



OLR RESEARCH REPORT

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FEDERAL “PROTECTION OF LAWFUL COMMERCE IN ARMS ACT”

By: Christopher Reinhart, Chief Attorney

You asked for a summary of the federal “Protection of Lawful Commerce in Arms Act’s” provisions protecting gun manufacturers from liability.

SUMMARY

The federal “Protection of Lawful Commerce in Arms Act” generally prohibits civil or administrative proceedings in federal or state court against (1) manufacturers or sellers of firearms, ammunition, or their components or (2) trade associations with these manufacturers or sellers as members, for criminal or unlawful misuse of these products. It prohibits actions for damages, punitive damages, injunctions, declaratory relief, abatement, restitution, fines, penalties, and other relief.

The act provides six exceptions to its ban on such actions, including defective product claims, actions based on a manufacturer’s or seller’s knowing violations of state or federal law (such as “strawman” sales), and certain actions by the U.S. attorney general.

The act took effect on October 26, 2005, barring claims filed after that date and dismissing all claims pending on that date (15 USC § 7901 et seq.).

EXCEPTIONS TO BAN ON ACTIONS

The federal act includes six exceptions. It does not bar actions:

1. against someone convicted under state or federal law of transferring a firearm knowing it will be used to commit a violent or drug trafficking crime, when the action is brought by a person directly harmed by the conduct;
2. against a seller for negligent entrustment (when the seller knows or should reasonably know the buyer is likely to, and actually does, use the product in a way that involves unreasonable risk of physical injury to someone) or negligence per se (conduct treated as negligence because it violates a statute);
3. involving a seller's or manufacturer's knowing violation of state or federal law on the product's sale or marketing where the violation is the proximate cause of the harm (this includes cases of false entries in records, helping someone make a false statement of a fact material to the transaction's legality, and helping someone obtain a product knowing or having reason to believe that the actual buyer cannot legally possess a firearm or ammunition under federal law);
4. for breach of contract or warranty related to the product's purchase;
5. for death, physical injury, or property damage directly resulting from a defective product that was used as intended or in a reasonably foreseeable manner (this does not apply if the product was intentionally discharged in a crime); or
6. by the U.S. attorney general related to certain federal firearm crimes and taxes.

The act provides that it does not create a public or private cause of action or remedy. But it does not limit the right of someone under age 17 to recover damages under state or federal law in a civil action under these exceptions.

MANUFACTURERS, SELLERS, AND TRADE ASSOCIATIONS

The act's protections apply to:

1. federally licensed manufacturers engaged in the business of making one of these products in interstate or foreign commerce;
2. sellers who are federally licensed (a) importers engaged in interstate or foreign commerce who bring firearms or ammunition into the U.S. for sale or distribution and (b) dealers engaged in interstate or foreign commerce in the business of selling firearms at wholesale or retail, repairing firearms or making or fitting certain components, or pawnbroking;
3. retail or wholesale sellers of ammunition in interstate or foreign commerce; and
4. trade associations that are tax exempt non-profit entities with at least two members who manufacture or sell these products.

FIREARMS AND AMMUNITION

The act's protections apply to manufacturers and sellers of the following products shipped or transported in interstate or foreign commerce:

1. "firearms," defined as (a) a weapon (including a starter gun) that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive, (b) the frame or receiver of any such weapon, and (c) antique firearms;
2. "ammunition," defined as ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm; and
3. components of firearms or ammunition.

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