
39 affected. All constitutionally valid applications of this article shall  
40 be severed from any applications that a court finds to be invalid, leav-  
41 ing the valid applications in force, because it is the legislature's  
42 intent and priority that the valid applications be allowed to stand  
43 alone. Even if a reviewing court finds a provision of this article to  
44 impose an unconstitutional burden in a large or substantial fraction of  
45 relevant cases, the applications that do not present an unconstitutional  
46 burden shall be severed from the remaining applications and shall remain  
47 in force, and shall be treated as if the legislature had enacted a stat-  
48 ute limited to the persons, group of persons, or circumstances for which  
49 the statute's application does not present an unconstitutional burden.  
50 If any court declares or finds a provision of this article facially  
51 unconstitutional, when discrete applications of that provision can be  
52 enforced against a person, group of persons, or circumstances without  
53 violating the United States Constitution and the state constitution,  
54 such applications shall be severed from all remaining applications of  
55 the provision, and the provision shall be interpreted as if the legisla-  
56 ture had enacted a provision limited to the persons, group of persons,

1 or circumstances for which the provision's application will not violate  
2 the United States Constitution and the state constitution.

3 3. The legislature further declares that it would have enacted this  
4 article, and each provision, section, subdivision, sentence, clause,  
5 phrase, and word, and all constitutional applications of this article,  
6 irrespective of the fact that any provision, section, subdivision,  
7 sentence, clause, phrase, or word, or application of this article, were  
8 to be declared unconstitutional or to represent an unconstitutional  
9 burden.

10 4. If any provision of this article is found by any court to be uncon-  
11 stitutionally vague, then the applications of that provision that do not  
12 present constitutional vagueness problems shall be severed and remain in  
13 force.

14 5. A court shall not decline to enforce the severability requirements  
15 of this section on the ground that severance would rewrite the statute  
16 or involve the court in legislative or lawmaking activity. A court that  
17 declines to enforce or enjoins a state official from enforcing a statu-  
18 tory provision of this article does not rewrite a statute, as the stat-  
19 ute continues to contain the same words as before the court's decision.  
20 Each of the following is true about a judicial injunction or declaration  
21 of unconstitutionality of a provision of this article:

22 (a) It is nothing more than an edict prohibiting enforcement that may  
23 subsequently be vacated by a later court if that court has a different  
24 understanding of the requirements of the state constitution or the  
25 United States Constitution.

26 (b) It is not a formal amendment of the language in a statute.

27 (c) It no more rewrites a statute than a decision by the executive not  
28 to enforce a duly-enacted statute in a limited and defined set of  
29 circumstances.

30 § 2. Paragraph (b) of subdivision 2 of section 898-n of the general  
31 business law, as added by section one of this act, is amended to read as  
32 follows:

33 (b) Statutory damages in an appropriate amount [~~of not less than ten~~  
34 ~~thousand dollars for each machine-gun, assault weapon, disguised gun,~~  
35 ~~ghost gun, or unfinished frame or receiver as to which the defendant~~  
36 ~~violated section eight hundred ninety-eight k of this article, and for~~  
37 ~~each machine-gun, assault weapon, disguised gun, ghost gun, or unfin-~~  
38 ~~ished frame or receiver as to which the defendant aided or abetted a~~  
39 ~~violation of section eight hundred ninety-eight k of this article] to be  
40 determined by the court for each violation of this article. In making  
41 that determination, the court shall consider factors that include, but  
42 are not limited to, the number of machine-guns, assault weapons,  
43 disguised guns, ghost guns, or unfinished frames or receivers involved  
44 in the defendant's violation of this article, the duration of the  
45 prohibited conduct, whether the defendant has previously violated this  
46 article or any other federal, state, or local law concerning the regu-  
47 lation of firearms, and any other factors tending to increase the risk  
48 to the public, such as proximity of the violations to sensitive places.~~

49 § 3. The civil practice law and rules is amended by adding a new  
50 section 8111 to read as follows:

51 § 8111. Costs in certain actions related to firearms. (a) Notwith-  
52 standing any other provision of law to the contrary, any person, includ-  
53 ing an entity, attorney, or law firm, who seeks declaratory or injunc-  
54 tive relief to prevent the state, a political subdivision, a  
55 governmental entity or public official in the state, or a person in the  
56 state from enforcing any statute, ordinance, rule, regulation, or any

1 other type of law that regulates or restricts firearms as defined in  
2 section 265.00 of the penal law, in any state or federal court, or that  
3 represents any litigant seeking that relief in any state or federal  
4 court, is jointly and severally liable to pay the attorney's fees and  
5 costs of the prevailing party.

6 (b) For purposes of this section, a party is considered a prevailing  
7 party if a state or federal court does either of the following:

8 (1) Dismisses any claim or cause of action brought by the party seek-  
9 ing the declaratory or injunctive relief described by subdivision (a) of  
10 this section, regardless of the reason for the dismissal.

11 (2) Enters judgment in the party's favor on any claim or cause of  
12 action.

13 (c) Regardless of whether a prevailing party sought to recover attor-  
14 ney's fees or costs in the underlying action, a prevailing party under  
15 this section may bring a civil action to recover attorney's fees and  
16 costs against a person, including an entity, attorney, or law firm, that  
17 sought declaratory or injunctive relief described by subdivision (a) of  
18 this section not later than the third anniversary of the date on which,  
19 as applicable:

20 (1) The dismissal or judgment described by subdivision (b) of this  
21 section becomes final upon the conclusion of appellate review; or

22 (2) The time for seeking appellate review expires.

23 (d) None of the following are a defense to an action brought under  
24 subdivision (c) of this section:

25 (1) A prevailing party under this section failed to seek recovery of  
26 attorney's fees or costs in the underlying action.

27 (2) The court in the underlying action declined to recognize or  
28 enforce the requirements of this section.

29 (3) The court in the underlying action held that any provision of this  
30 section is invalid, unconstitutional, or preempted by federal law,  
31 notwithstanding the doctrines of issue or claim preclusion.

32 (e) Any person, including an entity, attorney, or law firm, who seeks  
33 declaratory or injunctive relief as described in subdivision (a) of this  
34 section, shall not be deemed a prevailing party under this section or  
35 any other provision of this chapter.

36 (f) As used in this section the term "firearm" shall mean a device,  
37 designed to be used as a weapon, from which is expelled through a  
38 barrel, a projectile by the force of an explosion or other form of  
39 combustion.

40 § 4. 1. A statute that regulates or prohibits firearms shall not be  
41 construed to repeal any other statute that regulates or prohibits  
42 firearms, either wholly or partly, unless the later-enacted statute  
43 explicitly states that it is repealing the other statute.

44 2. A statute shall not be construed to restrict a political subdivi-  
45 sion from regulating or prohibiting firearms in a manner that is at  
46 least as stringent as the laws of this state, unless the statute explic-  
47 itly states that political subdivisions are prohibited from regulating  
48 or prohibiting firearms in the manner described by the statute.

49 3. Every statute that regulates or prohibits firearms is severable in  
50 each of its applications to every person and circumstance. If any stat-  
51 ute that regulates or prohibits firearms is found by any court to be  
52 unconstitutional, either on its face or as applied, then all applica-  
53 tions of that statute that do not violate the United States Constitution  
54 and the state constitution shall be severed from the unconstitutional  
55 applications and shall remain enforceable, notwithstanding any other  
56 law, and the statute shall be interpreted as if containing language

1 limiting the statute's application to the persons, group of persons, or  
2 circumstances for which the statute's application will not violate the  
3 United States Constitution and the state constitution.

4 4. As used in this section the term "firearm" shall mean a device,  
5 designed to be used as a weapon, from which is expelled through a  
6 barrel, a projectile by the force of an explosion or other form of  
7 combustion.

8 § 5. This act shall take effect on the thirtieth day after it shall  
9 have become a law; provided, however, that section two of this act shall  
10 take effect upon the final determination of a court of competent juris-  
11 diction that the provisions of paragraph (b) of subdivision 2 of section  
12 eight hundred ninety-eight-n of the general business law as added by  
13 section one of this act are invalid or unconstitutional; provided that  
14 the attorney general shall notify the legislative bill drafting commis-  
15 sion upon the occurrence of such a final determination by a court in  
16 order that the commission may maintain an accurate and timely effective  
17 data base of the official text of the laws of the state of New York in  
18 furtherance of effectuating the provisions of section 44 of the legisla-  
19 tive law and section 70-b of the public officers law.