
SENATE BILL 5078

State of Washington

68th Legislature

2023 Regular Session

By Senators Pedersen and Dhingra; by request of Attorney General

Prefiled 12/20/22.

1 AN ACT Relating to protecting public safety by establishing
2 duties of firearm industry members engaged in the sale,
3 manufacturing, distribution, importing, or marketing of firearms,
4 ammunition, component parts, or accessories, to adopt and implement
5 reasonable controls to prevent the diversion of firearms and related
6 products to straw purchasers, firearm traffickers, unauthorized
7 individuals, and individuals who pose a risk to themselves or others,
8 to prohibit such firearm industry members from creating or
9 maintaining a public nuisance, providing for investigation and
10 enforcement by the attorney general, and creating a private right of
11 action; adding a new section to chapter 7.48 RCW; creating new
12 sections; and prescribing penalties.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

14 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
15 irresponsible, dangerous, and unlawful business practices by firearms
16 industry members contributes to the illegal use of firearms and not
17 only constitutes a public nuisance as declared in chapter 7.48 RCW,
18 but that the effects of that nuisance exacerbate the public health
19 crisis of gun violence in this state. The Washington state medical
20 association, the Washington health alliance, and the voters of

1 Washington, most recently through approval of Initiative 1639 in
2 2016, have all noted that crisis.

3 (2) The legislature further finds that public nuisance was
4 established in state law by Washington's territorial legislature in
5 1875 and has been interpreted by the state supreme court for more
6 than 100 years to enjoin the operation of illegal businesses as
7 nuisance by individuals suffering special injury. Since at least
8 1895, public nuisance has included manufacturing and storing
9 gunpowder and other highly explosive substances.

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

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

31 (5) The legislature intends to ensure a level playing field for
32 responsible firearm industry members, to incentivize firearm industry
33 members to establish and implement safe and responsible business
34 practices, and to ensure that the attorney general and members of the
35 public in Washington who are harmed by a firearm industry member's
36 violation of law may bring legal action to seek appropriate justice
37 and fair remedies for those harms in court.

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

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

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

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

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

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

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

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

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

26 (e) "Product" means:

27 (i) A firearm;

28 (ii) Ammunition;

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

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

39 (v) A machine or device that is marketed or sold to the public
40 that is designed, intended, or able to be used to manufacture or

1 produce a firearm or any other product listed in this subsection
2 (1)(e).

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

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

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

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

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

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

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

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

39 (5) A firearm industry member shall take reasonable precautions
40 to ensure the firearm industry member does not sell or distribute a

1 firearm industry product to a downstream distributor or retailer of
2 firearm industry products that fails to establish and implement
3 reasonable controls.

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

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

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

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

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

22 (9) A firearm industry member's conduct in violation of any
23 provision of this section constitutes a proximate cause of the public
24 nuisance if the harm is a reasonably foreseeable effect of the
25 conduct, notwithstanding any intervening actions, including but not
26 limited to criminal actions by third parties. This subsection is not
27 intended to establish a causation requirement for a claim brought by
28 the attorney general pursuant to the consumer protection act, chapter
29 19.86 RCW.

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

37 (11) Whenever the attorney general believes that any person (a)
38 may be in possession, custody, or control of any information which he
39 or she believes to be relevant to the subject matter of an
40 investigation of a possible violation of this section, or (b) may

1 have knowledge of any information which the attorney general believes
2 relevant to the subject matter of such an investigation, the attorney
3 general may, prior to the institution of a civil proceeding thereon,
4 execute in writing and cause to be served upon such a person, a civil
5 investigative demand requiring such person to produce such
6 documentary material and permit inspection and copying, to answer in
7 writing written interrogatories, to give oral testimony, or any
8 combination of such demands pertaining to such documentary material
9 or information, subject to the provisions of RCW 19.86.110 (2)
10 through (9).

11 (12) A person that has suffered harm as a result of a firearm
12 industry member's acts or omissions in violation of this section may
13 commence an action to seek and obtain any remedies available for
14 violations of this chapter, and may also seek and obtain any of the
15 following:

16 (a) Injunctive relief;

17 (b) Compensatory damages;

18 (c) Punitive damages up to an amount not to exceed three times
19 the actual damages sustained; and

20 (d) Reasonable attorneys' fees, filing fees, and reasonable costs
21 of the action.

22 (13) If a person commences an action under subsection (12) of
23 this section, the person shall within five days of filing the
24 complaint notify the attorney general of the filing of the complaint
25 and provide the attorney general with a copy of the complaint and any
26 other documents or pleadings filed with the complaint.

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

31 (15) Nothing in this section shall be construed or implied to
32 limit or impair in any way any of the following:

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

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

38 (16) Nothing in this section shall be construed to deny,
39 abrogate, or impair any statutory or common law right, remedy, or

1 prohibition otherwise available to any party, including the attorney
2 general.

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

5 NEW SECTION. **Sec. 4.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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