
SUBSTITUTE SENATE BILL 5078

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by 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 and Attorney General)

READ FIRST TIME 02/24/23.

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, and providing for investigation and
10 enforcement by the attorney general; adding a new section to chapter
11 7.48 RCW; creating new sections; and prescribing penalties.

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

13 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
14 irresponsible, dangerous, and unlawful business practices by firearms
15 industry members contributes to the illegal use of firearms and not
16 only constitutes a public nuisance as declared in chapter 7.48 RCW,
17 but that the effects of that nuisance exacerbate the public health
18 crisis of gun violence in this state. The Washington state medical
19 association, the Washington health alliance, and the voters of
20 Washington, most recently through approval of Initiative 1639 in
21 2016, have all noted that crisis.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (e) "Product" means:

25 (i) A firearm;

26 (ii) Ammunition;

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

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

37 (v) A machine or device that is marketed or sold to the public
38 that is designed, intended, or able to be used to manufacture or
39 produce a firearm or any other product listed in this subsection

40 (1)(e).

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

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

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

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

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

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

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

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

37 (5) A firearm industry member shall take reasonable precautions
38 to ensure the firearm industry member does not sell or distribute a
39 firearm industry product to a downstream distributor or retailer of

1 firearm industry products that fails to establish and implement
2 reasonable controls.

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

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

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

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

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

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

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

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

1 relevant to the subject matter of such an investigation, the attorney
2 general may, prior to the institution of a civil proceeding thereon,
3 execute in writing and cause to be served upon such a person, a civil
4 investigative demand requiring such person to produce such
5 documentary material and permit inspection and copying, to answer in
6 writing written interrogatories, to give oral testimony, or any
7 combination of such demands pertaining to such documentary material
8 or information, subject to the provisions of RCW 19.86.110 (2)
9 through (9). Any person or entity that receives a civil investigative
10 demand issued pursuant to RCW 19.86.110 and that has an objection to
11 answering in whole or in part may avail themselves of the procedural
12 protections afforded in RCW 19.86.110(8). Further, the attorney
13 general shall not share with a law enforcement agency conducting a
14 criminal investigation any materials or information obtained via a
15 response to a civil investigative demand issued pursuant to RCW
16 19.86.110 unless such information or materials are required to be
17 disclosed pursuant to issuance of a search warrant.

18 (12) The attorney general's authority to investigate a possible
19 violation of this section and commence a legal action in response to
20 a violation of this section shall not be construed or implied to
21 deny, abrogate, limit, or impair any person's right to bring a
22 private right of action in response to a violation of this section
23 pursuant to (a) RCW 7.48.200 and 7.48.210, to seek damages,
24 abatement, or any other remedy available for a public nuisance, or
25 (b) chapter 19.86 RCW, to seek damages, equitable relief, or any
26 other remedy available under the consumer protection act.

27 (13) 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 (14) Nothing in this section shall be construed or implied to
32 deny, abrogate, limit, or impair in any way any of the following:

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

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

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

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

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

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