

109TH CONGRESS  
1ST SESSION

# H. R. 711

To expand the powers of the Attorney General to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Attorney General to include firearm products and nonpowder firearms.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2005

Mr. KENNEDY of Rhode Island introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To expand the powers of the Attorney General to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Attorney General to include firearm products and nonpowder firearms.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Firearms Safety and Consumer Protection Act of 2005”.

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.  
 Sec. 2. Purposes.  
 Sec. 3. Definitions.

## TITLE I—REGULATION OF FIREARM PRODUCTS

Sec. 101. Regulatory authority.  
 Sec. 102. Orders; inspections.

## TITLE II—PROHIBITIONS

Sec. 201. Prohibitions.  
 Sec. 202. Inapplicability to governmental authorities.

## TITLE III—ENFORCEMENT

### Subtitle A—Civil enforcement

Sec. 301. Civil penalties.  
 Sec. 302. Injunctive enforcement and seizure.  
 Sec. 303. Imminently hazardous firearms.  
 Sec. 304. Private cause of action.  
 Sec. 305. Private enforcement of this Act.  
 Sec. 306. Effect on private remedies.

### Subtitle B—Criminal enforcement

Sec. 351. Criminal penalties.

## TITLE IV—ADMINISTRATIVE PROVISIONS

Sec. 401. Firearm injury information and research.  
 Sec. 402. Annual report to Congress.

## TITLE V—RELATIONSHIP TO OTHER LAW

Sec. 501. Subordination to the Arms Export Control Act.  
 Sec. 502. Effect on State law.

### **1 SEC. 2. PURPOSES.**

2 The purposes of this Act are—  
 3       (1) to protect the public against unreasonable  
 4       risk of injury and death associated with firearms  
 5       and related products;  
 6       (2) to develop safety standards for firearms and  
 7       related products;  
 8       (3) to assist consumers in evaluating the com-  
 9       parative safety of firearms and related products;

4 (5) to restrict the availability of weapons that  
5 pose an unreasonable risk of death or injury.

## 6 SEC. 3. DEFINITIONS.

7 (a) SPECIFIC TERMS.—In this Act:

10 (A) any person engaged in the business (as  
11 defined in section 921(a)(21)(C) of title 18,  
12 United States Code) of dealing in firearms at  
13 wholesale or retail;

14 (B) any person engaged in the business (as  
15 defined in section 921(a)(21)(D) of title 18,  
16 United States Code) of repairing firearms or of  
17 making or fitting special barrels, stocks, or trig-  
18 ger mechanisms to firearms; and

19 (C) any person who is a pawnbroker.

22 (A) any part or component of a firearm as  
23 originally manufactured;

24 (B) any good manufactured or sold—

5 (C) any good that is not a part or compo-  
6 nent of a firearm and is manufactured, sold, de-  
7 livered, offered, or intended for use exclusively  
8 to safeguard individuals from injury by a fire-  
9 arm.

19 (6) NONPOWDER FIREARM.—The term “non-  
20 powder firearm” means a device specifically designed  
21 to discharge BBs, pellets, darts, or similar projec-  
22 tiles by the release of stored energy.

23 (b) OTHER TERMS.—Each term used in this Act that  
24 is not defined in subsection (a) shall have the meaning

1 (if any) given that term in section 921(a) of title 18,  
2 United States Code.

3 **TITLE I—REGULATION OF**  
4 **FIREARM PRODUCTS**

5 **SEC. 101. REGULATORY AUTHORITY.**

6 (a) IN GENERAL.—The Attorney General shall pre-  
7 scribe such regulations governing the design, manufacture,  
8 and performance of, and commerce in, firearm products,  
9 consistent with this Act, as are reasonably necessary to  
10 reduce or prevent unreasonable risk of injury resulting  
11 from the use of those products.

12 (b) MAXIMUM INTERVAL BETWEEN ISSUANCE OF  
13 PROPOSED AND FINAL REGULATION.—Not later than 120  
14 days after the date on which the Attorney General issues  
15 a proposed regulation under subsection (a) with respect  
16 to a matter, the Attorney General shall issue a regulation  
17 in final form with respect to the matter.

18 (c) PETITIONS.—

19 (1) IN GENERAL.—Any person may petition the  
20 Attorney General to—

21 (A) issue, amend, or repeal a regulation  
22 prescribed under subsection (a) of this section;  
23 or

(B) require the recall, repair, or replacement of a firearm product, or the issuance of refunds with respect to a firearm product.

10 (B) provide the petitioner with the reasons  
11 for granting or denying the petition.

## 12 SEC. 102. ORDERS; INSPECTIONS.

13       (a) AUTHORITY TO PROHIBIT MANUFACTURE, SALE,  
14 OR TRANSFER OF FIREARM PRODUCTS MADE, IMPORTED,  
15 TRANSFERRED, OR DISTRIBUTED IN VIOLATION OF REG-  
16 ULATION.—The Attorney General may issue an order pro-  
17 hibiting the manufacture, sale, or transfer of a firearm  
18 product which the Attorney General finds has been manu-  
19 factured, or has been or is intended to be imported, trans-  
20 ferred, or distributed in violation of a regulation pre-  
21 scribed under this Act.

22 (b) AUTHORITY TO REQUIRE THE RECALL, REPAIR,  
23 OR REPLACEMENT OF, OR THE PROVISION OF REFUNDS  
24 WITH RESPECT TO FIREARM PRODUCTS.—The Attorney  
25 General may issue an order requiring the manufacturer

1 of, and any dealer in, a firearm product which the Attorney  
2 General determines poses an unreasonable risk of injury  
3 to the public, is not in compliance with a regulation  
4 prescribed under this Act, or is defective, to—

5 (1) provide notice of the risks associated with  
6 the product, and of how to avoid or reduce the risks,  
7 to—

8 (A) the public;

9 (B) in the case of the manufacturer of the  
10 product, each dealer in the product; and

11 (C) in the case of a dealer in the product,  
12 the manufacturer of the product and the other  
13 persons known to the dealer as dealers in the  
14 product;

15 (2) bring the product into conformity with the  
16 regulations prescribed under this Act;

17 (3) repair the product;

18 (4) replace the product with a like or equivalent  
19 product which is in compliance with those regulations;

21 (5) refund the purchase price of the product,  
22 or, if the product is more than 1 year old, a lesser  
23 amount based on the value of the product after reasonable use;

6 (c) AUTHORITY TO PROHIBIT MANUFACTURE, IM-  
7 PORTATION, TRANSFER, DISTRIBUTION, OR EXPORT OF  
8 UNREASONABLY RISKY FIREARM PRODUCTS.—The At-  
9 torney General may issue an order prohibiting the manu-  
10 facture, importation, transfer, distribution, or export of a  
11 firearm product if the Attorney General determines that  
12 the exercise of other authority under this Act would not  
13 be sufficient to prevent the product from posing an unre-  
14 sonable risk of injury to the public.

15 (d) INSPECTIONS.—When the Attorney General has  
16 reason to believe that a violation of this Act or of a regula-  
17 tion or order issued under this Act is being or has been  
18 committed, the Attorney General may, at reasonable  
19 times—

24 (2) enter and inspect any conveyance being  
25 used to transport a firearm product.

## 1                   **TITLE II—PROHIBITIONS**

### 2   **SEC. 201. PROHIBITIONS.**

3                   (a) FAILURE OF MANUFACTURER TO TEST AND CER-  
4   TIFY FIREARM PRODUCTS.—It shall be unlawful for the  
5   manufacturer of a firearm product to transfer, distribute,  
6   or export a firearm product unless—

7                   (1) the manufacturer has tested the product in  
8   order to ascertain whether the product is in con-  
9   formity with the regulations prescribed under section  
10   101;

11                  (2) the product is in conformity with those reg-  
12   ulations; and

13                  (3) the manufacturer has included in the pack-  
14   aging of the product, and furnished to each person  
15   to whom the product is distributed, a certificate  
16   stating that the product is in conformity with those  
17   regulations.

18                  (b) FAILURE OF MANUFACTURER TO PROVIDE No-  
19   TICE OF NEW TYPES OF FIREARM PRODUCTS.—It shall  
20   be unlawful for the manufacturer of a new type of firearm  
21   product to manufacture the product, unless the manufac-  
22   turer has provided the Attorney General with—

23                  (1) notice of the intent of the manufacturer to  
24   manufacture the product; and

25                  (2) a description of the product.

1       (c) FAILURE OF MANUFACTURER OR DEALER TO  
2 LABEL FIREARM PRODUCTS.—It shall be unlawful for a  
3 manufacturer of or dealer in firearms to transfer, dis-  
4 tribute, or export a firearm product unless the product  
5 is accompanied by a label that—

6               (1) contains—

7                       (A) the name and address of the manufac-  
8 turer of the product;

9                       (B) the name and address of any importer  
10 of the product;

11                       (C) the model number of the product and  
12 the date the product was manufactured;

13                       (D) a specification of the regulations pre-  
14 scribed under this Act that apply to the prod-  
15 uct; and

16                       (E) the certificate required by subsection  
17 (a)(3) with respect to the product; and

18               (2) is located prominently in conspicuous and  
19 legible type in contrast by typography, layout, or  
20 color with other printed matter on the label.

21       (d) FAILURE TO MAINTAIN OR PERMIT INSPECTION  
22 OF RECORDS.—It shall be unlawful for an importer of,  
23 manufacturer of, or dealer in a firearm product to fail  
24 to—

1 (1) maintain such records, and supply such in-  
2 formation, as the Attorney General may require in  
3 order to ascertain compliance with this Act and the  
4 regulations and orders issued under this Act; and

7 (e) IMPORTATION AND EXPORTATION OF  
8 UNCERTIFIED FIREARM PRODUCTS.—It shall be unlawful  
9 for any person to import into the United States or export  
10 a firearm product that is not accompanied by the certifi-  
11 cate required by subsection (a)(3).

12 (f) COMMERCE IN FIREARM PRODUCTS IN VIOLA-  
13 TION OF ORDER ISSUED OR REGULATION PRESCRIBED  
14 UNDER THIS ACT.—It shall be unlawful for any person  
15 to manufacture, offer for sale, distribute in commerce, im-  
16 port into the United States, or export a firearm product—  
17 (1) that is not in conformity with the regula-  
18 tions prescribed under this Act; or  
19 (2) in violation of an order issued under this  
20 Act.

21 (g) STOCKPILING.—It shall be unlawful for any per-  
22 son to manufacture, purchase, or import a firearm prod-  
23 uct, after the date a regulation is prescribed under this  
24 Act with respect to the product and before the date the  
25 regulation takes effect, at a rate that is significantly great-

1 er than the rate at which the person manufactured, pur-  
2 chased, or imported the product during a base period (pre-  
3 scribed by the Attorney General in regulations) ending be-  
4 fore the date the regulation is so prescribed.

5 **SEC. 202. INAPPLICABILITY TO GOVERNMENTAL AUTHORI-  
6 TIES.**

7 Section 201 does not apply to any department or  
8 agency of the United States, of a State, or of a political  
9 subdivision of a State, or to any official conduct of any  
10 officer or employee of such a department or agency.

11 **TITLE III—ENFORCEMENT**  
12 **Subtitle A—Civil Enforcement**

13 **SEC. 301. CIVIL PENALTIES.**

14 (a) **AUTHORITY TO IMPOSE FINES.—**

15 (1) **IN GENERAL.**—The Attorney General shall  
16 impose upon any person who violates section 201 a  
17 civil fine in an amount that does not exceed the ap-  
18 plicable amount described in subsection (b).

19 (2) **SCOPE OF OFFENSE.**—Each violation of sec-  
20 tion 201 (other than of subsection (a)(3) or (d) of  
21 that section) shall constitute a separate offense with  
22 respect to each firearm product involved.

23 (b) **APPLICABLE AMOUNT.—**

24 (1) **FIRST 5-YEAR PERIOD.**—The applicable  
25 amount for the 5-year period immediately following

1 the date of enactment of this Act is \$5,000, or  
2 \$10,000 if the violation is willful.

3 (2) THEREAFTER.—The applicable amount dur-  
4 ing any time after the 5-year period described in  
5 paragraph (1) is \$10,000, or \$20,000 if the violation  
6 is willful.

7 **SEC. 302. INJUNCTIVE ENFORCEMENT AND SEIZURE.**

8 (a) INJUNCTIVE ENFORCEMENT.—The Attorney  
9 General may bring an action to restrain any violation of  
10 section 201 in the United States district court for any dis-  
11 trict in which the violation has occurred, or in which the  
12 defendant is found or transacts business.

13 (b) CONDEMNATION.—

14 (1) IN GENERAL.—The Attorney General may  
15 bring an action in rem for condemnation of a qual-  
16 fied firearm product in the United States district  
17 court for any district in which the Attorney General  
18 has found and seized for confiscation the product.

19 (2) QUALIFIED FIREARM PRODUCT DEFINED.—  
20 In paragraph (1), the term “qualified firearm prod-  
21 uct” means a firearm product—

22 (A) that is being transported or having  
23 been transported remains unsold, is sold or of-  
24 fered for sale, is imported, or is to be exported;  
25 and

1 (B)(i) that is not in compliance with a reg-  
2 ulation prescribed or an order issued under this  
3 Act; or

4 (ii) with respect to which relief has been  
5 granted under section 303.

## 6 SEC. 303. IMMINENTLY HAZARDOUS FIREARMS.

7 (a) IN GENERAL.—Notwithstanding the pendency of  
8 any other proceeding in a court of the United States, the  
9 Attorney General may bring an action in a United States  
10 district court to restrain any person who is a manufac-  
11 turer of, or dealer in, an imminently hazardous firearm  
12 product from manufacturing, distributing, transferring,  
13 importing, or exporting the product.

14 (b) IMMINENTLY HAZARDOUS FIREARM PRODUCT.—  
15 In subsection (a), the term “imminently hazardous fire-  
16 arm product” means any firearm product with respect to  
17 which the Attorney General determines that—

22 (c) RELIEF.—In an action brought under subsection  
23 (a), the court may grant such temporary or permanent  
24 relief as may be necessary to protect the public from the  
25 risks posed by the firearm product, including—

1 (1) seizure of the product; and

2 (2) an order requiring—

3 (A) the purchasers of the product to be no-  
4 tified of the risks posed by the product;

5 (B) the public to be notified of the risks  
6 posed by the product; or

7 (C) the defendant to recall, repair, or re-  
8 place the product, or refund the purchase price  
9 of the product (or, if the product is more than  
0 1 year old, a lesser amount based on the value  
1 of the product after reasonable use).

12 (d) VENUE.—An action under subsection (a)(2) may  
13 be brought in the United States district court for the Dis-  
14 trict of Columbia or for any district in which any defend-  
15 ant is found or transacts business.

## 16 SEC. 304. PRIVATE CAUSE OF ACTION.

17 (a) IN GENERAL.—Any person aggrieved by any vio-  
18 lation of this Act or of any regulation prescribed or order  
19 issued under this Act by another person may bring an ac-  
20 tion against such other person in any United States dis-  
21 trict court for damages, including consequential damages.  
22 In any action under this section, the court, in its discre-  
23 tion, may award to a prevailing plaintiff a reasonable at-  
24 torney's fee as part of the costs.

1       (b) RULE OF INTERPRETATION.—The remedy pro-  
2 vided for in subsection (a) shall be in addition to any other  
3 remedy provided by common law or under Federal or State  
4 law.

5 **SEC. 305. PRIVATE ENFORCEMENT OF THIS ACT.**

6       Any interested person may bring an action in any  
7 United States district court to enforce this Act, or restrain  
8 any violation of this Act or of any regulation prescribed  
9 or order issued under this Act. In any action under this  
10 section, the court, in its discretion, may award to a pre-  
11 vailing plaintiff a reasonable attorney's fee as part of the  
12 costs.

13 **SEC. 306. EFFECT ON PRIVATE REMEDIES.**

14       (a) IRRELEVANCY OF COMPLIANCE WITH THIS  
15 ACT.—Compliance with this Act or any order issued or  
16 regulation prescribed under this Act shall not relieve any  
17 person from liability to any person under common law or  
18 State statutory law.

19       (b) IRRELEVANCY OF FAILURE TO TAKE ACTION  
20 UNDER THIS ACT.—The failure of the Attorney General  
21 to take any action authorized under this Act shall not be  
22 admissible in litigation relating to the product under com-  
23 mon law or State statutory law.

## 1 Subtitle B—Criminal Enforcement

## 2 SEC. 351. CRIMINAL PENALTIES.

3 Any person who has received from the Attorney Gen-  
4 eral a notice that the person has violated a provision of  
5 this Act or of a regulation prescribed under this Act with  
6 respect to a firearm product and knowingly violates that  
7 provision with respect to the product shall be fined under  
8 title 18, United States Code, imprisoned not more than  
9 2 years, or both.

## 10                   **TITLE IV—ADMINISTRATIVE**

## 11                   **PROVISIONS**

## 12 SEC. 401. FIREARM INJURY INFORMATION AND RESEARCH.

13 (a) INJURY DATA.—The Attorney General shall, in  
14 coordination with the Secretary of Health and Human  
15 Services—

16 (1) collect, investigate, analyze, and share with  
17 other appropriate government agencies cir-  
18 cumstances of death and injury associated with fire-  
19 arms; and

20 (2) conduct continuing studies and investiga-  
21 tions of economic costs and losses resulting from  
22 firearm-related deaths and injuries.

23 (b) OTHER DATA.—The Attorney General shall—

24 (1) collect and maintain current production and  
25 sales figures for each licensed manufacturer, broken

1 down by the model, caliber, and type of firearms  
2 produced and sold by the licensee, including a list of  
3 the serial numbers of such firearms;

4 (2) conduct research on, studies of, and investi-  
5 gation into the safety of firearm products and im-  
6 proving the safety of firearm products; and

7 (3) develop firearm safety testing methods and  
8 testing devices.

9 (c) AVAILABILITY OF INFORMATION.—On a regular  
10 basis, but not less frequently than annually, the Attorney  
11 General shall make available to the public the results of  
12 the activities of the Attorney General under subsections  
13 (a) and (b).

14 **SEC. 402. ANNUAL REPORT TO CONGRESS.**

15 (a) IN GENERAL.—The Attorney General shall pre-  
16 pare and submit to the President and Congress at the be-  
17 ginning of each regular session of Congress, a comprehen-  
18 sive report on the administration of this Act for the most  
19 recently completed fiscal year.

20 (b) CONTENTS.—Each report submitted under sub-  
21 section (a) shall include—

22 (1) a thorough description, developed in coordi-  
23 nation with the Secretary of Health and Human  
24 Services, of the incidence of injury and death and ef-  
25 fects on the population resulting from firearm prod-

1 products, including statistical analyses and projections,  
2 and a breakdown, as practicable, among the various  
3 types of such products associated with the injuries  
4 and deaths;

5 (2) a list of firearm safety regulations pre-  
6 scribed that year;

12 (4) a summary of the outstanding problems  
13 hindering enforcement of this Act, in the order of  
14 priority; and

15 (5) a log and summary of meetings between the  
16 Attorney General or employees of the Attorney Gen-  
17 eral and representatives of industry, interested  
18 groups, or other interested parties.

## **TITLE V—RELATIONSHIP TO OTHER LAW**

21 SEC. 501. SUBORDINATION TO ARMS EXPORT CONTROL  
22 ACT.

23 In the event of any conflict between any provision of  
24 this Act and any provision of the Arms Export Control

1 Act, the provision of the Arms Export Control Act shall  
2 control.

3 **SEC. 502. EFFECT ON STATE LAW.**

4 (a) **IN GENERAL.**—This Act shall not be construed  
5 to preempt any provision of the law of any State or polit-  
6 ical subdivision thereof, or prevent a State or political sub-  
7 division thereof from enacting any provision of law regu-  
8 lating or prohibiting conduct with respect to a firearm  
9 product, except to the extent that such provision of law  
10 is inconsistent with any provision of this Act, and then  
11 only to the extent of the inconsistency.

12 (b) **RULE OF CONSTRUCTION.**—A provision of State  
13 law is not inconsistent with this Act if the provision im-  
14 poses a regulation or prohibition of greater scope or a pen-  
15 alty of greater severity than any prohibition or penalty im-  
16 posed by this Act.

