

ASSEMBLY, No. 659

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

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: 2/7/2022)

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
16 for 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 (cf: P.L.1987, c.197, s.6)
32

33 4. This bill shall take effect immediately and shall apply to
34 causes of action filed on or after the date of enactment.
35

36
37 STATEMENT
38

39 This act would allow common law public nuisance suits under
40 P.L.1971, c.366 (C.24:14A-1 et seq., and known as the “lead paint
41 act”), and exempt the Attorney General from certain elements of a
42 public nuisance claim when pursuing a public nuisance lead paint
43 claim. Specifically, the Attorney General would be permitted to
44 bring an action against a former or present lead paint manufacturer
45 pursuant to a theory of public nuisance and would not be limited 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 injunctive relief. The Attorney General would not be required to
2 demonstrate that a defendant physically controls lead paint, or real
3 property that contains lead paint, to prevail on a public nuisance
4 claim based upon the distribution of lead paint, nor demonstrate a
5 special injury in order to prevail in those actions. Additionally, the
6 bill provides that the exemption that already applies to
7 environmental tort actions in the law regulating product liability
8 actions, P.L.1987, c.197 (C.2A:58C-1 et seq.) would also apply to
9 actions concerning lead paint, when brought by the Attorney
10 General.

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