

Calendar No. 364

108TH CONGRESS
1ST SESSION

S. 1806

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2003

Mr. CRAIG introduced the following bill; which was read the first time

NOVEMBER 3, 2003

Read the second time and placed on the calendar

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

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

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Citizens have a right, protected by the Sec-
4 ond Amendment to the United States Constitution,
5 to keep and bear arms.

6 (2) Lawsuits have been commenced against
7 manufacturers, distributors, dealers, and importers
8 of firearms that operate as designed and intended,
9 which seek money damages and other relief for the
10 harm caused by the misuse of firearms by third par-
11 ties, including criminals.

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

18 (4) Businesses in the United States that are en-
19 gaged in interstate and foreign commerce through
20 the lawful design, manufacture, marketing, distribu-
21 tion, importation, or sale to the public of firearms or
22 ammunition that has been shipped or transported in
23 interstate or foreign commerce are not, and should
24 not, be liable for the harm caused by those who
25 criminally or unlawfully misuse firearm products or

ammunition products that function as designed and intended.

(5) 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.

(6) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups 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 con-

1 stitute a deprivation of the rights, privileges, and
2 immunities guaranteed to a citizen of the United
3 States under the Fourteenth Amendment to the
4 United States Constitution.

5 (b) PURPOSES.—The purposes of this Act are as fol-
6 lows:

7 (1) To prohibit causes of action against manu-
8 facturers, distributors, dealers, and importers of
9 firearms or ammunition products for the harm
10 caused by the criminal or unlawful misuse of firearm
11 products or ammunition products by others when
12 the product functioned as designed and intended.

13 (2) To preserve a citizen’s access to a supply of
14 firearms and ammunition for all lawful purposes, in-
15 cluding hunting, self-defense, collecting, and com-
16 petitive or recreational shooting.

17 (3) To guarantee a citizen’s rights, privileges,
18 and immunities, as applied to the States, under the
19 Fourteenth Amendment to the United States Con-
20 stitution, pursuant to section 5 of that Amendment.

21 (4) To prevent the use of such lawsuits to im-
22 pose unreasonable burdens on interstate and foreign
23 commerce.

24 (5) To protect the right, under the First
25 Amendment to the Constitution, of manufacturers,

1 distributors, dealers, and importers of firearms or
2 ammunition products, and trade associations, to
3 speak freely, to assemble peaceably, and to petition
4 the Government for a redress of their grievances.

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

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

10 (b) DISMISSAL OF PENDING ACTIONS.—A qualified
11 civil liability action that is pending on the date of enact-
12 ment of this Act shall be immediately dismissed by the
13 court in which the action was brought.

14 **SEC. 4. DEFINITIONS.**

15 In this Act, the following definitions shall apply:

16 (1) ENGAGED IN THE BUSINESS.—The term
17 “engaged in the business” has the meaning given
18 that term in section 921(a)(21) of title 18, United
19 States Code, and, as applied to a seller of ammuni-
20 tion, means a person who devotes, time, attention,
21 and labor to the sale of ammunition as a regular
22 course of trade or business with the principal objec-
23 tive of livelihood and profit through the sale or dis-
24 tribution of ammunition.

1 (2) MANUFACTURER.—The term “manufac-
2 turer” means, with respect to a qualified product, a
3 person who is engaged in the business of manufac-
4 turing the product in interstate or foreign commerce
5 and who is licensed to engage in business as such a
6 manufacturer under chapter 44 of title 18, United
7 States Code.

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

12 (4) QUALIFIED PRODUCT.—The term “qualified
13 product” means a firearm (as defined in subpara-
14 graph (A) or (B) of section 921(a)(3) of title 18,
15 United States Code), including any antique firearm
16 (as defined in section 921(a)(16) of such title), or
17 ammunition (as defined in section 921(a)(17) of
18 such title), or a component part of a firearm or am-
19 munition, that has been shipped or transported in
20 interstate or foreign commerce.

21 (5) QUALIFIED CIVIL LIABILITY ACTION.—

22 (A) IN GENERAL.—The term “qualified
23 civil liability action” means a civil action
24 brought by any person against a manufacturer
25 or seller of a qualified product, or a trade asso-

1 ciation, for damages resulting from the criminal
2 or unlawful misuse of a qualified product by the
3 person or a third party, but shall not include—

4 (i) an action brought against a trans-
5 feror convicted under section 924(h) of
6 title 18, United States Code, or a com-
7 parable or identical State felony law, by a
8 party directly harmed by the conduct of
9 which the transferee is so convicted;

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

13 (iii) an action in which a manufac-
14 turer or seller of a qualified product know-
15 ingly and willfully violated a State or Fed-
16 eral statute applicable to the sale or mar-
17 keting of the product, and the violation
18 was a proximate cause of the harm for
19 which relief is sought;

20 (iv) an action for breach of contract
21 or warranty in connection with the pur-
22 chase of the product; or

23 (v) an action for physical injuries or
24 property damage resulting directly from a

1 defect in design or manufacture of the
2 product, when used as intended.

3 (B) NEGLIGENT ENTRUSTMENT.—In sub-
4 paragraph (A)(ii), the term “negligent entrust-
5 ment” means the supplying of a qualified prod-
6 uct by a seller for use by another person when
7 the seller knows, or should know, the person to
8 whom the product is supplied is likely to, and
9 does, use the product in a manner involving un-
10 reasonable risk of physical injury to the person
11 and others.

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

14 (A) an importer (as defined in section
15 921(a)(9) of title 18, United States Code) who
16 is engaged in the business as such an importer
17 in interstate or foreign commerce and who is li-
18 censed to engage in business as such an im-
19 porter under chapter 44 of title 18, United
20 States Code;

21 (B) a dealer (as defined in section
22 921(a)(11) of title 18, United States Code) who
23 is engaged in the business as such a dealer in
24 interstate or foreign commerce and who is li-
25 censed to engage in business as such a dealer

1 under chapter 44 of title 18, United States
2 Code; or

3 (C) a person engaged in the business of
4 selling ammunition (as defined in section
5 921(a)(17) of title 18, United States Code) in
6 interstate or foreign commerce at the wholesale
7 or retail level, consistent with Federal, State,
8 and local law.

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

17 (8) TRADE ASSOCIATION.—The term “trade as-
18 sociation” means any association or business organi-
19 zation (whether or not incorporated under Federal
20 or State law) that is not operated for profit, and 2
21 or more members of which are manufacturers or
22 sellers of a qualified product.

Calendar No. 364

108TH CONGRESS
1ST SESSION

S. 1806

A BILL

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

NOVEMBER 3, 2003

Read the second time and placed on the calendar