

Representative Justin L. Fawson 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

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) the Second Amendment to the United States Constitution protects the rights of
40 individuals, including those who are not members of a militia or engaged in military service or
41 training, to keep and bear arms;

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

45 (d) the manufacture, importation, possession, sale, and use of firearms and ammunition
46 in the United States is heavily regulated by federal, state, and local laws, including the Gun
47 Control Act of 1968, 18 U.S.C. Sec. 921, et seq., the National Firearms Act, 26 U.S.C. Sec.
48 5801, et seq., the Arms Export Control Act, 22 U.S.C. Sec. 2751, et seq., Title 53, Chapter 5,
49 Regulation of Firearms, and Title 76, Chapter 10, Part 5, Weapons;

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

55 (f) the possibility of imposing liability on an entire industry for harm that is solely

56 caused by others is an abuse of the legal system, erodes public confidence in our nation's laws,
57 threatens a basic constitutional right and civil liberty, invites the disassembly and
58 destabilization of other industries and economic sectors lawfully competing in the free
59 enterprise system of the United States, and constitutes an unreasonable burden on interstate and
60 foreign commerce of the United States;

61 (g) (i) the liability actions commenced or contemplated are based on theories without
62 foundation in hundreds of years of the common law and jurisprudence of the United States and
63 do not represent a bona fide expansion of the common law;

64 (ii) the possible sustaining of these actions by a maverick judicial officer or petit jury
65 would expand civil liability in a manner never contemplated by the framers of the Constitution,
66 by Congress, or by the legislatures of the several states; and

67 (iii) an expansion of liability would constitute a deprivation of the rights, privileges,
68 and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment
69 to the United States Constitution; and

70 (h) the liability actions commenced or contemplated attempt to use the judicial branch
71 to circumvent the legislative branch of government to regulate interstate and foreign commerce
72 through judgments and judicial decrees thereby threatening the separation of powers doctrine
73 and weakening and undermining important principles of federalism, state sovereignty, and
74 comity between the sister states.

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

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

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

82 (c) guarantee a citizen's rights, privileges, and immunities, as applied to the states,
83 under the Fourteenth Amendment to the United States Constitution;

84 (d) prevent the use of lawsuits to impose unreasonable burdens on interstate and
85 foreign commerce;

86 (e) protect the rights, under the First Amendment to the United States Constitution, of

87 manufacturers, distributors, sellers, and importers of firearms or ammunition products, and
88 trade associations, to speak freely, to assemble peaceably, and to petition the government for a
89 redress of their grievances; and

90 (f) preserve and protect the separation of powers doctrine and important principles of
91 federalism, state sovereignty, and comity between sister states.

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

93 **53-5d-103. Definitions.**

94 As used in this chapter:

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

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

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

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

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

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

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

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

116 (iii) an action in which a manufacturer or seller of a qualified product knowingly
117 violated a state or federal statute applicable to the sale or marketing of the product, and the

118 violation was a proximate cause of the harm for which relief is sought, including:

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

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

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

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

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

137 (6) "Qualified product" means a firearm or antique firearm, as defined in Section
138 [76-10-501](#), ammunition, or a component part of a firearm or ammunition.

139 (7) "Seller" means, with respect to a qualified product, a federal firearms licensee, as
140 defined in Section [76-10-501](#).

141 (8) "Trade association" means:

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

145 (b) an organization described in 26 U.S.C. Sec. 501(c)(6) and exempt from tax under
146 26 U.S.C. Sec. 501(a); and

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

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

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

152 **53-5d-104. Limitations on liability.**

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

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