

[First Reprint]

ASSEMBLY, No. 1765

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

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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

As reported by the Assembly Judiciary Committee on June 23, 2022, with amendments.



(Sponsorship Updated As Of: 6/29/2022)

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 nuisance,
8 New Jersey courts have issued decisions which have limited the
9 ability of public officials to pursue civil actions for abatement,
10 damages, and other relief from the negligent, reckless and, in some
11 cases, illegal conduct of bad actors in the gun industry, whose
12 misconduct results in harm to the public and fuels the epidemic of
13 gun violence in New Jersey and across the nation. Since the passage
14 of Protection of Lawful Commerce in Arms Act (PLCAA), federal
15 law has created an additional barrier to this relief and shielded ¹【the
16 firearm】 gun¹ industry members¹ 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, ¹【firearms】 gun-related products¹. Even as
29 manufacturers have incorporated features and technology resulting
30 in more deadly and destructive firearms, some actors in the
31 ¹【firearm】 gun¹ industry have implemented sales, distribution and
32 marketing practices that have contributed to the development of an
33 illegal secondary market for these increasingly dangerous
34 instrumentalities.

35 d. Therefore, it is necessary and proper to promote and protect
36 the health, safety, and welfare of the people of New Jersey by
37 ¹requiring gun industry members to establish and implement
38 reasonable procedures, safeguards, and business practices for the
39 sale, manufacture, distribution, importing, and marketing of gun-
40 related products and¹ establishing a statutory cause of action for
41 public nuisance violations available to the Attorney General to
42 address injuries to public health and safety and to seek relief,
43 including but not limited to, abatement and other injunctive relief,
44 damages, and attorneys' fees and costs.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted June 23, 2022.

1 2. As used in this act:

2 “Gun industry member” means a person ¹【, firm, corporation,
3 company, partnership, society, joint stock company, or any other
4 entity or association】¹ engaged in the sale, manufacturing,
5 distribution, importing or marketing of ¹【firearms, ammunition,
6 ammunition magazines, or firearm accessories】 a gun-related
7 product, and any officer, agent, employee, or other person
8 authorized to act on behalf of that person or who acts in active
9 concert or participation with one or more such persons.

10 “Gun-related product” means any firearm, ammunition,
11 ammunition magazine, firearm component or part including, but not
12 limited to, a firearm frame and a firearm receiver, or firearm
13 accessory, which product was, or was intended to be, sold,
14 manufactured, distributed, imported, or marketed in this State, or
15 which product was possessed in this State and as to which it was
16 reasonably foreseeable that the product would be possessed or used
17 in this State.

18 “Person” means any natural person, firm, corporation, company,
19 partnership, society, joint stock company, or any other entity or
20 association¹.

21 “Public Nuisance” means any condition which injures,
22 endangers, or threatens to injure or endanger or contributes to the
23 injury or endangerment of the health, safety, peace, comfort, or
24 convenience of others ¹or which otherwise constitutes a public
25 nuisance under common law¹.

26 ¹【“Qualified product” shall have the same meaning as defined in
27 15 USC §7903(4)】

28 “Reasonable controls” means reasonable procedures, safeguards,
29 and business practices that are designed to:

30 (1) prevent the sale or distribution of a gun-related product to a
31 straw purchaser, a firearm trafficker, a person prohibited from
32 possessing a firearm under State or federal law, or a person who the
33 gun industry member has reasonable cause to believe is at
34 substantial risk of using a gun-related product to harm themselves
35 or unlawfully harm another or of unlawfully possessing or using a
36 gun-related product;

37 (2) prevent the loss of a gun-related product or theft of a gun-
38 related product from a gun industry member;

39 (3) ensure that a gun industry member complies with all
40 provisions of State and federal law and does not otherwise promote
41 the unlawful sale, manufacture, distribution, importing, marketing,
42 possession, or use of a gun-related product; and

43 (4) ensure that the gun industry member does not engage in an
44 act or practice in violation of any of the regulatory provisions
45 governing firearms set forth in chapters 39 and 58 of Title 2C of the
46 New Jersey Statutes or engage in conduct that constitutes a

1 violation of P.L.1960, c.39 (C.56:8-2) or any regulations
2 promulgated thereunder.

3 “Straw purchaser” means an individual who purchases, or
4 attempts or conspires to purchase, a gun-related product at the
5 request, order, or demand of another or for the purpose of selling or
6 transferring to another person, knowing or reasonably believing that
7 such other person is not authorized to either purchase or possess a
8 gun-related product, or both, by the laws of this State, the United
9 States, or of the state in which the other person resides by virtue of
10 having a conviction of a crime, or for any other reason¹.

11

12 3. a. ¹(1)¹ A gun industry member shall not, by conduct either
13 unlawful in itself or unreasonable under all the circumstances,
14 knowingly or recklessly create, maintain, or contribute to a public
15 nuisance in this State through the sale, manufacturing,
16 ¹distribution,¹ importing, or marketing of a ¹[qualified] gun-
17 related¹ product.

18 ¹(2) A gun industry member shall establish, implement, and
19 enforce reasonable controls regarding its manufacture, sale,
20 distribution, importing, and marketing of gun-related products.

21 (3) It shall be a public nuisance to engage in conduct that
22 violates paragraphs (1) or (2) of this subsection.¹

23 b. Whenever it appears to the Attorney General that a gun
24 industry member has engaged in or is engaging in conduct that
25 violates subsection a. of this section, the Attorney General may
26 commence an action to seek and obtain: an injunction prohibiting
27 the gun industry member from continuing that conduct or engaging
28 therein or doing any acts in furtherance thereof; an order providing
29 for abatement of the nuisance at the expense of the defendant;
30 restitution; damages; reasonable attorneys' fees, filing fees, and
31 reasonable costs of suit; and any other appropriate relief.

32 c. To prevail in an action under this section, the Attorney
33 General shall not be required to demonstrate that the gun industry
34 member acted with the purpose to engage in any public nuisance or
35 otherwise cause harm to the public. The Attorney General shall not
36 be required to demonstrate any special injury to be granted the
37 relief authorized by this section.

38 d. When it appears to the Attorney General that a gun industry
39 member has engaged in, is engaging in, or is about to engage in
40 conduct that violates subsection a. of this section, or when the
41 Attorney General believes it is in the public interest that an
42 investigation should be made to ascertain whether a gun industry
43 member has in fact engaged in, is engaging in, or is about to engage
44 in conduct that violates subsection a. of this section, the Attorney
45 General may:

46 (1) require the gun industry member ¹or any other person¹ to file
47 a statement or report in writing under oath or otherwise, as to all the

- 1 facts and circumstances concerning conduct, and other data and
2 information as the Attorney General deems necessary;
- 3 (2) examine under oath any gun industry member ¹or any other
4 person¹ concerning the act or omission;
- 5 (3) examine any record, object, book, document, account, or
6 paper as the Attorney General deems necessary; and
- 7 (4) pursuant to an order of the Superior Court, impound and
8 retain in the Attorney General's possession any record, book,
9 document, account, object, or paper that is produced in accordance
10 with this act until the completion of all proceedings in connection
11 with impounded items.
- 12 e. ¹**【The】** To the extent causation is applicable, the¹ conduct of a
13 gun industry member shall be deemed to constitute a proximate
14 cause of the public nuisance if the harm to the public was a
15 reasonably foreseeable effect of such conduct, notwithstanding any
16 intervening actions, including but not limited to criminal actions by
17 third parties.
- 18 f. ¹The Attorney General may establish or designate within the
19 Department of Law and Public Safety a unit, bureau, office or
20 division to exercise all functions, powers, and duties of the Attorney
21 General established under or deriving from P.L. , c. (C.)
22 (pending before the Legislature as this bill) and which may perform
23 such other functions, powers, and duties vested in the Department
24 of Law and Public Safety as the Attorney General may deem
25 appropriate.
- 26 g.¹ Nothing in P.L. , c. (C.) (pending before the
27 Legislature as this bill) shall be construed to deny, abrogate, or
28 impair any statutory or common law right, remedy, or prohibition
29 otherwise available to any party, including the Attorney General.
30
- 31 4. The provisions of P.L.1987, c.197 (C.2A:58C-1 et seq.) shall
32 not apply to any public nuisance action brought by the Attorney
33 General pursuant to section 3 of P.L. , c. (C.) (pending
34 before the Legislature as this bill).
35
- 36 5. This act shall take effect immediately and shall apply to all
37 actions instituted on or after the effective date of this act, and to all
38 proceedings taken subsequent to the effective date of this act in all
39 actions pending on the act's effective date, except that judgments
40 entered or awards made pursuant to law from which no appeal is
41 pending on the act's effective date shall not be affected by
42 the provisions of this act.