

# SENATE, No. 697

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Senator SHIRLEY K. TURNER**

**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**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 9/17/2020)**

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.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

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

15 2. (New section) The Attorney General may bring an action for  
16 damages against a former or present lead paint manufacturer  
17 pursuant to a common law theory of public nuisance, and shall not  
18 be limited to injunctive relief. The Attorney General need not  
19 demonstrate that a defendant physically controls lead paint, or real  
20 property that contains lead paint, in order to prevail in a common  
21 law public nuisance claim based upon the sale or distribution of  
22 lead paint, nor demonstrate a special injury in order to recover  
23 damages or prevail in such an action.  
24

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

27 6. The provisions of this act shall not apply to :  
28 a. any environmental tort action ; or  
29 b. a public nuisance claim brought pursuant to common law by  
30 the Attorney General concerning lead paint .  
31

32 4. This bill shall take effect immediately and shall apply to  
33 causes of action filed on or after the date of enactment.  
34

35  
36 STATEMENT  
37

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

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

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