

109TH CONGRESS
1ST SESSION

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2005

Mr. STEARNS (for himself, Mr. BOUCHER, Mr. SMITH of Texas, Ms. HART, Mr. BARTLETT of Maryland, Mr. BASS, Mr. ROGERS of Michigan, Mr. BLUNT, Mr. WILSON of South Carolina, Mr. PEARCE, Mr. REYNOLDS, Mrs. CUBIN, Mr. BRADY of Texas, Mr. BOEHLERT, Mr. NUSSLE, Mr. TERRY, Ms. PRYCE of Ohio, Mr. BAKER, Mr. BRADLEY of New Hampshire, Mr. SIMPSON, Mr. BOEHNER, Mrs. BLACKBURN, Mr. MCHUGH, Mr. SOUDER, Mr. WICKER, Mr. CANNON, Mr. BOYD, Mrs. MUSGRAVE, Mr. GARRETT of New Jersey, Mr. MANZULLO, Mr. GINGREY, Mr. DAVIS of Kentucky, Mr. MARSHALL, Mr. BONILLA, Mr. CANTOR, Mr. BACA, Mr. TANNER, Mr. LEWIS of Kentucky, Mr. SCOTT of Georgia, Mr. MICHAUD, Mr. LARSEN of Washington, Mr. HOLDEN, Mr. BERRY, Mr. TAYLOR of North Carolina, Mr. MCCREERY, Mrs. JO ANN DAVIS of Virginia, Mr. GARY G. MILLER of California, Mrs. MILLER of Michigan, Mr. SWEENEY, Mr. PENCE, Mr. DAVIS of Tennessee, Mr. AKIN, Mr. CHOCOLA, Mr. THOMAS, Mr. PETERSON of Minnesota, Mr. GILLMOR, Mr. SULLIVAN, Mr. STRICKLAND, Mr. FOLEY, Mr. NUNES, Mr. ROGERS of Kentucky, Mr. CULBERSON, Mr. OTTER, Mr. WALDEN of Oregon, Mr. REHBERG, Mr. GOHMERT, Ms. HERSETH, Mr. GIBBONS, Mr. BURGESS, Mr. WESTMORELAND, Mr. CARTER, Mr. SESSIONS, Mr. ENGLISH of Pennsylvania, Mr. RENZI, Mr. BONNER, Mr. KANJORSKI, Mr. SHUSTER, Mr. GENE GREEN of Texas, Mr. PICKERING, Mr. GOODE, Mr. ROGERS of Alabama, Mr. GORDON, Mrs. CAPITO, Mr. EVERETT, Mr. YOUNG of Alaska, Mr. TAYLOR of Mississippi, Mr. HENSARLING, Mr. MORAN of Kansas, Mr. BARRETT of South Carolina, Mr. RYUN of Kansas, Mr. MARCHANT, Mr. MACK, Mr. ADERHOLT, Mr. HEFLEY, Mr. COOPER, Mr. CALVERT, Mr. HAYWORTH, Mr. FRANKS of Arizona, Mr. ISSA, Mr. DINGELL, Mr. TANCREDO, Mr. RAHALL, Mr. SIMMONS, Mr. MILLER of Florida, Mr. THORNBERRY, Mr. POMBO, Mr. KELLER, Mr. HERGER, Mr. DOOLITTLE, Mr. SCHWARZ of Michigan, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages or injunctive or other relief 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”.

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

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

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

11 (2) The Second Amendment to the United
12 States Constitution protects the rights of individ-
13 uals, including those who are not members of a mili-
14 tia or engaged in military service or training, to
15 keep and bear arms.

16 (3) Lawsuits have been commenced against
17 manufacturers, distributors, dealers, and importers
18 of firearms that operate as designed and intended,
19 which seek money damages and other relief for the

1 harm caused by the misuse of firearms by third par-
2 ties, including criminals.

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

9 (5) Businesses in the United States that are en-
10 gaged in interstate and foreign commerce through
11 the lawful design, manufacture, marketing, distribu-
12 tion, importation, or sale to the public of firearms or
13 ammunition products that have been shipped or
14 transported in interstate or foreign commerce are
15 not, and should not, be liable for the harm caused
16 by those who criminally or unlawfully misuse firearm
17 products or ammunition products that function as
18 designed and intended.

19 (6) The possibility of imposing liability on an
20 entire industry for harm that is solely caused by oth-
21 ers is an abuse of the legal system, erodes public
22 confidence in our Nation's laws, threatens the dimi-
23 nution of a basic constitutional right and civil lib-
24 erty, invites the disassembly and destabilization of
25 other industries and economic sectors lawfully com-

1 peting in the free enterprise system of the United
2 States, and constitutes an unreasonable burden on
3 interstate and foreign commerce of the United
4 States.

5 (7) The liability actions commenced or con-
6 templated by the Federal Government, States, mu-
7 nicipalities, and private interest groups and others
8 are based on theories without foundation in hun-
9 dreds of years of the common law and jurisprudence
10 of the United States and do not represent a bona
11 fide expansion of the common law. The possible sus-
12 taining of these actions by a maverick judicial officer
13 or petit jury would expand civil liability in a manner
14 never contemplated by the framers of the Constitu-
15 tion, by the Congress, or by the legislatures of the
16 several States. Such an expansion of liability would
17 constitute a deprivation of the rights, privileges, and
18 immunities guaranteed to a citizen of the United
19 States under the Fourteenth Amendment to the
20 United States Constitution.

21 (8) The liability actions commenced or con-
22 templated by the Federal Government, States, mu-
23 nicipalities, private interest groups, and others at-
24 tempt to use the judicial branch to circumvent the
25 legislative branch of the Government by regulating

1 interstate and foreign commerce through judgments
2 and judicial decrees, thereby threatening the separa-
3 tion of powers doctrine and weakening and under-
4 mining important principles of federalism, State sov-
5 ereignty, and comity among the several States.

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

8 (1) To prohibit causes of action against manu-
9 facturers, distributors, dealers, and importers of
10 firearms or ammunition products, and their trade
11 associations, for the harm solely caused by the crimi-
12 nal or unlawful misuse of firearm products or am-
13 munition products by others when the product func-
14 tioned as designed and intended.

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

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

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

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

7 (6) To preserve and protect the separation of
8 powers doctrine and important principles of fed-
9 eralism, State sovereignty, and comity among the
10 several States.

11 (7) To exercise the power of Congress under ar-
12 ticle IV, section 1 of the United States Constitution
13 to carry out the full faith and credit clause.

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

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

19 (b) DISMISSAL OF PENDING ACTIONS.—A qualified
20 civil liability action that is pending on the date of the en-
21 actment of this Act shall be dismissed immediately by the
22 court in which the action was brought or is currently pend-
23 ing.

24 **SEC. 4. DEFINITIONS.**

25 In this Act:

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

10 (2) MANUFACTURER.—The term “manufac-
11 turer” means, with respect to a qualified product, a
12 person who is engaged in the business of manufac-
13 turing the product in interstate or foreign commerce
14 and who is licensed to engage in business as such a
15 manufacturer under chapter 44 of title 18, United
16 States Code.

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

21 (4) QUALIFIED PRODUCT.—The term “qualified
22 product” means a firearm (as defined in subpara-
23 graph (A) or (B) of section 921(a)(3) of title 18,
24 United States Code), including any antique firearm
25 (as defined in section 921(a)(16) of such title), or

1 ammunition (as defined in section 921(a)(17)(A) of
2 such title), or a component part of a firearm or am-
3 munition, that has been shipped or transported in
4 interstate or foreign commerce.

5 (5) QUALIFIED CIVIL LIABILITY ACTION.—

6 (A) IN GENERAL.—The term “qualified
7 civil liability action” means a civil action or pro-
8 ceeding or an administrative proceeding
9 brought by any person against a manufacturer
10 or seller of a qualified product, or a trade asso-
11 ciation, for damages, punitive damages, injunc-
12 tive or declaratory relief, abatement, restitution,
13 fines, or penalties, or other relief, resulting
14 from the criminal or unlawful misuse of a quali-
15 fied product by the person or a third party, but
16 shall not include—

17 (i) an action brought against a trans-
18 fer or convicted of an offense under section
19 924(h) of title 18, United States Code, or
20 a comparable or identical State felony law,
21 by a party directly harmed by the conduct
22 of which the transferee is so convicted;

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

1 (iii) an action in which a manufac-
2 turer or seller of a qualified product know-
3 ingly violated a State or Federal statute
4 applicable to the sale or marketing of the
5 product, if the violation was a proximate
6 cause of the harm for which relief is
7 sought, including—

8 (I) any case in which the manu-
9 facturer or seller knowingly made any
10 false entry in, or failed to make ap-
11 propriate entry in, any record re-
12 quired to be kept under Federal or
13 State law with respect to the qualified
14 product, or aided, abetted, or con-
15 spired with any person in making any
16 false or fictitious oral or written state-
17 ment with respect to any fact material
18 to the lawfulness of the sale or other
19 disposition of the qualified product; or

20 (II) any case in which the manu-
21 facturer or seller aided, abetted, or
22 conspired with any other person to
23 sell or otherwise dispose of the quali-
24 fied product, knowing, or having rea-
25 sonable cause to believe, that the ac-

1 tual buyer of the qualified product
2 was prohibited from possessing or re-
3 ceiving a firearm or ammunition
4 under subsection (g) or (n) of section
5 922 of title 18, United States Code;

6 (iv) an action for breach of contract
7 or warranty in connection with the pur-
8 chase of the product; or

9 (v) an action for death, physical inju-
10 ries, or property damage resulting directly
11 from a defect in design or manufacture of
12 the product, when used as intended or in
13 a reasonably foreseeable manner, except
14 that if the discharge of the product was
15 caused by a volitional act that constituted
16 a criminal offense, then such act shall be
17 considered the sole proximate cause of any
18 resulting death, personal injury, or prop-
19 erty damage.

20 (B) NEGLIGENT ENTRUSTMENT.—As used
21 in subparagraph (A)(ii), the term “negligent en-
22 trustment” means the supplying of a qualified
23 product by a seller for use by another person
24 when the seller knows, or reasonably should
25 know, the person to whom the product is sup-

1 plied is likely to, and does, use the product in
2 a manner involving unreasonable risk of phys-
3 ical injury to the person or others.

4 (C) RULE OF CONSTRUCTION.—The excep-
5 tions set forth in clauses (i) through (v) of sub-
6 paragraph (A) shall be construed so as not to
7 be in conflict, and no provision of this Act shall
8 be construed to create a public or private cause
9 of action or remedy.

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

12 (A) an importer (as defined in section
13 921(a)(9) of title 18, United States Code) who
14 is engaged in the business as such an importer
15 in interstate or foreign commerce and who is li-
16 censed to engage in business as such an im-
17 porter under chapter 44 of title 18, United
18 States Code;

19 (B) a dealer (as defined in section
20 921(a)(11) of title 18, United States Code) who
21 is engaged in the business as such a dealer in
22 interstate or foreign commerce and who is li-
23 censed to engage in business as such a dealer
24 under chapter 44 of title 18, United States
25 Code; or

1 (C) a person engaged in the business of
2 selling ammunition (as defined in section
3 921(a)(17)(A) of title 18, United States Code)
4 in interstate or foreign commerce at the whole-
5 sale or retail level.

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

14 (8) TRADE ASSOCIATION.—The term “trade as-
15 sociation” means any corporation, unincorporated
16 association, federation, business league, or profes-
17 sional or business organization—

18 (A) that is not organized or operated for
19 profit, and no part of the net earnings of which
20 inures to the benefit of any private shareholder
21 or individual;

22 (B) that is an organization described in
23 section 501(c)(6) of the Internal Revenue Code
24 of 1986 and exempt from tax under section
25 501(a) of such Code; and

1 (C) 2 or more members of which are man-
2 ufacturers or sellers of a qualified product.

3 (9) UNLAWFUL MISUSE.—The term “unlawful
4 misuse” means conduct that violates a statute, ordi-
5 nance, or regulation as it relates to the use of a
6 qualified product.

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