

P.L. 2022, CHAPTER 56, *approved July 5, 2022*
Assembly, No. 1765 (*First Reprint*)

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:

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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 ¹**["the firearm"] gun**¹ industry ¹members¹ from being
17 held accountable for 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 products**¹. Even as
29 manufacturers have incorporated features and technology resulting
30 in more deadly and destructive firearms, some actors in the
31 ¹**["firearm"] gun**¹ 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

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 ¹requiring gun industry members to establish and implement
2 reasonable procedures, safeguards, and business practices for the
3 sale, manufacture, distribution, importing, and marketing of gun-
4 related products and¹ establishing a statutory cause of action for
5 public nuisance violations available to the Attorney General to
6 address injuries to public health and safety and to seek relief,
7 including but not limited to, abatement and other injunctive relief,
8 damages, and attorneys' fees and costs.

9
10 2. As used in this act:

11 “Gun industry member” means a person ¹**【**, firm, corporation,
12 company, partnership, society, joint stock company, or any other
13 entity or association¹**】** engaged in the sale, manufacturing,
14 distribution, importing or marketing of ¹**【**firearms, ammunition,
15 ammunition magazines, or firearm accessories**】** a gun-related
16 product, and any officer, agent, employee, or other person
17 authorized to act on behalf of that person or who acts in active
18 concert or participation with one or more such persons.

19 “Gun-related product” means any firearm, ammunition,
20 ammunition magazine, firearm component or part including, but not
21 limited to, a firearm frame and a firearm receiver, or firearm
22 accessory, which product was, or was intended to be, sold,
23 manufactured, distributed, imported, or marketed in this State, or
24 which product was possessed in this State and as to which it was
25 reasonably foreseeable that the product would be possessed or used
26 in this State.

27 “Person” means any natural person, firm, corporation, company,
28 partnership, society, joint stock company, or any other entity or
29 association¹.

30 “Public Nuisance” means any condition which injures,
31 endangers, or threatens to injure or endanger or contributes to the
32 injury or endangerment of the health, safety, peace, comfort, or
33 convenience of others ¹or which otherwise constitutes a public
34 nuisance under common law¹.

35 ¹**【**“Qualified product” shall have the same meaning as defined in
36 15 USC §7903(4)**】**

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

39 (1) prevent the sale or distribution of a gun-related product to a
40 straw purchaser, a firearm trafficker, a person prohibited from
41 possessing a firearm under State or federal law, or a person who the
42 gun industry member has reasonable cause to believe is at
43 substantial risk of using a gun-related product to harm themselves
44 or unlawfully harm another or of unlawfully possessing or using a
45 gun-related product;

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

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

5 (4) ensure that the gun industry member does not engage in an
6 act or practice in violation of any of the regulatory provisions
7 governing firearms set forth in chapters 39 and 58 of Title 2C of the
8 New Jersey Statutes or engage in conduct that constitutes a
9 violation of P.L.1960, c.39 (C.56:8-2) or any regulations
10 promulgated thereunder.

11 “Straw purchaser” means an individual who purchases, or
12 attempts or conspires to purchase, a gun-related product at the
13 request, order, or demand of another or for the purpose of selling or
14 transferring to another person, knowing or reasonably believing that
15 such other person is not authorized to either purchase or possess a
16 gun-related product, or both, by the laws of this State, the United
17 States, or of the state in which the other person resides by virtue of
18 having a conviction of a crime, or for any other reason¹.

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

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

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

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

40 c. To prevail in an action under this section, the Attorney
41 General shall not be required to demonstrate that the gun industry
42 member acted with the purpose to engage in any public nuisance or
43 otherwise cause harm to the public. The Attorney General shall not
44 be required to demonstrate any special injury to be granted the
45 relief authorized by this section.

46 d. When it appears to the Attorney General that a gun industry
47 member has engaged in, is engaging in, or is about to engage in

1 conduct that violates subsection a. of this section, or when the
2 Attorney General believes it is in the public interest that an
3 investigation should be made to ascertain whether a gun industry
4 member has in fact engaged in, is engaging in, or is about to engage
5 in conduct that violates subsection a. of this section, the Attorney
6 General may:

7 (1) require the gun industry member ¹or any other person¹ to file
8 a statement or report in writing under oath or otherwise, as to all the
9 facts and circumstances concerning conduct, and other data and
10 information as the Attorney General deems necessary;

11 (2) examine under oath any gun industry member ¹or any other
12 person¹ concerning the act or omission;

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

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

20 e. ¹【The】 To the extent causation is applicable, the¹ conduct of a
21 gun industry member shall be deemed to constitute a proximate
22 cause of the public nuisance if the harm to the public was a
23 reasonably foreseeable effect of such conduct, notwithstanding any
24 intervening actions, including but not limited to criminal actions by
25 third parties.

26 f. ¹The Attorney General may establish or designate within the
27 Department of Law and Public Safety a unit, bureau, office or
28 division to exercise all functions, powers, and duties of the Attorney
29 General established under or deriving from P.L. _____, c. (C. _____)
30 (pending before the Legislature as this bill) and which may perform
31 such other functions, powers, and duties vested in the Department
32 of Law and Public Safety as the Attorney General may deem
33 appropriate.

34 g.¹ Nothing in P.L. _____, c. (C. _____) (pending before the
35 Legislature as this bill) shall be construed to deny, abrogate, or
36 impair any statutory or common law right, remedy, or prohibition
37 otherwise available to any party, including the Attorney General.

38
39 4. The provisions of P.L.1987, c.197 (C.2A:58C-1 et seq.) shall
40 not apply to any public nuisance action brought by the Attorney
41 General pursuant to section 3 of P.L. _____, c. (C. _____) (pending
42 before the Legislature as this bill).

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44 5. This act shall take effect immediately and shall apply to all
45 actions instituted on or after the effective date of this act, and to all
46 proceedings taken subsequent to the effective date of this act in all
47 actions pending on the act's effective date, except that judgments

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1 entered or awards made pursuant to law from which no appeal is
2 pending on the act's effective date shall not be affected by the
3 provisions of this act.

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