

Union Calendar No. 70

109TH CONGRESS
1ST SESSION

H. R. 800

[Report No. 109-124]

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. MCCRERY, 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. DIN-

GELL, 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

JUNE 14, 2005

Additional sponsors: Mr. DENT, Mr. KNOLLENBERG, Mr. WALSH, Mr. SAM JOHNSON of Texas, Mr. SALAZAR, Mr. KLINE, Mr. KENNEDY of Minnesota, Mr. PLATTS, Mr. BEAUPREZ, Mr. CONAWAY, Mr. SAXTON, Mr. GERLACH, Mr. MCHENRY, Mr. LATOURETTE, Mr. KUHLMANN of New York, Mrs. BIGGERT, Mr. JINDAL, Mr. ALEXANDER, Mr. ROSS, Mr. RADANOVICH, Mr. POMEROY, Mr. DUNCAN, Mr. WHITFIELD, Mr. POE, Mrs. KELLY, Mr. MCCAUL of Texas, Mr. KINGSTON, Ms. FOX, Mr. MURTHA, Mr. MURPHY, Mr. JONES of North Carolina, Mr. OXLEY, Mr. TURNER, Mr. BOOZMAN, Mr. JENKINS, Mr. GRAVES, Mr. HASTINGS of Washington, Mr. BOUSTANY, Mr. GILCHREST, Mr. CRAMER, Mr. HALL, Mr. PITTS, Mr. WOLF, Mr. MATHESON, Mr. NEY, Mr. BISHOP of Utah, Mr. HAYES, Mr. DELAY, Mr. PORTER, Mr. KING of Iowa, Mr. PRICE of Georgia, Mr. COSTELLO, Mr. BARROW, Mr. MELANCON, Mr. NEUGEBAUER, Mr. HUNTER, Mr. CAMP, Mr. MOLLOHAN, Mr. BISHOP of Georgia, Mr. PUTNAM, Mrs. BONO, Mr. ROYCE, Mr. BOREN, Mrs. MYRICK, Mr. BUYER, Mr. DANIEL E. LUNGREN of California, Mr. CHABOT, Mr. GUTKNECHT, Mrs. EMERSON, Miss McMORRIS, Mrs. DRAKE, Mr. DEAL of Georgia, Mr. GALLEGLY, Mr. TIAHRT, Mr. CARDOZA, Mr. CUELLAR, Mr. BACHUS, Mr. CHANDLER, Mr. RYAN of Ohio, Mr. FEENEY, Mr. DAVIS of Alabama, Mr. COX, Mr. HOSTETTLER, Ms. GINNY BROWN-WAITE of Florida, Mr. GREEN of Wisconsin, Mr. COLE of Oklahoma, Mr. TIBERI, Mr. SHADEGG, Mr. LINDER, Mr. MARIO DIAZ-BALART of Florida, Mr. WAMP, Mr. PETERSON of Pennsylvania, Ms. GRANGER, Mr. KOLBE, Mr. WELDON of Florida, Mr. BILIRAKIS, Mr. BARTON of Texas, Mr. ORTIZ, Mr. LATHAM, Mr. HULSHOF, Mr. INGLIS of South Carolina, Mr. FORTENBERRY, Mr. LOBIONDO, Mr. GOODLATTE, Mr. EDWARDS, Mr. CUNNINGHAM, Mr. BROWN of South Carolina, Mr. SODREL, Mr. HOEKSTRA, Mr. DREIER, Mr. LEWIS of California, Mr. REYES, Mr. FORBES, Mr. BOSWELL, Mr. MCKEON, Mrs. WILSON of New Mexico, Mr. COBLE, Mr. SKELTON, Mrs. NORTHUP, Mr. OSBORNE, Mr. TOM DAVIS of Virginia, Mr. ISTOOK, Mr. HYDE, Mr. LUCAS, Ms. ROS-LEHTINEN, Mr. RYAN of Wisconsin, Mr. WELDON of Pennsylvania, Mr. CRENSHAW, Mr. BURTON of Indiana, Mr. KIND, Mr. JOHNSON of Illinois, Mr. MCINTYRE, Mr. MICA, Mr. MCCOTTER, Mr. ROHRBACHER, Mr. SHIMKUS, Mr. EHLERS, Mr. HOBSON, Mr. REGULA, Mr. UPTON, Mr. THOMPSON of California, Mr. SHERWOOD, Ms. HARRIS, Mr. REICHERT, Mr. WELLER, Mr. LAHOOD, and Mr. STUPAK

JUNE 14, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 15, 2005]

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 States*
9 *Constitution provides that the right of the people to*
10 *keep and bear arms shall not be infringed.*

11 (2) *The Second Amendment to the United States*
12 *Constitution protects the rights of individuals, includ-*
13 *ing those who are not members of a militia or en-*
14 *gaged in military service or training, to keep and*
15 *bear arms.*

16 (3) *Lawsuits have been commenced against man-*
17 *ufacturers, distributors, dealers, and importers of fire-*

1 *arms that operate as designed and intended, which*
2 *seek money damages and other relief for the harm*
3 *caused by the misuse of firearms by third parties, in-*
4 *cluding criminals.*

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

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

21 *(6) The possibility of imposing liability on an*
22 *entire industry for harm that is solely caused by oth-*
23 *ers is an abuse of the legal system, erodes public con-*
24 *fidence in our Nation's laws, threatens the diminu-*
25 *tion of a basic constitutional right and civil liberty,*

1 *invites the disassembly and destabilization of other*
2 *industries and economic sectors lawfully competing in*
3 *the free enterprise system of the United States, and*
4 *constitutes an unreasonable burden on interstate and*
5 *foreign commerce of the United States.*

6 (7) *The liability actions commenced or con-*
7 *templated by the Federal Government, States, munici-*
8 *palities, and private interest groups and others are*
9 *based on theories without foundation in hundreds of*
10 *years of the common law and jurisprudence of the*
11 *United States and do not represent a bona fide ex-*
12 *pansion of the common law. The possible sustaining*
13 *of these actions by a maverick judicial officer or petit*
14 *jury would expand civil liability in a manner never*
15 *contemplated by the framers of the Constitution, by*
16 *the Congress, or by the legislatures of the several*
17 *States. Such an expansion of liability would con-*
18 *stitute a deprivation of the rights, privileges, and im-*
19 *munities guaranteed to a citizen of the United States*
20 *under the Fourteenth Amendment to the United*
21 *States Constitution.*

22 (8) *The liability actions commenced or con-*
23 *templated by the Federal Government, States, munici-*
24 *palities, private interest groups, and others attempt to*
25 *use the judicial branch to circumvent the legislative*

1 *branch of the Government by regulating interstate*
2 *and foreign commerce through judgments and judicial*
3 *decrees, thereby threatening the separation of powers*
4 *doctrine and weakening and undermining important*
5 *principles of federalism, State sovereignty, and com-*
6 *ity among the several States.*

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

9 *(1) To prohibit causes of action against manu-*
10 *facturers, distributors, dealers, and importers of fire-*
11 *arms or ammunition products, and their trade asso-*
12 *ciations, for the harm solely caused by the criminal*
13 *or unlawful misuse of firearm products or ammuni-*
14 *tion products by others when the product functioned*
15 *as designed and intended.*

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

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

1 (4) *To prevent the use of such lawsuits to impose*
2 *unreasonable burdens on interstate and foreign com-*
3 *merce.*

4 (5) *To protect the right, under the First Amend-*
5 *ment to the Constitution, of manufacturers, distribu-*
6 *tors, dealers, and importers of firearms or ammuni-*
7 *tion products, and trade associations, to speak freely,*
8 *to assemble peaceably, and to petition the Government*
9 *for a redress of their grievances.*

10 (6) *To preserve and protect the separation of*
11 *powers doctrine and important principles of fed-*
12 *eralism, State sovereignty, and comity among the sev-*
13 *eral States.*

14 (7) *To exercise the power of Congress under arti-*
15 *cle IV, section 1 of the United States Constitution to*
16 *carry out the full faith and credit clause.*

17 **SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LI-**
18 **ABILITY ACTIONS IN FEDERAL OR STATE**
19 **COURT.**

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

22 (b) *DISMISSAL OF PENDING ACTIONS.*—*A qualified*
23 *civil liability action that is pending on the date of the en-*
24 *actment of this Act shall be dismissed immediately by the*

1 *court in which the action was brought or is currently pend-*
2 *ing.*

3 **SEC. 4. DEFINITIONS.**

4 *In this Act:*

5 (1) *ENGAGED IN THE BUSINESS.*—*The term “en-*
6 *gaged in the business” has the meaning given that*
7 *term in section 921(a)(21) of title 18, United States*
8 *Code, and, as applied to a seller of ammunition,*
9 *means a person who devotes time, attention, and*
10 *labor to the sale of ammunition as a regular course*
11 *of trade or business with the principal objective of*
12 *livelihood and profit through the sale or distribution*
13 *of ammunition.*

14 (2) *MANUFACTURER.*—*The term “manufacturer”*
15 *means, with respect to a qualified product, a person*
16 *who is engaged in the business of manufacturing the*
17 *product in interstate or foreign commerce and who is*
18 *licensed to engage in business as such a manufacturer*
19 *under chapter 44 of title 18, United States Code.*

20 (3) *PERSON.*—*The term “person” means any in-*
21 *dividual, corporation, company, association, firm,*
22 *partnership, society, joint stock company, or any*
23 *other entity, including any governmental entity.*

24 (4) *QUALIFIED PRODUCT.*—*The term “qualified*
25 *product” means a firearm (as defined in subpara-*

1 *graph (A) or (B) of section 921(a)(3) of title 18,*
2 *United States Code), including any antique firearm*
3 *(as defined in section 921(a)(16) of such title), or am-*
4 *munition (as defined in section 921(a)(17)(A) of such*
5 *title), or a component part of a firearm or ammuni-*
6 *tion, that has been shipped or transported in inter-*
7 *state or foreign commerce.*

8 (5) *QUALIFIED CIVIL LIABILITY ACTION.—*

9 (A) *IN GENERAL.—The term “qualified civil*
10 *liability action” means a civil action or pro-*
11 *ceeding or an administrative proceeding brought*
12 *by any person against a manufacturer or seller*
13 *of a qualified product, or a trade association, for*
14 *damages, punitive damages, injunctive or declar-*
15 *atory relief, abatement, restitution, fines, or pen-*
16 *alties, or other relief, resulting from the criminal*
17 *or unlawful misuse of a qualified product by the*
18 *person or a third party, but shall not include—*

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

1 (ii) an action brought against a seller
2 for negligent entrustment or negligence per
3 se;

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

11 (I) any case in which the manu-
12 facturer or seller knowingly made any
13 false entry in, or failed to make appro-
14 priate entry in, any record required to
15 be kept under Federal or State law
16 with respect to the qualified product,
17 or aided, abetted, or conspired with
18 any person in making any false or fic-
19 titious oral or written statement with
20 respect to any fact material to the law-
21 fulness of the sale or other disposition
22 of the qualified product; or

23 (II) any case in which the manu-
24 facturer or seller aided, abetted, or con-
25 spired with any other person to sell or

1 *otherwise dispose of the qualified prod-*
2 *uct, knowing, or having reasonable*
3 *cause to believe, that the actual buyer*
4 *of the qualified product was prohibited*
5 *from possessing or receiving a firearm*
6 *or ammunition under subsection (g) or*
7 *(n) of section 922 of title 18, United*
8 *States Code;*

9 *(iv) an action for breach of contract or*
10 *warranty in connection with the purchase*
11 *of the product; or*

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

22 *(B) NEGLIGENCE ENTRUSTMENT.—As used*
23 *in subparagraph (A)(ii), the term “negligent en-*
24 *trustment” means the supplying of a qualified*
25 *product by a seller for use by another person*

1 *when the seller knows, or reasonably should*
2 *know, the person to whom the product is sup-*
3 *plied is likely to, and does, use the product in*
4 *a manner involving unreasonable risk of phys-*
5 *ical injury to the person or others.*

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

12 (6) *SELLER.—The term “seller” means, with re-*
13 *spect to a qualified product—*

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

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

1 *under chapter 44 of title 18, United States Code;*
2 *or*

3 *(C) a person engaged in the business of sell-*
4 *ing ammunition (as defined in section*
5 *921(a)(17)(A) of title 18, United States Code) in*
6 *interstate or foreign commerce at the wholesale*
7 *or retail level.*

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

15 (8) *TRADE ASSOCIATION.*—*The term “trade asso-*
16 *ciation” means any corporation, unincorporated asso-*
17 *ciation, federation, business league, or professional or*
18 *business organization—*

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

23 *(B) that is an organization described in sec-*
24 *tion 501(c)(6) of the Internal Revenue Code of*

1 *1986 and exempt from tax under section 501(a)*
2 *of such Code; and*

3 *(C) 2 or more members of which are manu-*
4 *facturers or sellers of a qualified product.*

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

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