

SSB 5078 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 04/10/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the
4 irresponsible, dangerous, and unlawful business practices by firearms
5 industry members contributes to the illegal use of firearms and not
6 only constitutes a public nuisance as declared in chapter 7.48 RCW,
7 but that the effects of that nuisance exacerbate the public health
8 crisis of gun violence in this state. The Washington state medical
9 association, the Washington health alliance, and the voters of
10 Washington, most recently through approval of Initiative 1639 in
11 2016, have all noted that crisis.

12 (2) The legislature further finds that public nuisance was
13 established in state law by Washington's territorial legislature in
14 1875 and has been interpreted by the state supreme court for more
15 than 100 years to enjoin the operation of illegal businesses as
16 nuisance by individuals suffering special injury. Since at least
17 1895, public nuisance has included manufacturing and storing
18 gunpowder and other highly explosive substances.

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

1 competitors who take reasonable precautions to protect others' lives
2 and well-being.

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

8 (5) The legislature intends to ensure a level playing field for
9 responsible firearm industry members, to incentivize firearm industry
10 members to establish and implement safe and responsible business
11 practices, and to ensure that the attorney general and members of the
12 public in Washington who are harmed by a firearm industry member's
13 violation of law may bring legal action to seek appropriate justice
14 and fair remedies for those harms in court.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.48 RCW
16 to read as follows:

17 (1) The definitions in this subsection apply throughout this
18 section unless the context clearly requires otherwise.

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

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

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

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

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

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

38 (d) "Person" means any natural person, firm, corporation,
39 company, partnership, society, joint stock company, municipality or

1 other political subdivision of the state, or any other entity or
2 association.

3 (e) "Product" means:

4 (i) A firearm;

5 (ii) Ammunition;

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

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

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

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

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

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

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

37 (g) "Straw purchaser" means a person who wrongfully purchases or
38 obtains a firearm industry product on behalf of a third party. "Straw
39 purchaser" does not include one who makes a bona fide gift to a
40 person who is not prohibited by law from possessing a firearm

1 industry product. For the purposes of this subsection (1)(g), a gift
2 is not a "bona fide gift" if the third party has offered or given the
3 purchaser or transferee a service or thing of value in connection
4 with the transaction.

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

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

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

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

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

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

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

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

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

39 (9) A firearm industry member's conduct in violation of any
40 provision of this section constitutes a proximate cause of the public

1 nuisance if the harm is a reasonably foreseeable effect of the
2 conduct, notwithstanding any intervening actions, including but not
3 limited to criminal actions by third parties. This subsection is not
4 intended to establish a causation requirement for a claim brought by
5 the attorney general pursuant to the consumer protection act, chapter
6 19.86 RCW.

7 (10) Whenever it appears to the attorney general that a firearm
8 industry member has engaged in or is engaging in conduct in violation
9 of this section, the attorney general may commence an action to seek
10 and obtain any remedies available for violations of this chapter, and
11 may also seek and obtain punitive damages up to an amount not to
12 exceed three times the actual damages sustained by the state,
13 reasonable attorneys' fees, and costs of the action.

14 (11) Whenever the attorney general believes that any person (a)
15 may be in possession, custody, or control of any information which he
16 or she believes to be relevant to the subject matter of an
17 investigation of a possible violation of this section, or (b) may
18 have knowledge of any information which the attorney general believes
19 relevant to the subject matter of such an investigation, the attorney
20 general may, prior to the institution of a civil proceeding thereon,
21 execute in writing and cause to be served upon such a person, a civil
22 investigative demand requiring such person to produce such
23 documentary material and permit inspection and copying, to answer in
24 writing written interrogatories, to give oral testimony, or any
25 combination of such demands pertaining to such documentary material
26 or information, subject to the provisions of RCW 19.86.110 (2)
27 through (9). Any person or entity that receives a civil investigative
28 demand issued pursuant to RCW 19.86.110 and that has an objection to
29 answering in whole or in part may avail themselves of the procedural
30 protections afforded in RCW 19.86.110(8). Further, the attorney
31 general shall not share with a law enforcement agency conducting a
32 criminal investigation any materials or information obtained via a
33 response to a civil investigative demand issued pursuant to RCW
34 19.86.110 unless such information or materials are required to be
35 disclosed pursuant to issuance of a search warrant.

36 (12) The attorney general's authority to investigate a possible
37 violation of this section and commence a legal action in response to
38 a violation of this section shall not be construed or implied to
39 deny, abrogate, limit, or impair any person's right to bring a
40 private right of action in response to a violation of this section

1 pursuant to (a) RCW 7.48.200 and 7.48.210, to seek damages,
2 abatement, or any other remedy available for a public nuisance, or
3 (b) chapter 19.86 RCW, to seek damages, equitable relief, or any
4 other remedy available under the consumer protection act.

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

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

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

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

15 (15) Nothing in this section shall be construed or implied to
16 deny, abrogate, limit, or impair any statutory or common law right,
17 remedy, or prohibition otherwise available to any party, including
18 the attorney general.

19 NEW SECTION. **Sec. 3.** This act is known as the firearm industry
20 responsibility and gun violence victims' access to justice act.

21 NEW SECTION. **Sec. 4.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected."

25 Correct the title.

EFFECT: Provides that the subsections of the bill authorizing the attorney general to investigate and bring claims in response to a violation should not be construed or implied to deny, abrogate, limit, or impair a private right of action in response to a violation pursuant to the sections of the revised code authorizing actions for public nuisance and violations of the consumer protection act. Modifies the bill's savings clauses to use the same "construed or implied to deny, abrogate, limit, or impair" wording. Limits one of the bill's savings clauses to only reference the attorney general by removing the wording "any person, including".

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