

ASSEMBLY, No. 6051

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED DECEMBER 5, 2019

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Authorizes common law public nuisance suits regarding lead paint under State law; exempts Attorney General from certain aspects of public nuisance claims when pursuing lead paint actions.

CURRENT VERSION OF TEXT

As introduced.



A6051 VERRELLI

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1 AN ACT concerning public nuisance actions related to lead paint,
2 supplementing P.L.1971, c.366 (C.24:14A-1 et seq.), and
3 amending P.L.1987, c.197.

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

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8 1. (New section) Nothing in P.L.1971, c.366 (C.24:14A-1 et
9 seq.) shall preclude recourse to any other remedy available pursuant
10 to common law for a violation of P.L.1971, c.366 (C.24:14A-1 et
11 seq.) or for damages caused by the sale or distribution of lead paint
12 and the subsequent use of such lead paint in dwellings.

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14 2. (New section) The Attorney General may bring an action
15 for damages against a former or present lead paint manufacturer
16 pursuant to a common law theory of public nuisance, and shall not
17 be limited to injunctive relief. The Attorney General need not
18 demonstrate that a defendant physically controls lead paint, or real
19 property that contains lead paint, in order to prevail in a common
20 law public nuisance claim based upon the sale or distribution of
21 lead paint, nor demonstrate a special injury in order to recover
22 damages or prevail in such an action.

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24 3. Section 6 of P.L.1987, c.197 (C.2A:58C-6) is amended to
25 read as follows:

26 6. The provisions of this act shall not apply to :

27 a. any environmental tort action ; or

28 b. a public nuisance claim brought pursuant to common law by
29 the Attorney General concerning lead paint .

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31 4. This bill shall take effect immediately and shall apply to
32 causes of action filed on or after the date of enactment.

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35 STATEMENT

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37 This act would allow common law public nuisance suits under
38 P.L.1971, c.366 (C.24:14A-1 et seq., and known as the “lead paint
39 act”), and exempt the Attorney General from certain elements of a
40 public nuisance claim when pursuing a public nuisance lead paint
41 claim. Specifically, the Attorney General would be permitted to
42 bring an action against a former or present lead paint manufacturer
43 pursuant to a theory of public nuisance and would not be limited to
44 injunctive relief. The Attorney General would not be required to
45 demonstrate that a defendant physically controls lead paint, or real

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 property that contains lead paint, to prevail on a public nuisance
2 claim based upon the distribution of lead paint, nor demonstrate a
3 special injury in order to prevail in those actions. Additionally, the
4 bill provides that the exemption that already applies to
5 environmental tort actions in the law regulating product liability
6 actions, P.L.1987, c.197 (C.2A:58C-1 et seq.) would also apply to
7 actions concerning lead paint, when brought by the Attorney
8 General.

9 The New Jersey Supreme Court, in In re Lead Paint Litigation,
10 191 N.J. 405 (2007), held that a group of municipalities could not
11 bring a common law public nuisance action against lead paint
12 manufacturers because (1) the lead paint act is the exclusive remedy
13 provided by the Legislature for lead paint actions and the act does
14 not allow for public nuisance claims against manufacturers; (2)
15 government entities cannot bring claims for damages under
16 common law public nuisance doctrine and may only seek injunctive
17 relief; and (3) that the law regulating product liability actions,
18 P.L.1987, c.197 (C.2A:58C-1 et seq.), does not exclude lead paint
19 actions under its environmental tort exemption provisions, and that
20 a public nuisance action against lead paint manufacturers was
21 properly recognized as a products liability claim. The bill would
22 amend the lead paint act and the law regulating products liability
23 actions to allow the Attorney General to pursue public nuisance
24 claims against lead paint manufacturers, and to remove the
25 limitation on the relief available in actions brought by the Attorney
26 General.