

RCW 7.48.330 Firearm industry—Public nuisance. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Firearm industry member" means a person engaged in the wholesale or retail sale, manufacturing, distribution, importing, or marketing of a firearm industry product, or any officer or agent to act on behalf of such a person or who acts in active concert or participation with such a person.

(b) "Firearm industry product" means a product that meets any of the following conditions:

(i) The firearm industry product was sold, made, distributed, or marketed in this state;

(ii) The firearm industry product was intended to be sold, made, distributed, or marketed in this state; or

(iii) The firearm industry product was used or possessed in this state, and it was reasonably foreseeable that the product would be used or possessed in this state.

(c) "Firearm trafficker" means a person who acquires, transfers, or attempts to acquire or transfer a firearm for purposes of unlawful commerce including, but not limited to, a subsequent transfer to another individual who is prohibited from possessing the firearm industry product under state or federal law.

(d) "Person" means any natural person, firm, corporation, company, partnership, society, joint stock company, municipality or other political subdivision of the state, or any other entity or association.

(e) "Product" means:

(i) A firearm;

(ii) Ammunition;

(iii) A component part of a firearm or ammunition, including a completed frame or receiver or unfinished frame or receiver, as defined in RCW 9.41.010;

(iv) An accessory or device that is designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm, if the device is marketed or sold to the public and that is designed, intended, or able to be used to increase a firearm's rate of fire, concealability, magazine capacity, or destructive capacity, or to increase the firearm's stability and handling when the firearm is repeatedly fired;

(v) A machine or device that is marketed or sold to the public that is designed, intended, or able to be used to manufacture or produce a firearm or any other product listed in this subsection (1) (e).

(f) "Reasonable controls" means reasonable procedures, safeguards, and business practices, including but not limited to screening, security, and inventory practices, that are designed and implemented to do all of the following:

(i) Prevent the sale or distribution of a firearm industry product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm industry product to harm themselves or unlawfully harm another, or of unlawfully possessing or using a firearm industry product;

(ii) Prevent the loss of a firearm industry product or theft of a firearm industry product from a firearm industry member; and

(iii) Ensure that the firearm industry member complies with all provisions of state and federal law and does not otherwise promote the unlawful sale, manufacture, distribution, importing, possession, marketing, or use of a firearm industry product.

(g) "Straw purchaser" means a person who wrongfully purchases or obtains a firearm industry product on behalf of a third party. "Straw purchaser" does not include one who makes a bona fide gift to a person who is not prohibited by law from possessing a firearm industry product. For the purposes of this subsection (1)(g), a gift is not a "bona fide gift" if the third party has offered or given the purchaser or transferee a service or thing of value in connection with the transaction.

(2) This section applies to a firearm industry member engaged in the manufacture, distribution, importation, marketing, or wholesale or retail sale of a firearm industry product.

(3) A firearm industry member shall not knowingly create, maintain, or contribute to a public nuisance in this state through the sale, manufacturing, distribution, importing, or marketing of a firearm industry product.

(4) A firearm industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, use, and marketing of firearm industry products.

(5) A firearm industry member shall take reasonable precautions to ensure the firearm industry member does not sell or distribute a firearm industry product to a downstream distributor or retailer of firearm industry products that fails to establish and implement reasonable controls.

(6) A firearm industry member shall not manufacture, distribute, import, market, offer for wholesale, or offer for retail sale a firearm industry product that is:

(a) Designed, sold, or marketed in a manner that foreseeably promotes conversion of legal firearm industry products into illegal firearm industry products; or

(b) Designed, sold, or marketed in a manner that is targeted at minors or individuals who are legally prohibited from purchasing or possessing firearms.

(7) A violation of this section is a public nuisance.

(8) The legislature finds that the acts or practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(9) A firearm industry member's conduct in violation of any provision of this section constitutes a proximate cause of the public nuisance if the harm is a reasonably foreseeable effect of the conduct, notwithstanding any intervening actions, including but not limited to criminal actions by third parties. This subsection is not intended to establish a causation requirement for a claim brought by the attorney general pursuant to the consumer protection act, chapter 19.86 RCW.

(10) Whenever it appears to the attorney general that a firearm industry member has engaged in or is engaging in conduct in violation of this section, the attorney general may commence an action to seek and obtain any remedies available for violations of this chapter, and

may also seek and obtain punitive damages up to an amount not to exceed three times the actual damages sustained by the state, reasonable attorneys' fees, and costs of the action.

(11) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any information which he or she believes to be relevant to the subject matter of an investigation of a possible violation of this section, or (b) may have knowledge of any information which the attorney general believes relevant to the subject matter of such an investigation, the attorney general may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of such demands pertaining to such documentary material or information, subject to the provisions of RCW 19.86.110 (2) through (9). Any person or entity that receives a civil investigative demand issued pursuant to RCW 19.86.110 and that has an objection to answering in whole or in part may avail themselves of the procedural protections afforded in RCW 19.86.110(8). Further, the attorney general shall not share with a law enforcement agency conducting a criminal investigation any materials or information obtained via a response to a civil investigative demand issued pursuant to RCW 19.86.110 unless such information or materials are required to be disclosed pursuant to issuance of a search warrant.

(12) The attorney general's authority to investigate a possible violation of this section and commence a legal action in response to a violation of this section shall not be construed or implied to deny, abrogate, limit, or impair any person's right to bring a private right of action in response to a violation of this section pursuant to (a) RCW 7.48.200 and 7.48.210, to seek damages, abatement, or any other remedy available for a public nuisance, or (b) chapter 19.86 RCW, to seek damages, equitable relief, or any other remedy available under the consumer protection act.

(13) To prevail in an action under this section, the party seeking relief is not required to demonstrate that the firearm industry member acted with the purpose to engage in a public nuisance or otherwise cause harm to the public.

(14) Nothing in this section shall be construed or implied to deny, abrogate, limit, or impair in any way any of the following:

(a) The right of the attorney general to pursue a legal action under any other law, including chapter 19.86 RCW; or

(b) An obligation or requirement placed on a firearm industry member by any other law.

(15) Nothing in this section shall be construed or implied to deny, abrogate, limit, or impair any statutory or common law right, remedy, or prohibition otherwise available to any party, including the attorney general. [2023 c 163 § 2.]

Findings—Intent—2023 c 163: "(1) The legislature finds that the irresponsible, dangerous, and unlawful business practices by firearms industry members contributes to the illegal use of firearms and not only constitutes a public nuisance as declared in chapter 7.48 RCW, but that the effects of that nuisance exacerbate the public health crisis of gun violence in this state. The Washington state medical association, the Washington health alliance, and the voters of

Washington, most recently through approval of Initiative 1639 in 2016, have all noted that crisis.

(2) The legislature further finds that public nuisance was established in state law by Washington's territorial legislature in 1875 and has been interpreted by the state supreme court for more than 100 years to enjoin the operation of illegal businesses as nuisance by individuals suffering special injury. Since at least 1895, public nuisance has included manufacturing and storing gunpowder and other highly explosive substances.

(3) Firearm industry members profit from the sale, manufacture, distribution, importing, and marketing of lethal products that are frequently used to threaten, injure, and kill people in Washington, and which cause enormous harms to individuals' and communities' health, safety, and well-being, as well as economic opportunity and vitality. While manufacturers have incorporated features and technology resulting in more deadly and destructive firearms, and products designed to be used with and for firearms, some actors in the firearm industry have implemented irresponsible and dangerous sales, distribution, importing, and marketing practices, including contributing to the development of an illegal secondary market for these increasingly dangerous products. Such practices lead to grave public harms and also provide an unfair business advantage to irresponsible firearm industry members over more responsible competitors who take reasonable precautions to protect others' lives and well-being.

(4) The federal protection of lawful commerce in arms act (PLCAA) recognizes the ability of states to enact and enforce statutes regulating the sale and marketing of firearms and related products, and expressly provides that causes of action may proceed where there are violations of such statutes.

(5) The legislature intends to ensure a level playing field for responsible firearm industry members, to incentivize firearm industry members to establish and implement safe and responsible business practices, and to ensure that the attorney general and members of the public in Washington who are harmed by a firearm industry member's violation of law may bring legal action to seek appropriate justice and fair remedies for those harms in court." [2023 c 163 § 1.]

Short title—2023 c 163: "This act is known as the firearm industry responsibility and gun violence victims' access to justice act." [2023 c 163 § 3.]