

SJR

15

ALASKA STATE LEGISLATURE

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Charlie Huggins Senator

May 5, 2005

The Honorable Lesli McGuire, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau AK 99801

RE: SJR 15 (End Tort Law Abuse Against Firearm Industry)

Dear Representative:

Senate Joint Resolution 15 has been read on the House Floor and is referred to your committee. I am writing to request that the bill be scheduled for the earliest convenient hearing before the House Judiciary Committee.

Included with this letter of request is the latest version of the bill, my sponsor statement and more supporting documents.

If you have any questions about the bill or require further information, please feel free to call me at any time. Thank you for your consideration of this request.

Sincerely,

Senator Charlie Huggins

Enclosures

schedule (yes)



NATIONAL RIFLE ASSOCIATION OF AMERICA
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STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

April 19, 2005

TO: Alaska State Legislators
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: Senate Joint Resolution 15 – SUPPORT

On behalf of the more than 24,000 NRA members living in the State of Alaska, I respectfully urge your support for Senate Joint Resolution 15. SJR 15 would urge Congress to pass S. 397 and H.R. 800, the "Protection of Lawful Commerce in Arms Act," federal legislation which would address the reckless lawsuits being filed against the firearms industry.

S. 397 and H.R. 800 provide that lawsuits may not be brought against manufacturers and sellers of firearms and ammunition if the suits are based on criminal or unlawful use of the product by a third party. Existing lawsuits must be dismissed. These suits are intended to drive gun makers out of business by holding manufacturers and dealers liable for the criminal acts of third parties who are totally beyond their control. Suing the firearms industry for street crimes is like suing Budweiser or General Motors for drunk driving accidents.

S. 397 and H.R. 800 grant carefully tailored protection for legitimate suits by expressly allowing actions based on knowing violations of federal or state law related to gun sales, or on traditional grounds including negligent entrustment (such as sales to a child or to an obviously intoxicated person) or breach of contract. The bills also allow product liability cases involving actual injuries caused by an improperly functioning firearm (as opposed to cases of intentional misuse).

Reckless lawsuits usurp the authority of the Congress and of state legislatures, in a desperate attempt to enact restrictions that have been widely rejected. Thirty-three states, including Alaska, have enacted statutes blocking this type of litigation. Congress should follow their lead.

Senate Joint Resolution 15 is intended to help move Congress in the direction of enacting this important protection and, thus, the National Rifle Association asks for your support of this measure.

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Protection of Lawful Commerce in Arms Act (Placed on Calendar in Senate)

S 397 PCS

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Lawful Commerce in Arms Act'.

SEC. 2. FINDINGS; PURPOSES.

(a) Findings- Congress finds the following:

- (1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.
- (2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.
- (3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.
- (4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms

Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) Purposes- The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

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

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

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

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

(a) In General- A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of Pending Actions- A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ENGAGED IN THE BUSINESS-** The term 'engaged in the business' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

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

(3) **PERSON-** The term 'person' means any individual, corporation, company, association, firm, partnership, society, joint stock

company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT**- The term 'qualified product' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION**-

(A) **IN GENERAL**- The term 'qualified civil liability action' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include--

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

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

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including--

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

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

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.

(B) **NEGLIGENT ENTRUSTMENT**- As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) **RULE OF CONSTRUCTION**- The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) **SELLER**- The term 'seller' means, with respect to a qualified product--

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) **STATE**- The term 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) **TRADE ASSOCIATION**- The term 'trade association' means--

(A) any corporation, unincorporated association, federation, business league, professional or business organization or

organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

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

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE- The term 'unlawful misuse' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

Calendar No. 15

109th CONGRESS

1st Session

S. 397

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.

February 17, 2005

Read the second time and placed on the calendar

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Protection of Lawful Commerce in Arms Act (Introduced in House)

HR 800 IH

109th CONGRESS

1st Session

H. R. 800

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. SOUDEF, 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. SWENEY, 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Lawful Commerce in Arms Act'.

SEC. 2. FINDINGS; PURPOSES.

(a) Findings- The Congress finds the following:

- (1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.
- (2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

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

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by the Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups, and others attempt to use the judicial branch to circumvent the legislative branch of the Government by regulating interstate and foreign commerce through judgments and judicial decrees, thereby threatening the separation of powers doctrine and weakening and undermining important principles of federalism, State sovereignty, and comity among the several States.

(b) Purposes- The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

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

(6) To preserve and protect the separation of powers doctrine and important principles of federalism, State sovereignty, and comity among the several States.

(7) To exercise the power of Congress under article IV, section 1 of the United States Constitution to carry out the full faith and credit clause.

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

(a) In General- A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of Pending Actions- A qualified civil liability action that is pending on the date of the enactment of this Act shall be dismissed immediately by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ENGAGED IN THE BUSINESS-** The term 'engaged in the business' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution

of ammunition.

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

(3) **PERSON**- The term 'person' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT**- The term 'qualified product' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION**-

(A) **IN GENERAL**- The term 'qualified civil liability action' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include--

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

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

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, if the violation was a proximate cause of the harm for which relief is sought, including--

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of the qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of the qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

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

(v) an action for death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that if the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injury, or property damage.

(B) **NEGLIGENT ENTRUSTMENT**- As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) **RULE OF CONSTRUCTION**- The exceptions set forth in clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) **SELLER**- The term 'seller' means, with respect to a qualified product--

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE- The term 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION- The term 'trade association' means any corporation, unincorporated association, federation, business league, or professional or business organization--

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

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

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE- The term 'unlawful misuse' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

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Lawsuit Against Firearm Industry Thrown Out of Ohio Court

Constitution Front Page Opinion (Published) Keywords: GUNS / GUN OWNERSHIP / 2ND AMENDMENT
 Source: N.R.A. WWW.NRA.ORG
 Published: 10/7/99 Author: BOB EVANS, REPUBLICAN CONGRESSIONAL CANDIDATE vs TOM LANTOS for 2000
 Posted on 10/07/1999 14:02:52 PDT by [Bob Evans](#)

Untitled Document

NEWS RELEASE**Lawsuit Against Firearm Industry Thrown Out of Ohio Court**

NRA hails dismissal "with prejudice" as first of many proving lack of merit of suits brought by greedy lawyers and scapegoating mayors

(WASHINGTON, DC) -- Municipal lawsuits that attempt to hold lawful, legitimate manufacturers liable for criminal misuse of their products have no legal merit. That is the message of today's decision by an Ohio state judge in dismissing with prejudice the suit filed by Cincinnati -- the first such lawsuit to reach court disposition.

"This is a major victory for those who believe, as NRA members believe, that we must hold criminals accountable for their crimes," said James J. Baker, executive director of NRA's Institute for Legislative Action. "And this dismissal is a major blow for the greedy attorneys seeking enormous contingency fees and for the mayors seeking scapegoats to blame for their own failure to enforce current laws and prosecute violent criminals. We are confident that other cities that have filed such reckless lawsuits will soon hear the same message."

Baker noted that most Americans oppose these types of lawsuits. "In poll after poll, the vast majority of Americans believe these suits are wrong," Baker said. "The very notion of trying to hold a third party that operates in total compliance with the law responsible for the deviant, criminal actions of another is a notion that flies in the face of common sense and our system of American jurisprudence."

The decision to dismiss the case "with prejudice" means the City of Cincinnati cannot attempt to amend and refile the suit. The defendants include Sturm Ruger & Co., Beretta Corp. U.S.A., and Colt's Manufacturing Co.

"I commend Judge Ruehlman for understanding the Constitutional importance of the separation of powers, and for clearly stating that policy issues are reserved to the legislature," Baker said. The opinion states that, "the City's complaint is an improper attempt to have this Court substitute its judgement for that of the legislature ... only the legislature has the power to engage in the type of regulation that is being sought by the City here. Moreover, the City's request ... exceeds the scope of its municipal powers and ... violates the Commerce Clause of the United States Constitution."

During the past year, the NRA has successfully worked to enact legislation in thirteen states to prohibit municipalities from filing such frivolous lawsuits against firearms manufacturers. Included are Georgia and Louisiana, states in which such suits had been filed. Baker said NRA would continue that legislative effort next year, an effort that is drawing greater support as it has become more evident that the suits lack merit.

For more information, see <http://www.FreeRepublic.com/per/redirect?u=http%3A%2F%2Fnra.org%2Fresearch%2F19990825-LawsuitPreemption-01.shtml> > "Judicial Lawsuits" Against Gun Makers.

Having difficulty finding ILA-related info? Try our [FAQ](#) page.

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 ManualTown's Electronic Information Services

Homepage established 1994 by the NRA Institute for Legislative Action
 11250 Waples Mill Road, Fairfax, VA 22030

Another interesting news item I felt you should see ...

Bob Evans
 Republican Congressional Candidate vs Tom Lantos for 2000
 340 Fourster St.
 SF, CA 94112
 415-334-9923

Please stop by my campaign web site and support a 2000 Congressional Candidate that has the balls to stand up for the 2nd Amendment of the Constitution!

Click here to enter: [BOB EVANS FOR U.S. CONGRESS 2000](#)


1 Posted on 10/07/1999 14:02:52 PTT by [Bob Evans \(bob0159@pacbell.net\)](#)
 [Reply | Top | Last]

To: [Bob Evans](#)

Herry for us! P'm on HCl, Clintonite, and d e rest of the socialist. Great post Bob!

2 Posted on 10/07/1999 14:07:04 PDT by [rboque](#)



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News

California Cities Cases Against Firearms Industry Rejected on Appeal

Court rules that "unfair trade practice" and "public nuisance" lawsuits were properly dismissed by the trial court.

SOUTHPORT, CT -- February 11, 2005 -- Sturm, Ruger & Company, Inc., (NYSE: RGR) the nation's largest firearms manufacturer, is pleased to announce that on February 10, 2005, the First Appellate District, Division One, in the Court of Appeals of the State of California, unanimously affirmed that the "unfair trade practice" and "public nuisance" lawsuits filed by San Francisco, Berkeley, Sacramento, Los Angeles, Compton, Inglewood, and West Hollywood, and the counties of San Mateo and Alameda, were properly dismissed by the trial court (In re Firearms Cases, The People et al. v. Arcadia Machine & Tool, Inc. Et al., No.'s A103211, A105309, Judicial Council Coordination Proceeding No. 4095, decided 2/10/05).

This is the latest in a long string of cases at both the trial and appeals court levels holding that manufacturers of lawfully-sold, non-defective firearms are not legally at fault if these products are subsequently illegally acquired or misused by criminals.

In dismissing plaintiff's claims against firearms manufacturers and distributors, the Appeals Court stated, "We conclude that endorsing the theory in this case would stretch the already expansive boundaries of the UCL (California's Unfair Competition Act) beyond any principled reading of the statute. In addition, supervision of the sweeping measures sought would be a Herculean task for court oversight."

The court continued, "No evidence in this case hints that any of the manufacturer defendants provided weapons to criminals or failed to properly record sales or did any of the other acts that plaintiffs characterize as high-risk business practices. They did not control the wrongful acts or encourage others to engage in questionable acts. Neither did they change their business practices to avoid proposed regulations or advise retailers on ways to circumvent the law. The record in this case shows that the only business practice that these defendants engage in is the manufacture and sale of firearms to dealers that are licensed as such by the federal government. Plaintiffs have cited no cases finding a manufacturer has engaged in an unfair practice solely by legally selling a non-defective product based on actions taken by entities further along the chain of distribution. Even plaintiffs' experts could not present an evidentiary link between the manufacturer of a firearm and a retail gun dealer who sold guns that ended up in criminal circumstances."

"Establishing public policy is primarily a legislative function and not a judicial function, especially in an area that is subject to heavy regulation. None of the evidence presented by plaintiffs support the conclusion that a manufacturer who does not undertake the kind of investigation and remedial action urged by plaintiffs and their experts has engaged in an unfair practice", continued the court.

The court concluded, "The case has progressed beyond the pleading stage and the plaintiffs have been unable to produce evidence to show the existence of a triable issue of material fact on the pleaded theories...Plaintiffs' public nuisance claim falls for lack of any evidence of causation. Their complaint attempts to reach too far back in the chain of distribution where it targets the manufacturer of a legal, non-defective product that lawfully distributes its product only to those buyers licensed by the federal government."

Sturm, Ruger President and General Counsel, Stephen L. Sanetti commented, "It should be apparent by now that, after almost seven years of intensive and costly litigation which has burdened both taxpayers and industry alike, the time has to come for plaintiffs to abandon their adversarial position against our industry, particularly at a time when national security is at stake."

"Unfortunately, at the behest of zealous agenda-driven organizations, some mayors seem determined to continue such litigation abuse despite prior court rulings. The only sure way to finally stop this wasteful litigation is swift enactment of the protection of Lawful Commerce in Arms Act as part of needed tort law reform to be considered by Congress."

"Court after court has found our responsible sales and marketing practices in this heavily-regulated industry to be

appropriate and legally correct. Violent crime is at a twenty year low, and firearms accidents are at an all-time low, due at least in part on many voluntary efforts of the responsible firearms industry," he continued.

"Let's work together with law enforcement on proven programs to surely and swiftly prosecute criminals who abuse firearms, and to help educate lawful firearms owners on proper firearms safety measures, to keep these trends going in the right direction," Sanetti concluded.

Sturm, Ruger is the nation's leading manufacturer of high-quality firearms for recreation and law enforcement, and a major producer of precision steel and titanium investment castings components for consumer industries. Sturm, Ruger is headquartered in Southport, CT, with plants and foundries located in Newport, NH and Prescott, AZ.

Find this article at:

<http://www.shootingtimes.com/firearm021105>

The Nation

Federal Judge Dismisses NAACP Suit Against Gun Industry

By Jeff Johnson

CNSNews.com Congressional Bureau Chief

July 21, 2003

Capitol Hill (CNSNews.com) - The latest attempt by opponents of the Second Amendment to hold the firearms industry responsible for the actions of individuals who misuse guns to commit crimes failed Monday. The U.S. District Court for the Eastern District of New York accepted a May 14 advisory jury ruling against the National Association for the Advancement of Colored People (NAACP) and several anti-gun groups that joined in the lawsuit.

Lawrence Keane, vice president and general counsel of the National Shooting Sports Foundation (NSSF), said Senior Federal District Judge Jack B. Weinstein did the right thing but went about doing it the wrong way.

"We are clearly pleased by the ultimate outcome of the case," Keane said. "We are, of course, disappointed, but not all that surprised by the route that Judge Weinstein takes because we think that the decision ... ignores New York law and is a slap in the face to the findings of the advisory jury."

After hearing six weeks of testimony, an advisory jury found that none of the firearm industry defendants had created a "public nuisance" as claimed by the NAACP. Weinstein rejected the jury's finding, but, based on the same testimony, still dismissed the case because, he said, the NAACP failed to prove that it had suffered any "special injury" as a result of the defendants' actions.

The NAACP filed the suit in 1999 - with the help of the Brady Center to Prevent Gun Violence (formerly Handgun Control, Inc.), the Violence Policy Center (VPC) and other anti-gun organizations - attempting to hold the gun industry liable for what it called "marketing practices that resulted in a proliferation of handguns in many communities."

The NAACP did not return calls seeking comment prior to the deadline for this report.

Federal judge hears case, but state law applies in 'diversity jurisdiction'

As a federal judge, Weinstein presided over the case under federal "diversity jurisdiction" rules that allow federal courts to hear suits in which the defendants and plaintiffs do not reside in the same jurisdiction. Although the case is heard in federal court, the judge is bound by the laws of the state in which the suit is filed.

The appellate division of the New York Supreme Court ruled June 24 that manufacturers of lawful and non-defective products such as firearms cannot be sued under New York law for allegedly creating a "public nuisance" when criminals misuse those products.

"The lawful manufacture, marketing and sale of a defect-free product in a highly regulated activity [is] far removed from the downstream, unlawful use of handguns," the appeals court said, adding "that courts are the least suited, least equipped and thus the least appropriate branch of government to regulate and micro-manage the manufacturing, marketing, distribution and sale of handguns."

The decision upheld an August 2001 ruling in which New York Supreme Court Justice Louis York also dismissed the lawsuit against the gun industry filed by New York Attorney General Eliot Spitzer. York also found that Spitzer failed to tie the industry directly to the alleged "public nuisance" created by criminals misusing firearms.

"It is obvious that the parties most directly responsible for the unlawful use of handguns," York wrote, "are the individuals who unlawfully use them."

Firearms industry believes suits intended to legislate through the courts

In a press release following the May 14 jury recommendation, the NSSF called the NAACP lawsuit "an attempted end-run around Congress and state legislatures."

"This case is also an unconstitutional attempt by this court and radical, anti-gun zealots - who are orchestrating and funding this lawsuit - to impose through litigation a gun control agenda repeatedly rejected by Congress and not supported by most Americans," the NSSF stated.

Erich Pratt, communications director for Gun Owners of America, told CNSNews.com that he believes anti-Second Amendment forces have an even more sinister, underlying agenda.

"They've failed at enacting many of the gun control proposals they've sought, and so now, they're using the court to try to force the gun makers to impose these gun controls upon themselves," he said, "or they're trying to put the gun makers out of business."

The NAACP announcement of the lawsuit on July 12, 1999, lends credence to Pratt's latter assertion.

"And so, the NAACP will be filing litigation this week in the United States District Court against the gun industry in an effort to break the backs of those who help perpetuate this over saturation of weapons in our communities," the group's president, Kweisi Mfume, said. (Emphasis added.)

Pro-gun groups say legislation needed to stop 'frivolous suits'

In a press release responding to the May 14 recommendation, Mfume expressed "disappointment" at the jury's ruling against his group.

"When you consider that Congress is now moving to pass legislation that would prohibit lawsuits such as ours," he said, "it's only a matter of time before more innocent Americans become victims of violence as a result of the availability of illegal weapons."

The NSSF believes, however, that lawsuits attempting to hold gun makers and dealers responsible for acts committed by criminals "will not stop a single crime from occurring."

"The unfair abuse of our legal system - to burden innocent people and law-abiding companies with tremendous costs to defend their innocence - points to the reason legislation now awaiting Senate action must be passed," Keane said.

The legislation to which Mfume and Keane referred is the Protection of Lawful Commerce in Arms Act ([S. 659](#)), which has 54 cosponsors and passed the House by a vote of 285-140.

In a newspaper advertising campaign begun last Thursday in the *New York Times*, the Brady Center claims the bill will "let gun dealers get away with murder."

"Quietly sneaking through the United States Senate is an outrageous bill which will slam the courthouse door shut on countless victims of gun crimes," the ad argues. "Believe it or not, this bill...actually immunizes negligent gun dealers and gun makers against lawsuits."

The ad also charges that the bill "is a 'Stay out of Court Free' pass, exempting the gun industry from legal rules that bind every other industry in America."

Pratt told CNSNews.com that the Brady Campaign has either not read the proposed law or is intentionally misrepresenting its content to the public.

"Their ad is entirely ignorant and outrageous," he said, "and flies in the face of reality."

The NSSF agrees.

"[T]his popular legal reform does not grant any special protection or blanket immunity for firearms manufacturers," the group said in a statement about the bill. "Contrary to what groups like the Brady Center to Prevent Handgun Violence claim, it would not stop injured parties from bringing legitimate lawsuits, on well-established legal theories, against members of the firearms industry."

The NSSF argues that "a plaintiff truly injured by a defective product, an illegally sold firearm or a firearm sold by a dealer to an irresponsible person would still be able to bring a lawsuit against a firearm manufacturer or dealer."

A Congressional Research Service (CRS) summary of the bill is nearly identical to the NSSF interpretation.

According to the CRS, the Protection of Lawful Commerce in Arms act would only block or require to be dismissed lawsuits "against a manufacturer or seller of a firearm, ammunition or a component of a firearm that has been shipped or transported in interstate or foreign commerce, or against a trade association of such manufacturers or sellers, for damages resulting from the criminal or unlawful misuse of a firearm." (Emphasis added.)

The proposal would specifically allow lawsuits to continue or be filed in the future:

- Against a seller for negligence per se, or negligent entrustment;
- For physical injuries or property damage resulting directly from a defect in design or manufacture of the firearm when used as intended;
- Against anyone who transfers a firearm knowing that it will be used to commit a crime of violence or a drug trafficking crime;
- Against a manufacturer or seller of a firearm who willfully violated a state or federal statute applicable to the sale or marketing of the firearm [if] the violation was a proximate cause of the harm for which relief is sought; or
- For breach of contract or warranty in connection with the purchase of the firearm.

Courts would be required to examine the claims made in a lawsuit against any of the parties covered by the bill. Only if the suit claimed "damages resulting from the criminal or unlawful misuse of a firearm" would the judge be required to dismiss the suit. All other claims would proceed.

Pratt said the continued attempts by anti-gun forces to use lawsuits to obtain what they can't get through legislation make passage of the Protection of Lawful Commerce in Arms act vital.

"The bottom line is," he concluded, "it's simply wrong to punish gun makers for selling a legal and constitutionally protected product in a lawful manner."

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