

STATE LEVEL FIREARM INDUSTRY PROTECTIONS

Consumers in the modern age of manufacturing purchase products under a reasonable assumption that they are without defect and functionally sound. If a manufacturer of a commercial good sells something that causes injury when used as intended, that manufacturer can be taken to court for damages.

What if a company was taken to court for a liability suit not due to a defect in their product, but rather when their product was used unlawfully and not as intended? This was the problem for the firearm and ammunition industry prior to the enactment of the federal Protection of Lawful Commerce in Arms Act (PLCAA) in 2005.¹ Before the law's enactment, gun control advocates sought to circumvent the legislative process to achieve their anti-gun goals. Numerous cities attempted to take firearm manufacturers to court to push their political, anti-Second Amendment agenda. The PLCAA addresses these issues by protecting lawful manufacturers and downstream entities in the business of firearms, firearm parts, and ammunition from frivolous lawsuits due to criminal and unlawful misuse by third parties. Of course, there are exemptions for defective products, breaches of contract, and criminal behavior that make the law very narrow and deliberate in its intent.

Before the PLCAA was enacted, many states enacted their own legislation to protect the firearm industry from politically motivated lawsuits. To date, 34 states have approved liability protections for manufacturers, distributors, and

- 34 states have approved liability protections for manufacturers, distributors, and retailers.
- Model law would prohibit the state and all entities of the state, from suing a member of the industry for lawful design, marketing, distribution, and sale of firearms and ammunition to the public.
- With the federal PLCAA under attack, state protections are crucial to ensure the Second Amendment rights of citizens are not eroded by politically-motivated lawsuits.

retailers. Some state protections give the state exclusive powers to bring suit to the firearm industry for liability issues unless certain exclusions are met. Giving the state exclusive power to bring suit ensures that cities and municipalities are not flooding the court system with frivolous lawsuits without checks and balances. However, this power alone is not sufficient to protect the right to keep and bear arms. State laws must also clearly declare that the legal commerce in firearms and ammunition is not unreasonably dangerous. The law must also explicitly set the conditions for such a lawsuit to exclude unlawful and unintended uses of firearms over which the manufacturers and retailers have no control. Just as a car company may not be sued for the illegal actions of a drunk driver, law-abiding firearm companies should not be held liable for the actions of criminals.

MODEL PROTECTIONS FOUND IN FLORIDA

One of the strongest state laws is the Florida Statute, § 790.331

Fla. Stat. (2001) . Florida stands out as it not only declares legal firearm commerce to not be unreasonably dangerous, but also that the unlawful use of firearms is the proximate cause of injuries from their unlawful use, not their lawful manufacture, distribution, or sale. The statute very clearly prohibits the state and all entities of the state, from suing a member of the industry for lawful design, marketing, distribution, and sale of firearms and ammunition to the public. Another important detail is that the statute finds firearms and ammunition may not be deemed defective based on their potential to cause serious injury, damage, or death when discharged legally or illegally. Furthermore, as a punitive measure for plaintiff's filing suit in violation of this statute the following provision has been included in the regulation: "In any civil action where the court finds that the defendant is immune as provided in this section, the court shall award the defendant all attorney's fees, costs and compensation for loss of income, and expenses incurred as a result of such action."³

¹ PLCAA, <https://www.congress.gov/bill/109th-congress/senate-bill/397>

² Florida Statute § 790.331 Fla. Stat. (2001), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0790/Sections/0790.331.html

³ Florida Statute § 790.331 Fla. Stat. (2001), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0790/Sections/0790.331.html

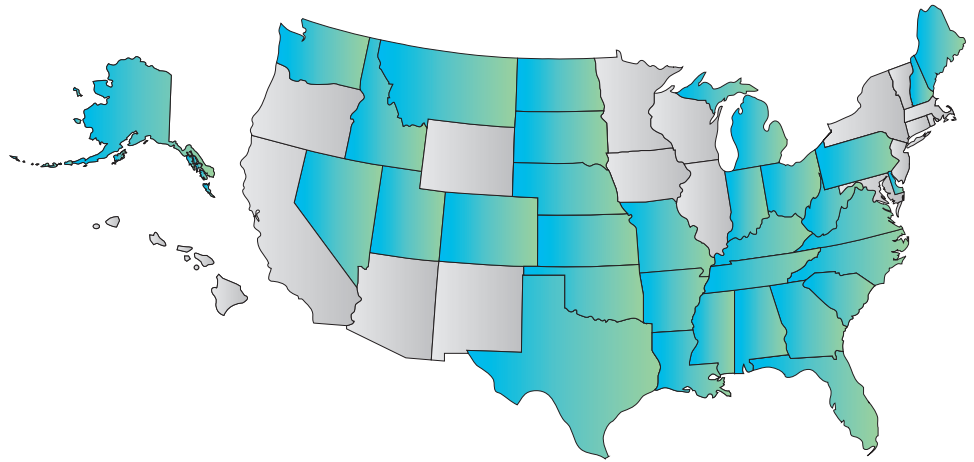
APPLICATION OF PROTECTIONS

The most common suit brought against the industry is public nuisance. Public nuisance claims against firearm manufacturers and retailers claim irrationally that firearms are inherently a risk to public health and safety. This has led some states to explicitly declare the lawful business of manufacturing and selling firearms to not be “unreasonably dangerous.” By further clarifying the categorization of firearm commerce on the state level, the protection against unjust civil claims strengthens further.

Some industry members have found themselves entangled in the judicial system due to events over which they had no influence or awareness for purely political reasons. We saw this applied in both *City of Chicago v. Beretta Corp*⁴ and *Young v. Bryco Arms*⁵ cases in 2004. In both cases the Illinois Supreme Court reversed lower court decisions and held that the plaintiffs could not pursue public nuisance claims under state law.

In 2012, gun control advocates politicized the tragic mass shooting in a movie theatre in Aurora, CO to sue Lucky Gunner⁶, a retailer who legally sold ammunition to

STATES WITH FIREARM INDUSTRY LIABILITY PROTECTIONS



the shooter. The plaintiffs sought arbitrary controls on the online retailer, which would have industry wide ramifications. Judge Richard P. Matsch dismissed the case under the PLCAA and ordered the plaintiffs to reimburse Lucky Gunner for their attorneys’ fees and costs thanks to Colorado’s legislation, CO Rev Stat § 13-21-504.5 (2016)⁷: “the court shall award reasonable attorney fees, in addition to costs, to each defendant named in the action.”

STRENGTHEN THE STATES

What can we do now? This map shows all states that currently have some level of liability protection

for the firearm industry from unjustified litigation. The firearm and ammunition industry urges our elected officials to extend the state level liability protections to all fifty states, strengthen each state’s liability legislation, and provide punitive measures for plaintiffs making political statements through their actions of filing suit. With gun control advocates seeking to repeal PLCAA, the states stand as the frontline of defense to protect the legal commerce of firearms and ammunition in the United States.

4 *City of Chicago v. Beretta Corp.*, 821 N.E.2d 1099 (Ill. 2004)

5 *Young v. Bryco Arms*, 821 N.E.2d 1078 (Ill. 2004)

6 <https://www.luckygunner.com/brady-v-lucky-gunner>

7 CO Rev Stat § 13-21-504.5 (2016), <http://leg.colorado.gov/sites/default/files/images/olls/crs2018-title-13.pdf>