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:

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

ARTICLE 39-DDDDD

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

Section 898-j. Definitions.
898-k. Prohibitions.
898-l. Exceptions.
898-m. Enforcement.
898-n. Private cause of action.
898-o. Defenses.
898-p. Construction.
898-q. Venue.
898-r. Sovereign immunity.
898-s. Severability.

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

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

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

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

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

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

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

§ 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, any machine-gun, assault weapon, disguised gun or ghost gun, except as provided in subdivisions four and five of this section and in section eight hundred ninety-eight-l of this article.

2. No person within the state may manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed or transported or imported into the state, keep for sale, offer or expose for sale, or give or lend, any unfinished frame or receiver. This subdivision shall not apply to a manufacturer or importer of firearms licensed pursuant to Chapter 44 (commencing with Section 921) of Part I of Title 18 of the United States Code, and the regulations issued pursuant thereto, except that the manufacturer or importer shall not perform any of the acts prohibited by this subdivision with respect to a kit of firearm precursor parts containing all parts necessary to construct a functioning firearm.

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

4. Subdivisions one and two of this section do not apply to the sale of a machine-gun, assault weapon, disguised gun, ghost gun or unfinished frame or receiver to, or the purchase, transport, importation, sale or other transfer, or manufacture of, a machine-gun, assault weapon, disguised gun, ghost gun or unfinished frame or receiver 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 machine-gun, assault weapon, disguised gun, ghost gun or unfinished frame or receiver, 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. Subdivisions one and two of this section do not apply to a person who is the executor or administrator of an estate that includes a machine-gun, assault weapon, disguised gun, ghost gun or unfinished frame or receiver, that is disposed of as authorized by the probate court, if the disposition is otherwise permitted pursuant to the provisions of section 265.20 of the penal law.

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

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

(a) A gunsmith employed by the dealer.

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

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

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

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

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

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

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

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

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

(b) Sell, deliver, or transfer a machine-gun, assault weapon, disguised gun, ghost gun or unfinished frame or receiver to an authorized representative of a city, city and county, county, or state government, or of the federal government, provided that the entity is acquiring the weapon as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.

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

§ 898-m. Enforcement. 1. 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-n 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-n of this article.

2. The fact that conduct violates this article shall not be an independent basis for enforcement of any other law of this state, or the denial, revocation, suspension, or withholding of any right or privilege conferred by the law of this state or a political subdivision, or a threat to do the same, by the state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of the state or a political subdivision, or a board, commission, or similar body assigned authority to do so under law, against any person, except as provided in section eight hundred ninety-eight-n of this article. Nor shall any civil action predicated upon a violation of this article be brought 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. For avoidance of doubt, the rights and privileges described by this subdivision include, but are not limited to, any business licenses and permits issued pursuant to this chapter or any licenses issued pursuant to article four hundred of the penal law. This subdivision shall not be construed to prevent or limit enforcement of any other law regulating conduct that also violates this article, including, but not limited to, articles two hundred sixty-five and four hundred of the penal law.

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

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

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

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

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

§ 898-n. 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. 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 machine-gun, assault weapon, disguised gun, ghost gun, or unfinished frame or receiver as to which the defendant violated section eight hundred ninety-eight-k of this article, and for each machine-gun, assault weapon, disguised gun, ghost gun, or unfinished

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

(c) Attorney's fees and costs.

3. Notwithstanding subdivision two 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 two of this section in a previous action for each machine-gun, assault weapon, disguised gun, ghost gun, or unfinished frame or receiver as to which the defendant violated, or aided or abetted a violation of, section eight hundred ninety-eight-k of this article.

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

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

6. 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.

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

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

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

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

(ii) A person sued under paragraph (c) of subdivision one of this section 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.

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

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

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

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.

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

11. 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.

§ 898-o. Defenses. 1. A defendant against whom an action is brought under section eight hundred ninety-eight-n of this article does not have standing to assert the right of another individual 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 eight hundred ninety-eight-n of this article may assert an affirmative defense to liability under this section if both of the following are true:

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

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

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

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

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

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

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

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

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

(b) The county of residence for any one of the natural person defendants at the time the cause of action accrued;

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

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

2. Notwithstanding any other provision of law to the contrary, if a civil action is brought under section eight hundred ninety-eight-n of this article in one of the venues described by subdivision one of this section, such action shall not be transferred to a different venue without the written consent of all parties.

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

2. A provision of state law shall not be construed to waive or abrogate an immunity described by subdivision one of this section unless it expressly waives immunity under this section.

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

2. If any application of any provision in this article to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and shall not be affected. All constitutionally valid applications of this article shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this article to impose an unconstitutional burden in a large or substantial fraction of relevant cases, the applications that do not present an unconstitutional burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an unconstitutional burden. If any court declares or finds a provision of this article facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and the state constitution, such applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons,

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

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

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

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

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

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

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

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

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

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

§ 8111. Costs in certain actions related to firearms. (a) Notwithstanding any other provision of law to the contrary, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent the state, a political subdivision, a governmental entity or public official in the state, or a person in the state from enforcing any statute, ordinance, rule, regulation, or any

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

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

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

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

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

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

(2) The time for seeking appellate review expires.

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

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

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

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

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

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

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

2. A statute shall not be construed to restrict a political subdivision from regulating or prohibiting firearms in a manner that is at least as stringent as the laws of this state, unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting firearms in the manner described by the statute.

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

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

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

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