

SENATE BILL REPORT

SB 5078

As Reported by Senate Committee On:
Law & Justice, January 19, 2023

Title: An act relating to protecting public safety by establishing duties of firearm industry members engaged in the sale, manufacturing, distribution, importing, or marketing of firearms, ammunition, component parts, or accessories, to adopt and implement reasonable controls to prevent the diversion of firearms and related products to straw purchasers, firearm traffickers, unauthorized individuals, and individuals who pose a risk to themselves or others, to prohibit such firearm industry members from creating or maintaining a public nuisance, providing for investigation and enforcement by the attorney general, and creating a private right of action.

Brief Description: Protecting public safety by establishing duties of firearm industry members.

Sponsors: Senators Pedersen, Dhingra, Frame, Hasegawa, Hunt, Keiser, Kuderer, Lias, Nguyen, Nobles, Rolfes, Saldaña, Stanford, Trudeau, Valdez and Wellman; by request of Office of the Governor, Attorney General.

Brief History:

Committee Activity: Law & Justice: 1/17/23, 1/19/23 [DP, DNP].

Brief Summary of Bill

- Requires firearm industry members to establish, implement and enforce reasonable controls regarding the manufacture, sale, distribution, import, use, and marketing of the firearm industry members' firearm and firearm-related products.
- Prohibits firearm industry members from creating or maintaining a public nuisance.
- Authorizes the attorney general to investigate suspected violations of firearm industry members' duties and to enforce actions against such firearm industry members.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Creates a private right of action for individuals who have suffered harm as a result of a firearm industry member's acts or omissions in violation of specified duties.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L.

Staff: Joe McKittrick (786-7287)

Background: Firearms. Under federal law, a firearms dealer cannot sell a firearm or ammunition to a person whom the dealer knows, or has reasonable cause to know, is federally prohibited from possessing a firearm. The consequence for willful violations of the federal law is revocation of the federal firearm license, and imposition of a civil fine.

Both federal and Washington law prohibit purchasing through a straw purchaser. A straw purchaser is a person who buys a firearm for someone who is prohibited by law from possessing a firearm, or buying a firearm for someone who does not want their name associated with the transaction.

Under the federal protection of Lawful Commerce in Arms Act, states retain the authority to enact and enforce statutes regulating the sale and marketing of firearms and related products and may pursue causes of action where there are violations of such statutes.

Nuisance. A nuisance is a substantial and unreasonable interference with the use and enjoyment of another person's property. Washington's nuisance law defines nuisance as an act or omission that either annoys, injures, or endangers the comfort, repose, health, or safety of others, or in any way renders another person insecure in life or the use of property.

A moral nuisance is any nuisance which is injurious to public morals. A public nuisance is one which affects equally the rights of an entire community or neighborhood, even if the extent of the damage is unequal. A private nuisance is any nuisance that is not included within the definition of a public nuisance.

Public nuisance was established in state law by Washington's territorial Legislature in 1875 and has been interpreted by the state supreme court to enjoin the operation of illegal

businesses as nuisances by individuals suffering special injury. Since at least 1895, public nuisance has included manufacturing and storing gunpowder and other highly explosive substances.

An action against a purported nuisance may be brought by any person whose property is, or whose patrons or employees are, injuriously affected or whose personal enjoyment is lessened by the nuisance. The remedies available for those affected by a public nuisance are indictment or information, a civil action, or abatement.

Summary of Bill: Firearm Industry Members' Duties. Firearm industry members, are defined as persons engaged in the wholesale or retail sale, manufacturing, distribution, importing, or marketing of firearms or related products, or any officer or agent to act on behalf of such persons or who acts in active concert or participation with such persons, are prohibited from knowingly creating, maintaining, or contributing to a public nuisance in Washington through the sale, manufacture, distribution, importing, or marketing of firearms or related products.

Firearm industry members are required to implement, and enforce reasonable controls, such as screening, security, and inventory practices, to prevent specified harms. This includes requiring firearm industry members to take reasonable precautions to ensure they do not sell or distribute firearms and related products to straw purchasers and gun traffickers, or sell or distribute firearms and related products to a downstream distributor or retailer that fails to implement reasonable controls.

Firearm industry members may not manufacture, distribute, import, market, or offer for wholesale or retail sale a firearm or related product that is designed, sold, or marketed in a manner that is targeted at minors or individuals who are legally prohibited from purchasing or possessing firearms, or that foreseeably promotes conversion of a legal firearm or related product into an illegal firearm or related product.

A violation of these duties is a public nuisance. A firearm industry member's conduct in violation of these duties constitutes a proximate cause of the public nuisance if the harm is a reasonably foreseeable effect of the conduct including criminal actions by third parties.

Attorney General. For purposes of the Consumer Protection Act, a violation of the firearm industry members' duties stated above is considered an unfair or deceptive act in trade or commerce and an unfair method of competition. If the attorney general has reason to believe a firearm industry member has violated these duties, they may commence an action to seek and obtain any remedies available against the firearm industry member. The attorney general may also seek and obtain punitive damages up to three times the actual damages sustained by the state, reasonable attorneys' fees, and costs of the action.

Whenever the attorney general believes a person may be in possession of information related to an investigation into a violation of the firearm industry members' duties stated

above, or who may have knowledge of information related to the subject matter of such an investigation, the attorney general may, prior to initiating a civil proceeding on the matter, serve such person with a civil investigative demand requiring the person to divulge this information.

Private Right of Action. A private right of action is created for individuals who have suffered harm as a result of a firearm industry member's acts or omissions in violation of duties stated above. A party seeking such relief does not need to demonstrate that the firearm industry member acted with the purpose to engage in a public nuisance or otherwise cause harm to the public.

In addition to the remedies available for an action against a public nuisance, a party seeking relief against a firearms industry member may also seek and obtain injunctive relieve, compensatory damages, punitive damages up to three times the actual damages sustained, and reasonable attorney's fees, filing fees, and reasonable costs of the action. This cause of action may not be construed or implied to limit or impair the right of any person, including the attorney general, to pursue a legal action under any other law, or to limit or impair an obligation or requirement placed on a firearm industry member by any other law.

Appropriation: None.

Fiscal Note: Requested on January 12, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There is a crisis of gun violence in our society and people have been working very hard over the last ten years to try and find common sense ways of addressing that crisis. This bill enlists the help of firearm industry members by putting some responsibility on manufacturers and retailers to make sure guns do not get into the hands of people who should not have them. It requires firearm industry members to establish and implement reasonable controls for the manufacture, sale and marketing of their products. This bill would give victims the right to hold retailers accountable for their breaches of the law. The gun industry has broad immunity from essentially all legal challenges. No other industry enjoys protection like this and none should. This bill will benefit survivors of gun violence by giving them the opportunity to seek justice in court and will benefit the people of Washington by encouraging safer business practices. PLACAA is designed to allow for this type of state level regulation.

CON: This bill violates concepts of federal supremacy. PLACAA does not permit a lawsuit against manufacturers, distributors, and retailers for the criminal misuse of a lawfully sold, non-defective, firearms. This bill would regulate commerce through litigation and would likely be subject to challenges by the gun industry. The reach of this bill extends beyond our

borders and is a violation of the Interstate Commerce Clause. If this bill passes, it will obliterate an industry that supports environmental and conservation issues that are important to all Washingtonians. Much of the funding for the Department of Fish and Wildlife comes from taxes on firearms and related goods. If this were to pass, stores would see a drop-off in sales of firearms and ammunition which would negatively affect the Department of Fish and Wildlife and all outdoor enthusiasts in Washington. Destroying an industry under the false pretense of non-culpability is misdirected and wrong.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Donnitta Sinclair; Jim Parsons; Barbara Serrano, Office of the Governor; Kristin Beneski, WA State Attorney General's Office; David O'Connor; Jane Weiss; Robert Schentrup.

CON: Lawrence Keane, National Shooting Sports Foundation; Scott Dover, Aero Precision; Heidi Lee, Minute Man Ammunition; Clint Gillespy, Beyer Barrels; Dan Mitchell, WA Civil Rights Association.

Persons Signed In To Testify But Not Testifying: PRO: Nate Roberts, Washington State Association for Justice; Tanya Schardt, Brady Center to Prevent Gun Violence; Kate Stockert; Flynn Williams.

CON: Deborah Stelfox; Jeannie Magdua, Conservative Ladies of Washington; Chris Aasness; Mary Grode; Travis Miller; Hannah Ordos; Jeannie Magdua, Conservative Ladies of Washington; Phil Bach; Thomas Duffy; Fred Baerbalck; JEANNE Barnum; William Thomas.