

ASSEMBLY, No. 808

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

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

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/5/2021)

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

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

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 .

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

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

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.