

## Public Law 109–92

109th Congress

## An Act

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

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Oct. 26, 2005

[S. 397]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Protection of Lawful Commerce in Arms Act”.

Protection of  
Lawful  
Commerce in  
Arms Act.  
15 USC 7901  
note.

**SEC. 2. FINDINGS; PURPOSES.**

15 USC 7901.

(a) **FINDINGS.**—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation’s laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing

in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

**SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.**

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

**SEC. 4. DEFINITIONS.**

15 USC 7903.

In this Act:

(1) **ENGAGED IN THE BUSINESS.**—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) **MANUFACTURER.**—The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) **PERSON.**—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT.**—The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION.**—

(A) **IN GENERAL.**—The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required

to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26, United States Code.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(D) MINOR CHILD EXCEPTION.—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) SELLER.—The term “seller” means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and

who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE.—The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term “trade association” means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term “unlawful misuse” means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

#### SEC. 5. CHILD SAFETY LOCKS.

(a) SHORT TITLE.—This section may be cited as the “Child Safety Lock Act of 2005”.

Child Safety  
Lock Act of 2005.  
18 USC 921 note.

(b) PURPOSES.—The purposes of this section are—

18 USC 922 note.

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) FIREARMS SAFETY.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

“(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

“(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United

States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

“(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

“(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

“(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

“(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

“(3) LIABILITY FOR USE.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

“(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

“(C) DEFINED TERM.—As used in this paragraph, the term ‘qualified civil liability action’—

“(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

“(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

“(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

“(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.”.

(2) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking “or (f)” and inserting “(f), or (p)”; and

(B) by adding at the end the following:

“(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

“(1) IN GENERAL.—

“(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

“(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

“(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

“(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

“(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.”.

(3) LIABILITY; EVIDENCE.—

(A) LIABILITY.—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

18 USC 922 note.

#### SEC. 6. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

“(7) for any person to manufacture or import armor piercing ammunition, unless—

“(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) the manufacture of such ammunition is for the purpose of exportation; or

“(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

“(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

18 USC 922 note.

“(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) is for the purpose of exportation; or

“(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;”.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

“(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

“(A) be sentenced to a term of imprisonment of not less than 15 years; and

“(B) if death results from the use of such ammunition—

“(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

“(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.”.

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or center-fire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Committee on the Judiciary of the Senate; and

(B) the chairman and ranking member of the Committee on the Judiciary of the House of Representatives.

Approved October 26, 2005.

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LEGISLATIVE HISTORY—S. 397:

CONGRESSIONAL RECORD, Vol. 151 (2005):

July 27-29, considered and passed Senate.

Oct. 20, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 41 (2005):

Oct. 26, Presidential statement.

