



Lawsuit "Immunity" for Firearms Industry Members? What the Protection of Lawful Commerce in Arms Act Really Says

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Do gun manufacturers really have blanket immunity from lawsuits? No, not even close.

Although the 2020 presidential campaign focused little on gun control, then-candidate and now President Biden made clear that he supports a repeal of a federal law known as the Protection of Lawful Commerce in Arms Act, or ?PLCAA?. **15 U.S.C. §§ 7901 - 7903**. Rhetoric put forth about the PLCAA often implies that the firearms industry enjoys broad immunity from litigation. In truth, the PLCAA provides protection for firearms industry members for only a limited category of lawsuits.

In 2005, Congress enacted the PLCAA to bar lawsuits against firearms sellers and manufacturers for crimes committed with their products. At that time, certain lawsuits, some successful, had been brought against gun makers, theorizing that industry members should be held liable for the crimes of others, even where there was no proof that industry members had done anything other than manufacture or sell an otherwise lawful product. The PLCAA is grounded in a legal principle that was developed long ago. Under basic personal injury law that exists in every state, a person ordinarily will not be held liable for the intentional criminal acts of another. Such liability as a general matter is rather rare, because American tort law does not often impose civil liability on one person when another person commits a crime. This rule is chiefly based on causation principles, which hold that someone?s intentional criminal conduct is the sole proximate cause of the injury that results from the crime. However, in the area of firearms, some courts varied from this general rule and allowed lawsuits to go forward against firearms sellers and manufacturers. In response, Congress enacted the PLCAA.

The provisions of the PLCAA are straightforward. The section barring liability, **15 U.S.C. § 7902**, states plainly that ?a qualified civil liability action may not be brought in any Federal or State court.? A ?qualified civil liability action? is any civil action or administrative proceeding by any person brought against a seller or manufacturer of firearms or ammunition for any relief whatsoever when harm results from criminal or unlawful misuse of the products. **15 U.S.C. § 7903(5)(A)**. Thus, in the United States,

firearms sellers and manufacturers generally are not liable when a criminal commits a crime using one of their products.

What the PLCAA does not do is insulate industry members entirely. Another section of the PLCAA contains a list of exceptions, which negate any protection offered by the PLCAA. These exceptions are:

When the transferor of a firearm or ammunition is convicted of knowingly transferring a gun or ammunition to a person who will use it in a crime. **15 U.S.C. § 7903(5)(A)(i).**

When a seller negligently entrusts a gun or ammunition to someone, as was at issue in the **Badger Guns case**. **15 U.S.C. § 7903(5)(A)(ii).** This is a crucial exception, because "straw purchases" that are not identified by sellers can subject sellers to liability.

When an industry member knowingly violates State or Federal law and the violation of law caused a person's injury. **15 U.S.C. § 7903(5)(A)(iii).**

When a buyer sues for breach of warranty, such as when the product does not operate as promised or as intended. **15 U.S.C. § 7903(5)(A)(iv).**

When someone is injured from the negligent design or manufacture of a product. **15 U.S.C. § 7903(5)(A)(v).**

These exceptions to PLCAA protection are crucial, and they show plainly that federal law does not provide blanket immunity to industry members. Instead, industry members must ensure that their sales efforts comply with the law, and, as with any product, industry members must ensure that their products work as intended and as promised.

Aside from the political debate, industry members continue to face lawsuits by persons injured by guns or ammunition. For example, plaintiffs' lawyers continue to push forth theories such as "negligent marketing" that would impose liability on industry members based upon statements made in their advertising. In light of these lawsuits and potential legal risk, industry members must understand the PLCAA, understand how plaintiffs' lawyers advocate for new interpretations of the law, and ensure that they remain within the protections provided by the PLCAA.

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