

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.

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

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;

1 (4) to promote research and investigation into
2 the causes and prevention of firearm-related deaths
3 and injuries; and

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:

8 (1) **FIREARMS DEALER.**—The term “firearms
9 dealer” means—

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.

20 (2) **FIREARM PART.**—The term “firearm part”
21 means—

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

24 (B) any good manufactured or sold—

1 (i) for replacement or improvement of
2 a firearm; or

3 (ii) as any accessory or addition to the
4 firearm; and

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.

10 (3) FIREARM PRODUCT.—The term “firearm
11 product” means a firearm, firearm part, nonpowder
12 firearm, and ammunition.

13 (4) FIREARM SAFETY REGULATION.—The term
14 “firearm safety regulation” means a regulation pre-
15 scribed under this Act.

16 (5) FIREARM SAFETY STANDARD.—The term
17 “firearm safety standard” means a standard pro-
18 mulgated under this Act.

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

1 (B) require the recall, repair, or replace-
2 ment of a firearm product, or the issuance of
3 refunds with respect to a firearm product.

4 (2) DEADLINE FOR ACTION ON PETITION.—Not
5 later than 120 days after the date on which the At-
6 torney General receives a petition referred to in
7 paragraph (1), the Attorney General shall—

8 (A) grant, in whole or in part, or deny the
9 petition; and

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 Attor-
2 ney General determines poses an unreasonable risk of in-
3 jury 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 regula-
20 tions;

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 rea-
24 sonable use;

1 (6) recall the product from the stream of com-
2 merce; or

3 (7) submit to the Attorney General a satisfac-
4 tory plan for implementation of any action required
5 under this subsection.

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 unrea-
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—

20 (1) enter any place in which firearm products
21 are manufactured, stored, or held, for distribution in
22 commerce, and inspect those areas where the prod-
23 ucts are manufactured, stored, or held; and

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

5 (2) permit the Attorney General to inspect and
6 copy those records at reasonable times.

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 quali-
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—

18 (1) the product poses an unreasonable risk of
19 injury to the public; and

20 (2) time is of the essence in protecting the pub-
21 lic from the risks posed by the product.

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
10 1 year old, a lesser amount based on the value
11 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 inves-
5 tigation 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-

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

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

(3) an evaluation of the degree of compliance
with firearm safety regulations, including a list of
enforcement actions, court decisions, and settlements
of alleged violations, by name and location of the vi-
olator or alleged violator, as the case may be;

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

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

TITLE V—RELATIONSHIP TO OTHER LAW

SEC. 501. SUBORDINATION TO ARMS EXPORT CONTROL ACT.

In the event of any conflict between any provision of
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.

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