

## CHAPTER 56

AN ACT concerning public safety and supplementing Title 2C of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.2C:58-33 Attorney General, statutory cause of action, public nuisance violations, certain.

1. a. In cases involving the common law tort of public nuisance, New Jersey courts have issued decisions which have limited the ability of public officials to pursue civil actions for abatement, damages, and other relief from the negligent, reckless and, in some cases, illegal conduct of bad actors in the gun industry, whose misconduct results in harm to the public and fuels the epidemic of gun violence in New Jersey and across the nation. Since the passage of Protection of Lawful Commerce in Arms Act (PLCAA), federal law has created an additional barrier to this relief and shielded gun industry members from being held accountable for misconduct.

b. The practical result of those decisions is that the people of New Jersey have been deprived in many cases of adequate protection from and appropriate redress for injuries to public health and safety resulting from gun violence.

c. With respect to gun violence, the unavailability of a robust public nuisance statute has limited the State's ability to seek legal redress in situations where firearms manufacturers and retail dealers may have knowingly or recklessly taken actions that have endangered the safety and health of New Jersey residents through the sale, manufacture, distribution, and marketing of lethal, but nonetheless legal, gun-related products. Even as manufacturers have incorporated features and technology resulting in more deadly and destructive firearms, some actors in the gun industry have implemented sales, distribution and marketing practices that have contributed to the development of an illegal secondary market for these increasingly dangerous instrumentalities.

d. Therefore, it is necessary and proper to promote and protect the health, safety, and welfare of the people of New Jersey by requiring gun industry members to establish and implement reasonable procedures, safeguards, and business practices for the sale, manufacture, distribution, importing, and marketing of gun-related products and establishing a statutory cause of action for public nuisance violations available to the Attorney General to address injuries to public health and safety and to seek relief, including, but not limited to, abatement and other injunctive relief, damages, and attorneys' fees and costs.

C.2C:58-34 Definitions.

2. As used in this act:

“Gun industry member” means a person engaged in the sale, manufacturing, distribution, importing or marketing of a gun-related product, and any officer, agent, employee, or other person authorized to act on behalf of that person or who acts in active concert or participation with one or more such persons.

“Gun-related product” means any firearm, ammunition, ammunition magazine, firearm component or part including, but not limited to, a firearm frame and a firearm receiver, or firearm accessory, which product was, or was intended to be, sold, manufactured, distributed, imported, or marketed in this State, or which product was possessed in this State and as to which it was reasonably foreseeable that the product would be possessed or used in this State.

“Person” means any natural person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association.

“Public nuisance” means any condition which injures, endangers, or threatens to injure or endanger or contributes to the injury or endangerment of the health, safety, peace, comfort, or convenience of others or which otherwise constitutes a public nuisance under common law.

“Reasonable controls” means reasonable procedures, safeguards, and business practices that are designed to:

(1) prevent the sale or distribution of a gun-related 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 gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a gun-related product;

(2) prevent the loss of a gun-related product or theft of a gun-related product from a gun industry member;

(3) ensure that a gun industry member complies with all provisions of State and federal law and does not otherwise promote the unlawful sale, manufacture, distribution, importing, marketing, possession, or use of a gun-related product; and

(4) ensure that the gun industry member does not engage in an act or practice in violation of any of the regulatory provisions governing firearms set forth in chapters 39 and 58 of Title 2C of the New Jersey Statutes or engage in conduct that constitutes a violation of P.L.1960, c.39 (C.56:8-2) or any regulations promulgated thereunder.

“Straw purchaser” means an individual who purchases, or attempts or conspires to purchase, a gun-related product at the request, order, or demand of another or for the purpose of selling or transferring to another person, knowing or reasonably believing that such other person is not authorized to either purchase or possess a gun-related product, or both, by the laws of this State, the United States, or of the state in which the other person resides by virtue of having a conviction of a crime, or for any other reason.

C.2C:58-35 Gun industry member, engage in public nuisance, prohibited, consequences; reasonable controls.

3. a. (1) A gun industry member shall not, by conduct either unlawful in itself or unreasonable under all the circumstances, knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product.

(2) A gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products.

(3) It shall be a public nuisance to engage in conduct that violates paragraphs (1) or (2) of this subsection.

b. Whenever it appears to the Attorney General that a gun industry member has engaged in or is engaging in conduct that violates subsection a. of this section, the Attorney General may commence an action to seek and obtain: an injunction prohibiting the gun industry member from continuing that conduct or engaging therein or doing any acts in furtherance thereof; an order providing for abatement of the nuisance at the expense of the defendant; restitution; damages; reasonable attorneys' fees, filing fees, and reasonable costs of suit; and any other appropriate relief.

c. To prevail in an action under this section, the Attorney General shall not be required to demonstrate that the gun industry member acted with the purpose to engage in any public nuisance or otherwise cause harm to the public. The Attorney General shall not be required to demonstrate any special injury to be granted the relief authorized by this section.

d. When it appears to the Attorney General that a gun industry member has engaged in, is engaging in, or is about to engage in conduct that violates subsection a. of this section, or when the Attorney General believes it is in the public interest that an investigation should be made to ascertain whether a gun industry member has in fact engaged in, is engaging in, or is about to engage in conduct that violates subsection a. of this section, the Attorney General may:

(1) require the gun industry member or any other person to file a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning conduct, and other data and information as the Attorney General deems necessary;

(2) examine under oath any gun industry member or any other person concerning the act or omission;

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

(4) pursuant to an order of the Superior Court, impound and retain in the Attorney General's possession any record, book, document, account, object, or paper that is produced in accordance with this act until the completion of all proceedings in connection with impounded items.

e. To the extent causation is applicable, the conduct of a gun industry member shall be deemed to constitute a proximate cause of the public nuisance if the harm to the public was a reasonably foreseeable effect of such conduct, notwithstanding any intervening actions, including, but not limited to, criminal actions by third parties.

f. The Attorney General may establish or designate within the Department of Law and Public Safety a unit, bureau, office or division to exercise all functions, powers, and duties of the Attorney General established under or deriving from P.L.2022, c.56 (C.2C:58-33 et seq.) and which may perform such other functions, powers, and duties vested in the Department of Law and Public Safety as the Attorney General may deem appropriate.

g. Nothing in P.L.2022, c.56 (C.2C:58-33 et seq.) shall be construed to deny, abrogate, or impair any statutory or common law right, remedy, or prohibition otherwise available to any party, including the Attorney General.

#### C.2C:58-36 Exemptions.

4. The provisions of P.L.1987, c.197 (C.2A:58C-1 et seq.) shall not apply to any public nuisance action brought by the Attorney General pursuant to section 3 of P.L.2022, c.56 (C.2C:58-35).

5. This act shall take effect immediately and shall apply to all actions instituted on or after the effective date of this act, and to all proceedings taken subsequent to the effective date of this act in all actions pending on the act's effective date, except that judgments entered or awards made pursuant to law from which no appeal is pending on the act's effective date shall not be affected by the provisions of this act.

Approved July 5, 2022.