

109TH CONGRESS  
1ST SESSION

# S. 397

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## 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.

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.—Congress finds the following:

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

6 (2) The Second Amendment to the United  
7 States Constitution protects the rights of individ-  
8 uals, including those who are not members of a mili-  
9 tia or engaged in military service or training, to  
10 keep and bear arms.

11 (3) Lawsuits have been commenced against  
12 manufacturers, distributors, dealers, and importers  
13 of firearms that operate as designed and intended,  
14 which seek money damages and other relief for the  
15 harm caused by the misuse of firearms by third par-  
16 ties, including criminals.

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

23 (5) Businesses in the United States that are en-  
24 gaged in interstate and foreign commerce through  
25 the lawful design, manufacture, marketing, distribu-  
26 tion, importation, or sale to the public of firearms or

1 ammunition products that have been shipped or  
2 transported in interstate or foreign commerce are  
3 not, and should not, be liable for the harm caused  
4 by those who criminally or unlawfully misuse firearm  
5 products or ammunition products that function as  
6 designed and intended.

7 (6) The possibility of imposing liability on an  
8 entire industry for harm that is solely caused by oth-  
9 ers is an abuse of the legal system, erodes public  
10 confidence in our Nation's laws, threatens the dimi-  
11 nution of a basic constitutional right and civil lib-  
12 erty, invites the disassembly and destabilization of  
13 other industries and economic sectors lawfully com-  
14 peting in the free enterprise system of the United  
15 States, and constitutes an unreasonable burden on  
16 interstate and foreign commerce of the United  
17 States.

18 (7) The liability actions commenced or con-  
19 templated by the Federal Government, States, mu-  
20 nicipalities, and private interest groups and others  
21 are based on theories without foundation in hun-  
22 dreds of years of the common law and jurisprudence  
23 of the United States and do not represent a bona  
24 fide expansion of the common law. The possible sus-  
25 taining of these actions by a maverick judicial officer

1 or petit jury would expand civil liability in a manner  
2 never contemplated by the framers of the Constitu-  
3 tion, by Congress, or by the legislatures of the sev-  
4 eral States. Such an expansion of liability would con-  
5 stitute a deprivation of the rights, privileges, and  
6 immunities guaranteed to a citizen of the United  
7 States under the Fourteenth Amendment to the  
8 United States Constitution.

9 (8) The liability actions commenced or con-  
10 templated by the Federal Government, States, mu-  
11 nicipalities, private interest groups and others at-  
12 tempt to use the judicial branch to circumvent the  
13 Legislative branch of government to regulate inter-  
14 state and foreign commerce through judgments and  
15 judicial decrees thereby threatening the Separation  
16 of Powers doctrine and weakening and undermining  
17 important principles of federalism, State sovereignty  
18 and comity between the sister States.

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

21 (1) To prohibit causes of action against manu-  
22 facturers, distributors, dealers, and importers of  
23 firearms or ammunition products, and their trade  
24 associations, for the harm solely caused by the crimi-  
25 nal or unlawful misuse of firearm products or am-

1       munition products by others when the product func-  
2       tioned as designed and intended.

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

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

11              (4) To prevent the use of such lawsuits to im-  
12      pose unreasonable burdens on interstate and foreign  
13      commerce.

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

20              (6) To preserve and protect the Separation of  
21      Powers doctrine and important principles of fed-  
22      eralism, State sovereignty and comity between sister  
23      States.

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

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

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

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

14 **SEC. 4. DEFINITIONS.**

15           In this Act:

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)(A) 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 or pro-  
 24 ceeding or an administrative proceeding  
 25 brought by any person against a manufacturer

1 or seller of a qualified product, or a trade asso-  
2 ciation, for damages, punitive damages, injunc-  
3 tive or declaratory relief, abatement, restitution,  
4 fines, or penalties, or other relief” resulting  
5 from the criminal or unlawful misuse of a quali-  
6 fied product by the person or a third party, but  
7 shall not include—

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

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

17 (iii) an action in which a manufac-  
18 turer or seller of a qualified product know-  
19 ingly violated a State or Federal statute  
20 applicable to the sale or marketing of the  
21 product, and the violation was a proximate  
22 cause of the harm for which relief is  
23 sought, including—

24 (I) any case in which the manu-  
25 facturer or seller knowingly made any



1 false entry in, or failed to make ap-  
2 propriate entry in, any record re-  
3 quired to be kept under Federal or  
4 State law with respect to the qualified  
5 product, or aided, abetted, or con-  
6 spired with any person in making any  
7 false or fictitious oral or written state-  
8 ment with respect to any fact material  
9 to the lawfulness of the sale or other  
10 disposition of a qualified product; or

11 (II) any case in which the manu-  
12 facturer or seller aided, abetted, or  
13 conspired with any other person to  
14 sell or otherwise dispose of a qualified  
15 product, knowing, or having reason-  
16 able cause to believe, that the actual  
17 buyer of the qualified product was  
18 prohibited from possessing or receiv-  
19 ing a firearm or ammunition under  
20 subsection (g) or (n) of section 922 of  
21 title 18, United States Code;

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

1 (v) an action for death, physical inju-  
2 ries or property damage resulting directly  
3 from a defect in design or manufacture of  
4 the product, when used as intended or in  
5 a reasonably foreseeable manner, except  
6 that where the discharge of the product  
7 was caused by a volitional act that con-  
8 stituted a criminal offense then such act  
9 shall be considered the sole proximate  
10 cause of any resulting death, personal inju-  
11 ries or property damage; or

12 (vi) and action or proceeding com-  
13 menced by the Attorney General to enforce  
14 the provisions of chapter 44 of title 18 or  
15 chapter 53 of title 26, United States Code.

16 (B) NEGLIGENT ENTRUSTMENT.—As used  
17 in subparagraph (A)(ii), the term ‘negligent en-  
18 trustment’ means the supplying of a qualified  
19 product by a seller for use by another person  
20 when the seller knows, or reasonably should  
21 know, the person to whom the product is sup-  
22 plied is likely to, and does, use the product in  
23 a manner involving unreasonable risk of phys-  
24 ical injury to the person or others.

1           (C) RULE OF CONSTRUCTION.—The excep-  
2           tions enumerated under clauses (i) through (v)  
3           of subparagraph (A) shall be construed so as  
4           not to be in conflict, and no provision of this  
5           Act shall be construed to create a public or pri-  
6           vate cause of action or remedy.

7           (D) MINOR CHILD EXCEPTION.—Nothing  
8           in this Act shall be construed to limit the right  
9           of a person under 17 years of age to recover  
10          damages authorized under Federal or State law  
11          in a civil action that meets 1 of the require-  
12          ments under clauses (i) through (v) of subpara-  
13          graph (A).

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

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

23                (B) a dealer (as defined in section  
24                921(a)(11) of title 18, United States Code) who  
25                is engaged in the business as such a dealer in

1 interstate or foreign commerce and who is li-  
2 censed to engage in business as such a dealer  
3 under chapter 44 of title 18, United States  
4 Code; or

5 (C) a person engaged in the business of  
6 selling ammunition (as defined in section  
7 921(a)(17)(A) of title 18, United States Code)  
8 in interstate or foreign commerce at the whole-  
9 sale or retail level.

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

18 (8) TRADE ASSOCIATION.—The term “trade as-  
19 sociation” means—

20 (A) any corporation, unincorporated asso-  
21 ciation, federation, business league, professional  
22 or business organization not organized or oper-  
23 ated for profit and no part of the net earnings  
24 of which inures to the benefit of any private  
25 shareholder or individual;

1 (B) that is an organization described in  
2 section 501(c)(6) of the Internal Revenue Code  
3 of 1986 and exempt from tax under section  
4 501(a) of such Code; and

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

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

11 **SEC. 5. CHILD SAFETY LOCKS.**

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

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

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

17 (2) to prevent unauthorized persons from gain-  
18 ing access to or use of a handgun, including children  
19 who may not be in possession of a handgun; and

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

24 (c) FIREARMS SAFETY.—

1           (1) MANDATORY TRANSFER OF SECURE GUN  
2 STORAGE OR SAFETY DEVICE.—Section 922 of title  
3 18, United States Code, is amended by inserting at  
4 the end the following:

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

6           “(1) IN GENERAL.—Except as provided under  
7 paragraph (2), it shall be unlawful for any licensed  
8 importer, licensed manufacturer, or licensed dealer  
9 to sell, deliver, or transfer any handgun to any per-  
10 son other than any person licensed under this chap-  
11 ter, unless the transferee is provided with a secure  
12 gun storage or safety device (as defined in section  
13 921(a)(34)) for that handgun.

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

16           “(A)(i) the manufacture for, transfer to, or  
17 possession by, the United States, a department  
18 or agency of the United States, a State, or a  
19 department, agency, or political subdivision of a  
20 State, of a handgun; or

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

1           “(B) the transfer to, or possession by, a  
2 rail police officer employed by a rail carrier and  
3 certified or commissioned as a police officer  
4 under the laws of a State of a handgun for pur-  
5 poses of law enforcement (whether on or off  
6 duty);

7           “(C) the transfer to any person of a hand-  
8 gun listed as a curio or relic by the Secretary  
9 pursuant to section 921(a)(13); or

10           “(D) the transfer to any person of a hand-  
11 gun for which a secure gun storage or safety  
12 device is temporarily unavailable for the reasons  
13 described in the exceptions stated in section  
14 923(e), if the licensed manufacturer, licensed  
15 importer, or licensed dealer delivers to the  
16 transferee within 10 calendar days from the  
17 date of the delivery of the handgun to the  
18 transferee a secure gun storage or safety device  
19 for the handgun.

20           “(3) LIABILITY FOR USE.—

21           “(A) IN GENERAL.—Notwithstanding any  
22 other provision of law, a person who has lawful  
23 possession and control of a handgun, and who  
24 uses a secure gun storage or safety device with

1 the handgun, shall be entitled to immunity from  
2 a qualified civil liability action.

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

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

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

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

20 “(II) at the time access was  
21 gained by the person not so author-  
22 ized, the handgun had been made in-  
23 operable by use of a secure gun stor-  
24 age or safety device; and



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

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

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

10           (B) by adding at the end the following:

11           “(p) PENALTIES RELATING TO SECURE GUN STOR-  
12           AGE OR SAFETY DEVICE.—

13           “(1) IN GENERAL.—

14           “(A) SUSPENSION OR REVOCATION OF LI-  
15           CENSE; CIVIL PENALTIES.—With respect to  
16           each violation of section 922(z)(1) by a licensed  
17           manufacturer, licensed importer, or licensed  
18           dealer, the Secretary may, after notice and op-  
19           portunity for hearing—

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

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

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

7           “(2) ADMINISTRATIVE REMEDIES.—The sus-  
8           pension or revocation of a license or the imposition  
9           of a civil penalty under paragraph (1) shall not pre-  
10          clude any administrative remedy that is otherwise  
11          available to the Secretary.”.

12          (3) LIABILITY; EVIDENCE.—

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

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

18           (ii) establish any standard of care.

19           (B) EVIDENCE.—Notwithstanding any  
20           other provision of law, evidence regarding com-  
21           pliance or noncompliance with the amendments  
22           made by this section shall not be admissible as  
23           evidence in any proceeding of any court, agen-  
24           cy, board, or other entity, except with respect to  
25           an action relating to section 922(z) of title 18,

1 United States Code, as added by this sub-  
2 section.

3 (C) RULE OF CONSTRUCTION.—Nothing in  
4 this paragraph shall be construed to bar a gov-  
5 ernmental action to impose a penalty under sec-  
6 tion 924(p) of title 18, United States Code, for  
7 a failure to comply with section 922(z) of that  
8 title.

9 (d) EFFECTIVE DATE.—This section and the amend-  
10 ments made by this section shall take effect 180 days after  
11 the date of enactment of this Act.

12 **SEC. 6. ARMOR PIERCING AMMUNITION.**

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

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

18 “(A) the manufacture of such ammunition  
19 is for the use of the United States, any depart-  
20 ment or agency of the United States, any State,  
21 or any department, agency, or political subdivi-  
22 sion of a State;

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

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

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

8           “(A) is for the use of the United States,  
9           any department or agency of the United States,  
10          any State, or any department, agency, or polit-  
11          ical subdivision of a State;

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

13          “(C) is for the purpose of testing or ex-  
14          perimentation and has been authorized by the  
15          Attorney General;”.

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

19          “(5) Except to the extent that a greater minimum  
20          sentence is otherwise provided under this subsection, or  
21          by any other provision of law, any person who, during and  
22          in relation to any crime of violence or drug trafficking  
23          crime (including a crime of violence or drug trafficking  
24          crime that provides for an enhanced punishment if com-  
25          mitted by the use of a deadly or dangerous weapon or de-

1 vice) for which the person may be prosecuted in a court  
 2 of the United States, uses or carries armor piercing am-  
 3 munition, or who, in furtherance of any such crime, pos-  
 4 sesses armor piercing ammunition, shall, in addition to the  
 5 punishment provided for such crime of violence or drug  
 6 trafficking crime or conviction under this section—

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

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

11                 “(i) if the killing is murder (as defined in  
 12                 section 1111), be punished by death or sen-  
 13                 tenced to a term of imprisonment for any term  
 14                 of years or for life; and

15                 “(ii) if the killing is manslaughter (as de-  
 16                 fined in section 1112), be punished as provided  
 17                 in section 1112.”.

18          (c) STUDY AND REPORT.—

19                 (1) STUDY.—The Attorney General shall con-  
 20                 duct a study to determine whether a uniform stand-  
 21                 ard for the testing of projectiles against Body Armor  
 22                 is feasible.

23                 (2) ISSUES TO BE STUDIED.—The study con-  
 24                 ducted under paragraph (1) shall include—

1           (A) variations in performance that are re-  
2           lated to the length of the barrel of the handgun  
3           or center-fire rifle from which the projectile is  
4           fired; and

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

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

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

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

Passed the Senate July 29, 2005.

Attest:

*Secretary.*

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 397**

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