

HB0298S01 compared with HB0298

~~deleted text~~ shows text that was in HB0298 but was deleted in HB0298S01.

inserted text shows text that was not in HB0298 but was inserted into HB0298S01.

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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:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

53-5d-101, Utah Code Annotated 1953

53-5d-102, Utah Code Annotated 1953

53-5d-103, Utah Code Annotated 1953

53-5d-104, Utah Code Annotated 1953

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

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

CHAPTER 5d. LAWFUL COMMERCE IN ARMS ACT

53-5d-101. Title.

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

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

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

(1) The Legislature finds the following:

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

(b) 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;

(c) 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;

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

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(e) 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 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;

(f) 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 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;

(g) (i) the liability actions commenced or contemplated 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;

(ii) 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; and

(iii) 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; and

(h) the liability actions commenced or contemplated 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.

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

(a) limit causes of action against manufacturers, distributors, ~~dealers~~ sellers, 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;

(b) preserve a citizen's access to a supply of firearms and ammunition for all lawful

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purposes, including hunting, self-defense, collecting, and competitive or recreational shooting;

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

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

(e) protect the rights, under the First Amendment to the United States Constitution, of manufacturers, distributors, ~~{dealers}~~ sellers, 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; and

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

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

53-5d-103. Definitions.

As used in this chapter:

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

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

(3) "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.

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

(5) (a) "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.

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

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

(A) any incident 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

(B) 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 18 U.S.C. Sec. 922(g) or (n) or Section 76-10-503;

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

(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 the act shall be considered the sole proximate cause of any resulting death, personal injuries, or property damage; or

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

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

(7) "Seller" means, with respect to a qualified product, a ~~dealer~~ federal firearms licensee, as defined in Section 76-10-501 ~~and includes a person who devotes time, attention, and labor to dealing in firearms and ammunition as a regular course of trade or business~~.

(8) "Trade association" means:

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(a) any corporation, unincorporated association, federation, business league, or professional or business organization 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) an organization described in 26 U.S.C. Sec. 501(c)(6) and exempt from tax under 26 U.S.C. Sec. 501(a); and

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

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

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

53-5d-104. Limitations on liability.

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel