

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Hunschofsky offered the following:

Amendment (with title amendment)

Between lines 2364 and 2365, insert:

Section 41. The Legislature finds that judicial decisions have purported to limit the ability 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 firearms industry, whose misconduct results in harm to the public and fuels the epidemic of gun violence in the state and across the nation. The practical result of those decisions is that the people of the state and across the nation have been

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14 deprived, in many cases, of adequate protection from and
15 appropriate redress for injuries to public health and
16 safety resulting from gun violence. The Legislature further
17 finds that with respect to gun violence, the unavailability
18 of a robust public nuisance statute related to the sale,
19 manufacture, importation, or marketing of a firearm-related
20 product has limited the ability to seek legal redress in
21 situations where firearms manufacturers and retail dealers
22 may have knowingly or recklessly taken actions that have
23 endangered the safety and health of Florida residents and
24 communities across America through the sale, manufacture,
25 distribution, and marketing of lethal, but nonetheless
26 legal, firearms. Even as manufacturers have incorporated
27 features and technology resulting in more deadly and
28 destructive firearms, some actors in the firearm industry
29 have implemented selling, manufacturing, distributing, and
30 marketing practices that have contributed to the
31 development of an illegal secondary market for these
32 increasingly dangerous weapons. The Federal Government has
33 enacted the Protection of Lawful Commerce in Arms Act
34 (PLCAA), which also limits the ability of those injured by
35 guns to bring civil actions; however, the PLCAA was
36 intended only to limit such claims under the common law, to
37 recognize the ability of the states to enact statutes
38 applicable to the sale or marketing of firearms, and to

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39 expressly provide that causes of action may proceed where
40 there are violations of such statutes. It is necessary and
41 proper to promote and protect the health, safety, and
42 welfare of the people of the state by repealing s. 790.331,
43 Florida Statutes, to establish a statutory cause of action
44 for public nuisances and other violations, to address
45 injuries to public health and safety, and to seek relief,
46 including, but not limited to, abatement and other
47 injunctive relief, damages, and attorney fees and costs.

48 Section 42. Section 790.331, Florida Statutes, is
49 repealed.

50 Section 43. Section 790.332, Florida Statutes, is created
51 to read:

52 790.332 Public nuisance actions; firearms industry.-

53 (1) As used in this section, the term:

54 (a) "Firearm-related product" means a firearm, ammunition,
55 a firearm component, or a firearm accessory that, in each case,
56 meets any of the following conditions:

57 1. The product was sold, manufactured, distributed, or
58 marketed in the state;

59 2. The product was intended to be sold, manufactured,
60 distributed, or marketed in the state; or

61 3. The product was possessed in the state and it was
62 reasonably foreseeable that the product would be sold or
63 possessed in the state.

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64 (b) "Firearm industry member" means a person engaged in
65 selling, manufacturing, distributing, importing, or marketing a
66 firearm-related product.

67 (c) "Public nuisance" means any condition existing or
68 arising anywhere within the state which injures, endangers,
69 threatens to injure or endanger, or contributes to the injury or
70 endangerment of the health, safety, peace, comfort, or
71 convenience of others or otherwise constitutes a public nuisance
72 at common law.

73 (d) "Reasonable controls" means reasonable procedures,
74 safeguards, and business practices that are designed to do all
75 of the following:

76 1. Prevent the sale or distribution of a firearm-related
77 product to a straw purchaser, a firearm trafficker, a person
78 prohibited from possessing a firearm under state or federal law,
79 or a person who the firearm industry member has reasonable cause
80 to believe is at substantial risk of using a firearm-related
81 product to harm himself or herself, unlawfully harm another
82 person, or unlawfully possess or use a firearm-related product.

83 2. Prevent the loss of a firearm-related product or theft
84 of a firearm-related product from a firearm industry member.

85 3. Ensure that the firearm industry member complies with
86 all provisions of state and federal law and does not otherwise
87 promote the unlawful sale, manufacture, distribution,
88 possession, marketing, or use of a firearm-related product.

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89 4. Ensure that the firearm industry member does not engage
90 in an act or practice in violation of the Florida Deceptive and
91 Unfair Trade Practices Act.

92 (e) "Straw purchaser" means a person who conceals, or
93 intends to conceal, from another person that the purchase of a
94 firearm-related product is being made on behalf of a third
95 party. The term does not include a bona fide gift to a person
96 who is not prohibited by law from possessing or receiving a
97 firearm-related product. For purposes of this paragraph, a gift
98 to a person is not a bona fide gift if the person has offered or
99 given the purchaser a service or thing of value to acquire the
100 firearm-related product for the person.

101 (2) A firearm industry member, by conduct unlawful in
102 itself or unreasonable under all the circumstances, may not
103 knowingly or recklessly create, maintain, or contribute to a
104 public nuisance through the sale, manufacture, distribution,
105 importation, or marketing of a firearm-related product.

106 (3) A firearm industry member shall establish and
107 implement reasonable controls regarding the sale, manufacture,
108 sale, importation, distribution, use, and marketing of the
109 firearm industry member's firearm-related products.

110 (4) A violation of subsection (2) or subsection (3) is a
111 public nuisance.

112 (5) A firearm industry member's conduct constitutes the
113 proximate cause of the public nuisance if harm to the public is

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114 a reasonably foreseeable effect of the conduct, notwithstanding
115 any intervening actions, including criminal actions by a third
116 party.

117 (6) Whenever it appears to the Attorney General that a
118 firearm industry member has engaged in or is engaging in conduct
119 in violation of this section, the Attorney General may commence
120 an action to seek and obtain any of the following:

121 (a) An injunction prohibiting the firearm industry member
122 from continuing the conduct or engaging in the conduct or doing
123 any acts in furtherance of the conduct.

124 (b) An order providing for abatement of the nuisance at
125 the expense of the firearm industry member.

126 (c) Restitution.

127 (d) Compensatory and punitive damages.

128 (e) Reasonable attorney fees, filing fees, and reasonable
129 costs of the action.

130 (f) Any other appropriate relief.

131 (7)(a) A person who has been damaged as a result of a
132 firearm industry member's acts or omissions in violation of this
133 section may commence an action to seek and obtain any of the
134 following:

135 1. Injunctive relief.

136 2. Compensatory and punitive damages.

137 3. Reasonable attorney fees, filing fees, and reasonable
138 costs of the action.

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139 (b) If a person commences an action under paragraph (a),
140 the person shall, within 5 days after filing the complaint,
141 notify the Attorney General of the filing of the complaint and
142 provide the Attorney General with a copy of the complaint and
143 any other documents or pleadings filed with the complaint.

144 (8) To prevail in an action under this section, the party
145 seeking relief is not required to demonstrate that the firearm
146 industry member acted with the intent to engage in a public
147 nuisance or otherwise cause harm to the public.

148 (9) This section does not limit or impair in any way any
149 of the following:

150 (a) The right of a person to pursue legal action under any
151 other law.

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

154 (10) This section shall be construed and applied in a
155 manner that is consistent with the requirements of the Florida
156 and United States Constitutions.

157 (11) This section does not restrict or alter the
158 availability of an action for relief from or to remedy a public
159 nuisance at common law.

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T I T L E A M E N D M E N T

162 Remove line 119 and insert:
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164 the act; providing appropriations; providing legislative
165 findings; repealing s. 790.331, F.S., relating to the
166 prohibition of civil actions against manufacturers of
167 firearms and ammunition and other related businesses;
168 creating s. 790.332, F.S.; providing definitions;
169 prohibiting certain actions by firearm industry members;
170 requiring firearm industry members to establish and
171 implement certain controls; declaring certain violations to
172 be public nuisances; specifying when conduct may be a
173 proximate cause of such a nuisance; authorizing actions by
174 the Attorney General against such nuisances; authorizing
175 private actions against such nuisances; providing for
176 remedies; providing for construction; providing effective

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