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## Civil Rights & Judiciary Committee

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### SSB 5078

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

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Pedersen, Dhingra, Frame, Hasegawa, Hunt, Keiser, Kuderer, Liias, Nguyen, Nobles, Rolfes, Saldaña, Stanford, Trudeau, Valdez and Wellman; by request of Office of the Governor, Attorney General).

#### Brief Summary of Substitute Bill

- Prohibits firearm industry members from knowingly creating, maintaining, or contributing to a public nuisance; and from designing, selling, and marketing firearm industry products that promote conversion of legal products into illegal products, or which target minors or individuals prohibited from purchasing or possessing firearms.
- Requires firearm industry members to establish, implement, and enforce reasonable controls to prevent sale and distribution to certain individuals, prevent loss and theft of firearm industry products, and ensure compliance with state and federal law; and to take reasonable precautions to prevent sale or distribution of firearm industry products to distributors and retailers that have failed to establish and implement reasonable controls.
- Establishes that violations constitute a public nuisance and are per se actionable under the Consumer Protection Act.
- Authorizes the Attorney General to investigate suspected violations and bring enforcement actions against firearm industry members.

**Hearing Date:** 3/14/23

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*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.*

**Staff:** John Burzynski (786-7133).

**Background:**

The Protection of Lawful Commerce in Arms Act.

A federal law known as the Protection of Lawful Commerce in Arms Act (PLCAA) prohibits certain legal actions against specific entities engaged in firearms-related commerce.

Specifically, the law bars any civil action or proceeding, or an administrative proceeding, brought by any person against a manufacturer or seller of a qualifying firearm, ammunition, or component part shipped or transported in interstate or foreign commerce, or a trade association, if the action or proceeding seeks damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, that results from the criminal or unlawful misuse of a qualified product by the person or a third party.

The foregoing restriction is subject to several exceptions. Among other claims, PLCAA does not bar:

- actions in which a manufacturer or seller of a qualified product knowingly violated a state or federal statute applicable to the sale or marketing of the product, if the violation was a proximate cause of the harm for which relief is sought;
- actions brought against transferors convicted under state or federal law for knowingly receiving or transferring a firearm or ammunition, knowing or having reasonable cause to believe that such firearm or ammunition will be used to commit a felony, by a party directly harmed by such conduct; and
- actions brought against a seller for negligent entrustment or negligence per se.

Public Nuisance.

State law provides that public nuisance is actionable under both criminal and civil law. In relevant part, nuisance consists of unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures, or endangers the comfort, repose, health, or safety of others, or in any way renders other persons insecure in life, or in the use of property.

A nuisance rises to the level of a criminal public nuisance if it affects a considerable number of persons, even if the extent of damage is unequal. Committing, maintaining, or refusing to remove a public nuisance constitutes a misdemeanor. For civil purposes, a nuisance constitutes a public nuisance if it affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

Authorized remedies against a public nuisance include criminal prosecution, a civil action, and abatement. Any private person may maintain a civil action for a public nuisance, if it is specially injurious to himself or herself, but not otherwise.

The Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition, and unfair or deceptive acts or practices in trade or commerce. If a person is injured in their business or

property by a violation of the CPA, the person may bring a civil action to enjoin further violations and recover actual damages, costs, and reasonable attorney's fees. In addition, the court may award treble damages up to \$25,000. The Attorney General may also bring an action in the name of the state or on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA.

### **Summary of Bill:**

#### Firearm Industry Member Duties.

Firearm industry members are prohibited from engaging in certain acts:

- *Public Nuisance:* Firearm industry members are prohibited from knowingly creating, maintaining, or contributing to a public nuisance in this state through the sale, manufacture, distribution, importing, or marketing of a firearm industry product.
- *Design, Sale, and Marketing:* Firearm industry members are prohibited from manufacturing, distributing, importing, marketing, offering for wholesale, or offering for retail sale a firearm industry product that is designed, sold, or marketed in a manner that: (1) foreseeably promotes conversion of legal firearm industry products into illegal firearm industry products; or (2) is targeted at minors or individuals who are legally prohibited from purchasing or possessing firearms.

Additionally, firearm industry members are required to establish specific controls and take specific precautions:

- *Reasonable Controls:* Firearm industry members are required to establish, implement, and enforce reasonable controls regarding their manufacture, sale, distribution, importing, use, and marketing of firearm industry products.
- *Reasonable Precautions:* Firearm industry members are required to take reasonable precautions to ensure they do 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.

"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: (1) 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; (2) prevent the loss of a firearm industry product or theft of a firearm industry product from a firearm industry member; and (3) 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.

### Public Nuisance.

A violation of the foregoing duties is classified as a public nuisance. A firearm industry member's conduct in violation of this act 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.

### Consumer Protection Act.

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 (CPA). A violation of this act 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 CPA.

### Investigation and Enforcement by the Attorney General.

Whenever the Attorney General believes a person may have information or knowledge relevant to an investigation of a possible violation of this act, the Attorney General may execute and serve a civil investigative demand requiring such person to produce documents, permit inspection and copying, answer written interrogatories, and give oral testimony, subject to the limits of the statute governing civil investigative demands.

Any person or entity that receives a civil investigative demand and objects to answering in whole or in part may file in Superior Court a petition to extend the time to respond or to modify or set aside a demand.

The Attorney General is prohibited from sharing with a law enforcement agency conducting a criminal investigation any materials or information obtained through a civil investigative demand, unless disclosure is required by a search warrant.

Whenever it appears to the Attorney General that a firearm industry member has violated the requirements of this act, the Attorney General may commence an action to seek and obtain any remedies available for violations of the state laws governing nuisance claims. Additionally, the Attorney General may seek and obtain punitive damages up to three times the actual damages sustained by the state, reasonable attorneys' fees, and the costs of the action.

### Legal Actions.

To prevail in an action under this act, 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.

Nothing in this act limits or impairs: (1) the right of any person, including the Attorney General, to pursue a legal action under any other law, including the CPA; (2) an obligation or requirement placed on a firearm industry member by any other law; or (3) any statutory or common law right, remedy, or prohibition otherwise available to any party, including the Attorney General.

Defined Terms.

The bill defines a number of terms including the following.

"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.

"Firearm industry product" means a product that meets any of the following conditions: (1) the firearm industry product was sold, made, distributed, or marketed in this state; (2) the firearm industry product was intended to be sold, made, distributed, or marketed in this state; or (3) 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.

"Product" means: (1) a firearm; (2) ammunition; (3) a component part of a firearm or ammunition, including a completed frame or receiver or unfinished frame or receiver; (4) 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; or (5) 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 definition.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.