

**A RESOLUTION TO BE SUBMITTED BY  
LEGISLATOR TODARO, LORIGO, GREENE, AND MILLS**

**Re: Opposition to Establishment of a Nuisance Claim against Gun Manufacturers**

**WHEREAS**, Senate Bill S1048A seeks to create a nuisance claim against gun manufacturers for the deliberate misuse of their products by the end purchaser; and

**WHEREAS**, in effect the bill merely serves to scapegoat the gun industry for the bad acts of others; and

**WHEREAS**, if this bill passes, the State would essentially be asking gun manufacturers and dealers to backstop criminal acts of which they are not involved, a move that is unprecedented and nonsensical; and

**WHEREAS**, if gun manufacturers are found to be providing weapons illegally to the criminal underworld, they should be held responsible, and can be under existing laws. If gun dealers are providing weapons to individuals outside of the current legal process, they can and should be held responsible. Neither party should potentially be held responsible for acts of violence perpetrated by a deranged individual. Criminal laws already punish individuals for buying (NYS Penal Law 265.17), selling (NYS Penal Law 265.10 – 265.14), possessing (NYS Penal Law 265.01 – 265.06, 265.19) or using (NYS Penal Law 265.08 – 265.09) firearms improperly, and this is not an exhaustive list; and

**WHEREAS**, the blatant failure of a gun dealer to properly follow state requirements when selling a firearm merits a viable cause of action for damages under the Protection of Lawful Commerce in Arms Act (PLCAA). Under which, plaintiffs have been able to hold dealers liable for selling to people they knew, or should have known, would provide the firearm to someone who was not properly licensed, or who would have been otherwise prohibited under state law from possession themselves. New York State does not need additional laws, they need to enforce the laws we already have; and

**WHEREAS**, further, the federal PLCAA is a federal law which protects firearm manufacturers and dealers from being held liable when crimes have been committed with their products. S1048A would be in direct contention with the PLCAA, established federal law; and

**WHEREAS**, this bill will neither decrease gun violence nor increase the safety of residents in New York, it only serves to create a false sense of safety and security and a new private cause of action for lawyers to expose.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that this honorable body believes individuals are responsible for their actions and therefore corporations and small businesses should not be held criminally liable for

the actions of their customers and wishes to go on record expressing our opposition to New York State Senate Bill S1048A(2021); and, be it further

**RESOLVED**, that certified copies of this resolution be sent to the Western New York delegation to the New York State Senate and Assembly, the majority and minority leaders in both the New York State Senate and Assembly, Governor Andrew Cuomo, and any other party deemed necessary and proper.

Fiscal Impact: None for resolution

# STATE OF NEW YORK

1048

2021-2022 Regular Sessions

## IN SENATE

January 6, 2021

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds that the illegal use of firearms not only constitutes a public  
3 nuisance as declared in article 400 of the penal law, but that the  
4 effects of such nuisance poses specific harm to New Yorkers based large-  
5 ly on their zip code and certain immutable characteristics such as race  
6 and ethnicity. Illegal firearm violence has disproportionately affected  
7 underserved black and brown neighborhoods in our cities and throughout  
8 the state despite stringent state and local laws against the illegal  
9 possession of firearms while, according to the Bureau of Alcohol, Tobac-  
10 co, Firearms and Explosives statistics, 74% of firearms used in crimes  
11 in New York are purchased outside of New York. Thus, the legislature  
12 further finds that given the ease at which legal firearms flow into the  
13 illegal market, and given the specific harm illegal firearm violence  
14 causes certain New Yorkers, those responsible for the illegal or unrea-  
15 sonable sale, manufacture, distribution, importing or marketing of  
16 firearms may be held liable for the public nuisance caused by such  
17 activities.

18 § 2. The general business law is amended by adding a new article  
19 39-DDDD to read as follows:

20 ARTICLE 39-DDDD  
21 SALE, MANUFACTURING, IMPORTING AND MARKETING OF FIREARMS  
22 Section 898-a. Definitions.  
23 898-b. Dangers to safety and health.  
24 898-c. Public nuisance.

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

LBD06691-01-1

1 898-d. Enforcement.

2 898-e. Private right of action.

3 § 898-a. Definitions. For purposes of this article, the following  
4 terms shall have the following meanings:

5 1. "Deceptive acts or practices" shall have the same meaning as  
6 defined in article twenty-two-A of this chapter.

7 2. "False advertising" shall have the same meaning as defined in arti-  
8 cle twenty-two-A of this chapter.

9 3. "Gun industry member" shall mean a person, firm, corporation or  
10 association engaged in the sale, manufacturing, distribution, importing  
11 or marketing of firearms.

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

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

16 § 898-b. Dangers to safety and health. No gun industry member, by  
17 conduct either unlawful in itself or unreasonable under all the circum-  
18 stances shall knowingly or recklessly create or maintain a condition  
19 that endangers the safety or health of the public through the sale,  
20 manufacturing, importing or marketing of a qualified product.

21 § 898-c. Public nuisance. 1. A violation of section eight hundred  
22 ninety-eight-b of this article that results in harm to the public shall  
23 hereby be declared to be a public nuisance.

24 2. The existence of a public nuisance shall not depend on whether the  
25 gun industry member acted for the purpose of causing harm to the public.

26 3. The acts or omissions of a gun industry member shall constitute a  
27 proximate cause of the public nuisance if the harm to the public was a  
28 reasonably foreseeable effect of such acts or omissions, notwithstanding  
29 any intervening actions, including but not limited to criminal actions  
30 by third parties.

31 4. In determining whether a nuisance exists, a finder of fact shall  
32 consider the totality of the evidence, which may include, but is not  
33 limited to:

34 (a) the distribution, importation, marketing or sales methods utilized  
35 by the gun industry member and their foreseeable effects on crimes in  
36 New York;

37 (b) the number of qualified products that have been diverted to the  
38 illegal market through the alleged illegal, irresponsible or unreason-  
39 able conduct of the gun industry member;

40 (c) the number of crimes that have been committed in New York with  
41 qualified products sold, manufactured, distributed, imported or marketed  
42 by the gun industry member in the alleged illegal, irresponsible or  
43 unreasonable manner;

44 (d) the total number of qualified products that the gun industry  
45 member manufactured, distributed or sold in the United States, through  
46 the alleged illegal, irresponsible or unreasonable conduct, which were  
47 recovered in, or destined for, New York;

48 (e) whether the alleged illegal, irresponsible or unreasonable conduct  
49 of the gun industry member constitutes deceptive acts or practices in  
50 the conduct of any business, trade or commerce or in the furnishing of  
51 any service;

52 (f) whether the alleged illegal, irresponsible or unreasonable conduct  
53 of the gun industry member constitutes false advertising in the conduct  
54 of any business, trade, or commerce or in the furnishing of any service;  
55 and

1 (g) any other illegal, irresponsible or unreasonable acts or omissions  
2 by the gun industry member that create, contribute to or maintain public  
3 harm.

4 § 898-d. Enforcement. The provisions of this article may be enforced  
5 by the attorney general in the name of the people of the state of New  
6 York, or by the town attorney, city corporation counsel, or other  
7 lawfully designated enforcement officer of a municipality or local  
8 government.

9 § 898-e. Private right of action. Any person, firm, corporation or  
10 association that has been damaged as a result of a gun industry member's  
11 acts or omissions in violation of this article shall be entitled to  
12 bring an action for recovery of damages or to enforce this article.

13 § 3. This act shall take effect immediately.