



Immunity Statutes/Manufacturer Litigation

Immunity statutes grant legal protection to a class of potential defendants, shielding them from liability for certain conduct. These laws provide unprecedented legal protection to the gun industry. Immunity laws have been adopted in some form by the federal government and 36 states.

Summary of Federal Law

The Protection of Lawful Commerce in Arms Act (PLCAA), [15 U.S.C. §§ 7901 - 7903](#), adopted by Congress in 2005, immunizes firearms manufacturers and sellers from civil lawsuits that seek injunctive or other relief arising from the unlawful misuse of firearms distributed in interstate commerce. The PLCAA prohibits a “qualified civil liability action” from being brought in any state or federal court and requires the immediate dismissal of any such action upon the date the PLCAA was enacted (October 26, 2005). [15 U.S.C. § 7902](#).

A “qualified civil liability action” is a civil or administrative action or proceeding brought against a manufacturer or seller of a qualified product, or a trade association that has two or more members who are manufacturers or sellers of qualified products, for relief, if the action results from the criminal or unlawful misuse of a qualified product by the person or a third party, with certain exceptions. [15 U.S.C. § 7903](#). A firearm, including an antique firearm, ammunition, or a component of a firearm or ammunition may each be a qualified product, as long as it has been shipped or transported in interstate or foreign commerce. *Id.* “Unlawful misuse” is defined as conduct that violates a statute, ordinance or regulation. *Id.* Actions excluded from the definition of “qualified civil liability action” include those:

- Against a transferor convicted of knowingly transferring a firearm with the knowledge that it will be used to commit a crime of violence (so long as the action is brought by the person harmed by the transfer);
- Against a transferor for negligence per se or negligent entrustment (the latter is defined in the Act to mean supplying a firearm or ammunition to a person the seller knows or reasonably should know is likely to, and does, use the firearm or ammunition in a manner involving unreasonable risk of physical injury);
- Against a manufacturer or seller who knowingly violated a state or federal law applicable to the sale or marketing of firearms or ammunition if the violation of law was the proximate cause of the harm for which relief is sought;
- For breach of contract or warranty in connection with the purchase of the firearm or ammunition;

- 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, such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or
- Commenced by the Attorney General to enforce certain federal firearms laws.

[15 U.S.C. § 7903\(5\)\(A\).](#)

In addition, the PLCAA makes it unlawful for any licensed importer, manufacturer or dealer to sell or transfer any handgun unless the transferee is provided with a secure gun storage or safety device. [18 U.S.C. § 922\(z\)](#). The PLCAA also immunizes any person who is in lawful possession and control of a handgun and who uses a secure gun storage or safety device with the handgun from a civil action for damages resulting from the criminal or unlawful misuse of the handgun by an unauthorized third party, if at the time the handgun had been made inoperable by the use of a secure gun storage or safety device. [18 U.S.C. § 922\(z\)\(3\)](#).

The scope of the PLCAA and its exceptions has been tested in several recent cases:

- *City of Gary v. Smith & Wesson Corp*, No. 45A05-0612-CV-754, 2008 Ind. App. LEXIS 8 (Ind. Ct. App. Jan. 9, 2008). In a landmark ruling on January 12, 2009, the Indiana Supreme Court allowed Gary, Indiana’s lawsuit against 16 gun manufacturers and six Indiana gun dealers to proceed to trial, denying a petition to transfer the case to the Indiana Supreme Court. The court affirmed the appeals court ruling that the case is not barred by the PLCAA. Gun industry defendants had claimed that the PLCAA shields them from liability for sales practices in violation of Indiana’s public nuisance statute that resulted in the funneling of guns into the criminal market.
- *Adames v. Sheahan*, Docket Nos. 105789 & 105851 cons., 2009 Ill. LEXIS 310 (Ill. Mar. 19, 2009). On March 13, 2009, the Illinois Supreme Court rejected plaintiffs’ claims alleging design defect, failure to warn and breach of the implied warranty of merchantability against firearm manufacturers for the unintentional shooting death of a boy, finding that the lawsuit was a “qualified civil liability action” under the PLCAA and did not fall within an exception that would save plaintiffs’ claims.
- *City of New York v. Bob Moates' Sport Shop, Inc.*, 253 F.R.D. 237, 243 (E.D.N.Y. Sept. 29, 2008). On September 29, 2008, New York City’s settlement agreement for a public nuisance suit against an out-of-state firearm retailer for illegal trafficking was found not barred by the PLCAA, because the retailers’ knowing

participation in the straw purchases violated federal and state laws involving the sale and marketing of guns.

- *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008). On March 9, 2009, in a decision effectively ending New York City's nine-year lawsuit against the gun industry for diverting lawfully purchased firearms into illegal gun markets, the U.S. Supreme Court refused to consider the Second Circuit's dismissal of this case on PLCAA grounds. The Second Circuit found that the PLCAA required dismissal because the statute upon which the city had predicated its claims, N.Y. Penal Law § 240.45, does not fall within the exception in the PLCAA that saves claims involving the sale or marketing of guns. The court found that Penal Law § 240.45 is a statute of general applicability that does not fall within the PLCAA's predicate exception because it does not clearly regulate the firearms industry. *Id.* at 404.
- *Ileto v. Glock, Inc.*, No. 06-56872, No. 07-15403, No. 07-15404, 2009 U.S. App. LEXIS 10945 (9th Cir. May 11, 2009). On May 11, 2009, the Ninth Circuit held that the PLCAA requires dismissal of public nuisance and negligence claims by family members of shooting victims against firearms manufacturers, dealers and distributors of the guns used in the shootings. The Ninth Circuit concluded that, in adopting the PLCAA, Congress clearly intended to preempt common-law claims such as general tort theories of liability. The tort theories raised by plaintiffs, the court found, did not fall within the exception in the PLCAA because they do not specifically relate to firearms. *Id.* at *26.

State Laws

Immunity laws have been adopted in 36 states. These laws have been directed principally at state and local governmental lawsuits against certain gun industry defendants. In general, lawsuits against the gun industry allege that industry defendants have marketed and distributed their firearms (mostly handguns) in ways which they know or should know create and feed an illegal secondary market in firearms. This secondary market allows unauthorized purchasers, such as felons, to obtain guns for use in crime, to the injury of the government entity and its citizens.

A second claim central to a number of the lawsuits is that defendant manufacturers have failed to implement safer designs, including designs that would prevent unauthorized use of handguns by children and others. While some of the governmental lawsuits seek damages, others seek injunctive or other equitable relief.

In 2002, California became the first state to repeal an immunity statute. California's law, adopted in 1983, stated that "[i]n a product liability action, no firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged."

The Legislature moved to repeal the statute following the California Supreme Court's decision in *Merrill v. Navegar* (2001) 26 Cal. 4th 465, which held that the law immunized an assault weapons manufacturer from a negligence action brought by the victims of the 101 California Street massacre. For more information about California's statute and the *Navegar* litigation, see [California's Immunity Statutes/Manufacturer Litigation](#) section.

For detailed information about government and private party lawsuits against the gun industry, the status of litigation involving gun industry immunity statutes in various states, or pending gun industry immunity legislation, visit the [Brady Center's Legal Action Project](#) and the [Coalition to Stop Gun Violence's Gun Industry Immunity](#) page.

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