

ASSEMBLY, No. 6218

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 9, 2021

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

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 introduced.



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 and those injured by
38 the public nuisance to address injuries to public health and safety
39 and to seek relief, including but not limited to, abatement and other
40 injunctive relief, damages, and attorneys' fees and costs.

41

42 2. As used in this act:

43 a. "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 b. “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 c. “Qualified product” shall have the same meaning as defined
6 in 15 USC §7903(4).

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 person acted
24 with the purpose to engage in any public nuisance or otherwise
25 cause harm to the public. The Attorney General shall not be
26 required to demonstrate any special injury to be granted the relief
27 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 has engaged in, is engaging in, or is about to
34 engage in conduct that violates subsection a. of this section, the
35 Attorney 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 the
3 public was a reasonably foreseeable effect of such conduct,
4 notwithstanding any intervening actions, including but not limited to
5 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
28 nuisance created or contributed to by the conduct of gun industry
29 members that allows the Attorney General to address injuries to
30 public health and safety and to seek relief, including but not limited
31 to, abatement and other injunctive relief, damages, and attorneys'
32 fees and costs. Under the bill, the Attorney General may seek
33 appropriate remedies for public nuisance violations committed by
34 firearm manufacturers, retailers and other gun industry members
35 who knowingly or recklessly 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
38 public nuisance or engaging in or doing any acts in furtherance of a
39 public nuisance. The Attorney General also may seek and obtain an
40 order providing for abatement of the nuisance at the expense of a
41 defendant; restitution; damages; reasonable attorneys' fees, filing
42 fees, and 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,
46 the Attorney General would not be required to demonstrate any
47 special 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
3 gun industry member has engaged in, is engaging in, or is about to
4 engage in any conduct causing or contributing to a public nuisance,
5 or when it is in the public interest that an investigation should be
6 made to ascertain whether a person in fact has engaged in, is
7 engaging in, or is about to engage in, any such conduct, the
8 Attorney General may:

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

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

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

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

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

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

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

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