

Calendar No. 15

109TH CONGRESS
1ST SESSION

S. 397

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2005

Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, Mr. SUNUNU, Mr. ALLEN, Mr. VITTER, and Ms. LANDRIEU) introduced the following bill; which was read the first time

FEBRUARY 17, 2005

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, 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.—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
20 harm caused by the misuse of firearms by third par-
21 ties, including criminals.

22 (4) The manufacture, importation, possession,
23 sale, and use of firearms and ammunition in the
24 United States are heavily regulated by Federal,
25 State, and local laws. Such Federal laws include the

1 Gun Control Act of 1968, the National Firearms
2 Act, and the Arms Export Control Act.

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

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

24 (7) The liability actions commenced or con-
25 templated by the Federal Government, States, mu-

1 municipalities, and private interest groups and others
2 are based on theories without foundation in hun-
3 dreds of years of the common law and jurisprudence
4 of the United States and do not represent a bona
5 fide expansion of the common law. The possible sus-
6 taining of these actions by a maverick judicial officer
7 or petit jury would expand civil liability in a manner
8 never contemplated by the framers of the Constitu-
9 tion, by Congress, or by the legislatures of the sev-
10 eral States. Such an expansion of liability would con-
11 stitute a deprivation of the rights, privileges, and
12 immunities guaranteed to a citizen of the United
13 States under the Fourteenth Amendment to the
14 United States Constitution.

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

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

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

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

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

18 (4) To prevent the use of such lawsuits to im-
19 pose unreasonable burdens on interstate and foreign
20 commerce.

21 (5) To protect the right, under the First
22 Amendment to the Constitution, of manufacturers,
23 distributors, dealers, and importers of firearms or
24 ammunition products, and trade associations, to

1 speak freely, to assemble peaceably, and to petition
2 the Government for a redress of their grievances.

3 (6) To preserve and protect the Separation of
4 Powers doctrine and important principles of fed-
5 eralism, State sovereignty and comity between sister
6 States.

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

10 **SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL**
11 **LIABILITY ACTIONS IN FEDERAL OR STATE**
12 **COURT.**

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

15 (b) DISMISSAL OF PENDING ACTIONS.—A qualified
16 civil liability action that is pending on the date of enact-
17 ment of this Act shall be immediately dismissed by the
18 court in which the action was brought or is currently pend-
19 ing.

20 **SEC. 4. DEFINITIONS.**

21 In this Act:

22 (1) ENGAGED IN THE BUSINESS.—The term
23 “engaged in the business” has the meaning given
24 that term in section 921(a)(21) of title 18, United
25 States Code, and, as applied to a seller of ammuni-

1 tion, means a person who devotes, time, attention,
2 and labor to the sale of ammunition as a regular
3 course of trade or business with the principal objec-
4 tive of livelihood and profit through the sale or dis-
5 tribution of ammunition.

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

13 (3) PERSON.—The term “person” means any
14 individual, corporation, company, association, firm,
15 partnership, society, joint stock company, or any
16 other entity, including any governmental entity.

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

1 (5) QUALIFIED CIVIL LIABILITY ACTION.—

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

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

19 (ii) an action brought against a seller
20 for negligent entrustment or negligence per
21 se;

22 (iii) an action in which a manufac-
23 turer or seller of a qualified product know-
24 ingly violated a State or Federal statute
25 applicable to the sale or marketing of the

1 product, and the violation was a proximate
2 cause of the harm for which relief is
3 sought, including—

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

16 (II) any case in which the manu-
17 facturer or seller aided, abetted, or
18 conspired with any other person to
19 sell or otherwise dispose of a qualified
20 product, knowing, or having reason-
21 able cause to believe, that the actual
22 buyer of the qualified product was
23 prohibited from possessing or receiv-
24 ing a firearm or ammunition under

1 subsection (g) or (n) of section 922 of
2 title 18, United States Code;

3 (iv) an action for breach of contract
4 or warranty in connection with the pur-
5 chase of the product; or

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

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

9 (A) an importer (as defined in section
10 921(a)(9) of title 18, United States Code) who
11 is engaged in the business as such an importer
12 in interstate or foreign commerce and who is li-
13 censed to engage in business as such an im-
14 porter under chapter 44 of title 18, United
15 States Code;

16 (B) a dealer (as defined in section
17 921(a)(11) of title 18, United States Code) who
18 is engaged in the business as such a dealer in
19 interstate or foreign commerce and who is li-
20 censed to engage in business as such a dealer
21 under chapter 44 of title 18, United States
22 Code; or

23 (C) a person engaged in the business of
24 selling ammunition (as defined in section
25 921(a)(17)(A) of title 18, United States Code)

1 in interstate or foreign commerce at the whole-
2 sale or retail level.

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

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

13 (A) any corporation, unincorporated asso-
14 ciation, federation, business league, professional
15 or business organization not organized or oper-
16 ated for profit and no part of the net earnings
17 of which inures to the benefit of any private
18 shareholder or individual;

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

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

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

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