

**ASSEMBLY, No. 1765**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblyman REGINALD W. ATKINS**

**District 20 (Union)**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Co-Sponsored by:**

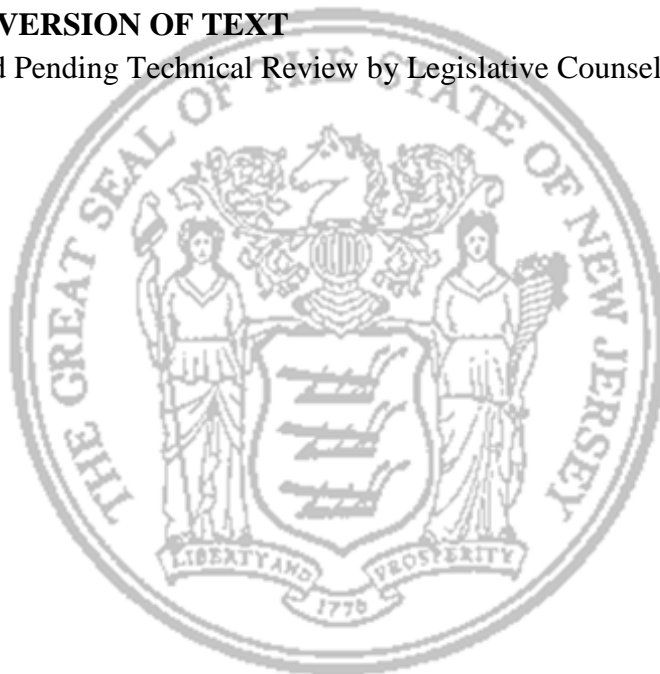
**Assemblywomen Reynolds-Jackson, Chaparro, Assemblymen Spearman, Wimberly, Stanley, Moen, Moriarty and Assemblywoman Jimenez**

**SYNOPSIS**

Allows Attorney General to bring cause of action for certain public nuisance violations arising from sale or marketing of firearms.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 6/16/2022)**

1    **AN ACT** concerning public safety and supplementing Title 2C of the  
2       New Jersey Statutes.

3

4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6

7       1.   a.   In cases involving the common law tort of public  
8       nuisance, New Jersey courts have issued decisions which have  
9       limited the ability of public officials to pursue civil actions for  
10      abatement, damages, and other relief from the negligent, reckless  
11      and, in some cases, illegal conduct of bad actors in the gun industry,  
12      whose misconduct results in harm to the public and fuels the  
13      epidemic of gun violence in New Jersey and across the nation.  
14      Since the passage of Protection of Lawful Commerce in Arms Act  
15      (PLCAA), federal law has created an additional barrier to this relief  
16      and shielded the firearm industry from being held accountable for  
17      misconduct.

18      b.   The practical result of those decisions is that the people of  
19      New Jersey have been deprived in many cases of adequate  
20      protection from and appropriate redress for injuries to public health  
21      and safety resulting from gun violence.

22      c.   With respect to gun violence, the unavailability of a robust  
23      public nuisance statute has limited the State's ability to seek legal  
24      redress in situations where firearms manufacturers and retail dealers  
25      may have knowingly or recklessly taken actions that have  
26      endangered the safety and health of New Jersey residents through  
27      the sale, manufacture, distribution, and marketing of lethal, but  
28      nonetheless legal, firearms. Even as manufacturers have  
29      incorporated features and technology resulting in more deadly and  
30      destructive firearms, some actors in the firearm industry have  
31      implemented sales, distribution and marketing practices that have  
32      contributed to the development of an illegal secondary market for  
33      these increasingly dangerous instrumentalities.

34      d.   Therefore, it is necessary and proper to promote and protect  
35      the health, safety, and welfare of the people of New Jersey by  
36      establishing a statutory cause of action for public nuisance  
37      violations available to the Attorney General to address injuries to  
38      public health and safety and to seek relief, including but not limited  
39      to, abatement and other injunctive relief, damages, and attorneys'  
40      fees and costs.

41

42      2.   As used in this act:

43        "Gun industry member" means a person, firm, corporation,  
44       company, partnership, society, joint stock company, or any other  
45       entity or association engaged in the sale, manufacturing,  
46       distribution, importing or marketing of firearms, ammunition,  
47       ammunition magazines, or firearm accessories.

1       “Public Nuisance” means any condition which injures,  
2       endangers, or threatens to injure or endanger or contributes to the  
3       injury or endangerment of the health, safety, peace, comfort, or  
4       convenience of others.

5       “Qualified product” shall have the same meaning as defined in  
6       15 USC §7903(4).

7  
8       3. a. A gun industry member shall not, by conduct either  
9       unlawful in itself or unreasonable under all the circumstances,  
10      knowingly or recklessly create, maintain, or contribute to a public  
11      nuisance in this State through the sale, manufacturing, importing, or  
12      marketing of a qualified product.

13      b. Whenever it appears to the Attorney General that a gun  
14      industry member has engaged in or is engaging in conduct that  
15      violates subsection a. of this section, the Attorney General may  
16      commence an action to seek and obtain: an injunction prohibiting  
17      the gun industry member from continuing that conduct or engaging  
18      therein or doing any acts in furtherance thereof; an order providing  
19      for abatement of the nuisance at the expense of the defendant;  
20      restitution; damages; reasonable attorneys' fees, filing fees, and  
21      reasonable costs of suit; and any other appropriate relief.

22      c. To prevail in an action under this section, the Attorney  
23      General shall not be required to demonstrate that the gun industry  
24      member acted with the purpose to engage in any public nuisance or  
25      otherwise cause harm to the public. The Attorney General shall not  
26      be required to demonstrate any special injury to be granted the  
27      relief authorized by this section.

28      d. When it appears to the Attorney General that a gun industry  
29      member has engaged in, is engaging in, or is about to engage in  
30      conduct that violates subsection a. of this section, or when the  
31      Attorney General believes it is in the public interest that an  
32      investigation should be made to ascertain whether a gun industry  
33      member has in fact engaged in, is engaging in, or is about to engage  
34      in conduct that violates subsection a. of this section, the Attorney  
35      General may:

36      (1) require the gun industry member to file a statement or report  
37      in writing under oath or otherwise, as to all the facts and  
38      circumstances concerning conduct, and other data and information  
39      as the Attorney General deems necessary;

40      (2) examine under oath any gun industry member concerning the  
41      act or omission;

42      (3) examine any record, object, book, document, account, or  
43      paper as the Attorney General deems necessary; and

44      (4) pursuant to an order of the Superior Court, impound and  
45      retain in the Attorney General's possession any record, book,  
46      document, account, object, or paper that is produced in accordance  
47      with this act until the completion of all proceedings in connection  
48      with impounded items.

1 e. The conduct of a gun industry member shall be deemed to  
2 constitute a proximate cause of the public nuisance if the harm to  
3 the public was a reasonably foreseeable effect of such conduct,  
4 notwithstanding any intervening actions, including but not limited  
5 to criminal actions by third parties.

6 f. Nothing in P.L. , c. (C. ) (pending before the  
7 Legislature as this bill) shall be construed to deny, abrogate, or  
8 impair any statutory or common law right, remedy, or prohibition  
9 otherwise available to any party, including the Attorney General.

10  
11 4. The provisions of P.L.1987, c.197 (C.2A:58C-1 et seq.) shall  
12 not apply to any public nuisance action brought by the Attorney  
13 General pursuant to section 3 of P.L. , c. (C. ) (pending  
14 before the Legislature as this bill).

15  
16 5. This act shall take effect immediately and shall apply to all  
17 actions instituted on or after the effective date of this act, and to all  
18 proceedings taken subsequent to the effective date of this act in all  
19 actions pending on the act's effective date, except that judgments  
20 entered or awards made pursuant to law from which no appeal is  
21 pending on the act's effective date shall not be affected by  
22 the provisions of this act.

#### 23 24 25 STATEMENT

26  
27 This bill establishes a statutory cause of action for public nuisance  
28 created or contributed to by the conduct of gun industry members that  
29 allows the Attorney General to address injuries to public health and  
30 safety and to seek relief, including but not limited to, abatement and  
31 other injunctive relief, damages, and attorneys' fees and costs. Under  
32 the bill, the Attorney General may seek appropriate remedies for  
33 public nuisance violations committed by firearm manufacturers,  
34 retailers and other gun industry members who knowingly or recklessly  
35 endanger the public health and safety.

36 Specifically, the bill allows the Attorney General to obtain an  
37 injunction prohibiting gun industry members from continuing a public  
38 nuisance or engaging in or doing any acts in furtherance of a public  
39 nuisance. The Attorney General also may seek and obtain an order  
40 providing for abatement of the nuisance at the expense of a defendant;  
41 restitution; damages; reasonable attorneys' fees, filing fees, and  
42 reasonable costs of suit; and any other appropriate relief.

43 The Attorney General would not be required to demonstrate that  
44 the gun industry member acted with the purpose to engage in any  
45 public nuisance or otherwise cause harm to the public. In addition, the  
46 Attorney General would not be required to demonstrate any special  
47 injury in order to be granted the relief authorized by the bill.

1       The bill also allows the Attorney General to conduct an  
2 investigation under certain circumstances. Under the bill, when a gun  
3 industry member has engaged in, is engaging in, or is about to engage  
4 in any conduct causing or contributing to a public nuisance, or when it  
5 is in the public interest that an investigation should be made to  
6 ascertain whether a person in fact has engaged in, is engaging in, or is  
7 about to engage in, any such conduct, the Attorney General may:

8       (1) require the gun industry member to file a statement or report in  
9 writing under oath or otherwise, as to all the facts and circumstances  
10 concerning such act or omission, and other data and information as  
11 the Attorney General deems necessary;

12       (2) examine under oath any person concerning the conduct;

13       (3) examine any record, object, book, document, account, or paper  
14 as the Attorney General deems necessary; and

15       (4) impound and retain in the Attorney General's possession any  
16 record, book, document, account, object, or paper that is produced in  
17 accordance with the bill until the completion of all proceedings in  
18 connection with impounded items.

19       The bill provides that a gun industry member's conduct is to be  
20 deemed a proximate cause of the nuisance if, notwithstanding any  
21 intervening actions including, but not limited to, criminal actions by  
22 third parties, the endangerment was a reasonably foreseeable effect of  
23 such conduct.

24       The bill allows the Attorney General to commence an action at any  
25 time seeking an injunction prohibiting any gun industry member from  
26 engaging in a public nuisance, or continuing those practices or  
27 engaging therein or doing any acts in furtherance thereof, or an order  
28 providing for abatement of the nuisance, regardless of the date on  
29 which the cause of action accrued.

30       The provisions of the bill apply to all actions instituted on or after  
31 the date of the bill's enactment and all proceedings taken subsequent  
32 to the date of bill's enactment. Judgments entered or awards made  
33 pursuant to law from which no appeal is pending on the date of the  
34 bill's enactment would not be affected by the bill's provisions.

35       With respect to gun violence, the unavailability of a robust public  
36 nuisance statute and limitations imposed by federal law have limited  
37 the State's ability to seek legal redress in situations where firearms  
38 manufacturers, retail dealers and other gun industry members may  
39 have knowingly or recklessly taken actions that have endangered the  
40 safety and health of New Jersey residents through the sale,  
41 manufacture, distribution, and marketing of lethal, but nonetheless  
42 legal, firearms. This bill would give the Attorney General greater  
43 authority to address injuries to public health and safety caused by the  
44 firearm industry.