

**Representative Paul Ray** proposes the following substitute bill:

**LAWFUL COMMERCE IN ARMS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Justin L. Fawson**

Senate Sponsor: \_\_\_\_\_

Cosponsor: Derrin Owens

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**LONG TITLE**

**General Description:**

This bill limits the liability of manufacturers and sellers of firearms and ammunition.

**Highlighted Provisions:**

This bill:

- ▶ enacts the Lawful Commerce in Arms Act;
- ▶ provides findings and purpose;
- ▶ creates definitions; and
- ▶ limits the liability of manufacturers and sellers of firearms and ammunition to

specific situations.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**53-5d-101**, Utah Code Annotated 1953



25 [53-5d-102](#), Utah Code Annotated 1953  
26 [53-5d-103](#), Utah Code Annotated 1953  
27 [53-5d-104](#), Utah Code Annotated 1953



29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **53-5d-101** is enacted to read:

31 **CHAPTER 5d. LAWFUL COMMERCE IN ARMS ACT**

32 **53-5d-101. Title.**

33 This chapter is known as the "Lawful Commerce in Arms Act."

34 Section 2. Section **53-5d-102** is enacted to read:

35 **53-5d-102. Findings -- Purpose.**

36 (1) The Legislature finds the following:

37 (a) the Second Amendment to the United States Constitution provides that the right of  
38 the people to keep and bear arms shall not be infringed;

39 (b) lawsuits have been commenced against manufacturers, distributors, dealers, and  
40 importers of firearms that operate as designed and intended, which seek money damages and  
41 other relief for the harm caused by the misuse of firearms by third parties, including criminals;

42 (c) the manufacture, importation, possession, sale, and use of firearms and ammunition  
43 in the United States is heavily regulated by federal, state, and local laws, including the Gun  
44 Control Act of 1968, 18 U.S.C. Sec. 921, et seq., the National Firearms Act, 26 U.S.C. Sec.  
45 5801, et seq., the Arms Export Control Act, 22 U.S.C. Sec. 2751, et seq., Title 53, Chapter 5,  
46 Regulation of Firearms, and Title 76, Chapter 10, Part 5, Weapons;

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

52 (e) an expansion of liability would constitute a deprivation of the rights, privileges, and  
53 immunities guaranteed to a citizen of the United States under the United States Constitution;

54 and

55 (f) the liability actions commenced or contemplated attempt to use the judicial branch

56 to circumvent the legislative branch of government to regulate interstate and foreign commerce  
57 through judgments and judicial decrees, weakening and undermining important principles of  
58 federalism, state sovereignty, and comity between the sister states.

59 (2) It is the purpose of this chapter to:

60 (a) limit causes of action against manufacturers, distributors, sellers, and importers of  
61 firearms or ammunition products, and their trade associations, for the harm solely caused by the  
62 criminal or unlawful misuse of firearm products or ammunition products by others when the  
63 product functioned as designed and intended;

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

66 (c) prevent the use of lawsuits to impose unreasonable burdens on interstate and  
67 foreign commerce;

68 (d) protect the rights of manufacturers, distributors, sellers, importers of firearms or  
69 ammunition products, and trade associations, to speak freely, to assemble peaceably, and to  
70 petition the government for a redress of their grievances; and

71 (f) preserve and protect the important principles of federalism, state sovereignty, and  
72 comity between sister states.

73 Section 3. Section **53-5d-103** is enacted to read:

74 **53-5d-103. Definitions.**

75 As used in this chapter:

76 (1) "Ammunition" means a bullet, a cartridge case, primer, propellant powder, or other  
77 ammunition designed for use in any firearm, either as an individual component part or in a  
78 completely assembled cartridge.

79 (2) "Manufacturer" means, with respect to a qualified product, a person who is engaged  
80 in the business of manufacturing a qualified product and who is licensed to engage in business  
81 as a manufacturer under 18 U.S.C. Chapter 44.

82 (3) "Negligent entrustment" means the supplying of a qualified product by a seller for  
83 use by another person when the seller knows, or reasonably should know, the person to whom  
84 the product is supplied is likely to, and does, use the product in a manner involving  
85 unreasonable risk of physical injury to the person or others.

86 (4) "Person" means the same as that term is defined in Section [68-3-12.5](#).

87 (5) (a) "Qualified civil liability action" means a civil action or proceeding or an  
88 administrative proceeding brought by any person against a manufacturer or seller of a qualified  
89 product, or a trade association, for damages, punitive damages, injunctive or declaratory relief,  
90 abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or  
91 unlawful misuse of a qualified product by the person or a third party.

92 (b) "Qualified civil liability action" does not include:

93 (i) an action brought against a transferor convicted under 18 U.S.C. Sec. 924(h) or  
94 Section 76-10-503 by a party directly harmed by the conduct of which the transferee was  
95 convicted;

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

97 (iii) an action in which a manufacturer or seller of a qualified product knowingly  
98 violated a state or federal statute applicable to the sale or marketing of the product, and the  
99 violation was a proximate cause of the harm for which relief is sought, including:

100 (A) any incident in which the manufacturer or seller knowingly made any false entry  
101 in, or failed to make appropriate entry in, any record required to be kept under federal or state  
102 law with respect to the qualified product, or aided, abetted, or conspired with any person in  
103 making any false or fictitious oral or written statement with respect to any fact material to the  
104 lawfulness of the sale or other disposition of a qualified product; or

105 (B) any case in which the manufacturer or seller aided, abetted, or conspired with any  
106 other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable  
107 cause to believe, that the actual buyer of the qualified product was prohibited from possessing  
108 or receiving a firearm or ammunition under 18 U.S.C. Sec. 922(g) or (n) or Section 76-10-503;

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

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

116 (vi) an action or proceeding commenced to enforce the provisions of 18 U.S.C.  
117 Chapter 44, 26 U.S.C. Chapter 53, or Title 76, Chapter 10, Part 5, Weapons.

118 (6) "Qualified product" means a firearm or antique firearm, as defined in Section  
119 76-10-501, ammunition, or a component part of a firearm or ammunition.

120 (7) "Seller" means, with respect to a qualified product, a federal firearms licensee, as  
121 defined in Section 76-10-501.

122 (8) "Trade association" means:

123 (a) any corporation, unincorporated association, federation, business league, or  
124 professional or business organization not organized or operated for profit and no part of the net  
125 earnings of which inures to the benefit of any private shareholder or individual;

126 (b) an organization described in 26 U.S.C. Sec. 501(c)(6) and exempt from tax under  
127 26 U.S.C. Sec. 501(a); and

128 (c) an organization, two or more members of which are manufacturers or sellers of a  
129 qualified product.

130 (9) "Unlawful misuse" means conduct that violates a statute, ordinance, or regulation  
131 as it relates to the use of a qualified product.

132 Section 4. Section **53-5d-104** is enacted to read:

133 **53-5d-104. Limitations on liability.**

134 (1) A manufacturer or seller of a qualified product, or trade association, is not subject  
135 to civil liability regarding the unlawful misuse of a qualified product unless an injury or death  
136 results from an act or omission of the manufacturer, seller, or trade association that constitutes  
137 gross negligence, recklessness, or intentional misconduct.

138 (2) A qualified civil liability action against a manufacturer, seller, or trade association  
139 that does not allege any of the provisions of Subsection 53-5d-103(5)(b) shall be dismissed.