

S. 1779/H.R. 3214: EQUAL ACCESS TO JUSTICE FOR VICTIMS OF GUN VIOLENCE ACT

SUMMARY

S. 1779/H.R. 3214, the Equal Access to Justice for Victims of Gun Violence Act, would repeal the Protection of Lawful Commerce in Arms Act (PLCAA). Enacted in 2005, PLCAA provides broad, unprecedented immunity from civil liability to gun manufacturers, dealers, and trade associations in federal and state courts, leaving families of gun violence victims without an avenue to seek justice. As a result, the gun industry is able to ignore the incentive that civil litigation normally provides for private businesses to improve the safety of their practices. S. 1779/H.R. 3214 would also enable gun trace data to be admissible as evidence in civil proceedings in state and federal courts.

BACKGROUND THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT AND ITS EXCEPTIONS

PLCAA gives the gun industry unusual immunity held by no other industry. Lawsuits against the tobacco industry in the 1990s forced the industry to adopt new ways to market products to reduce youth smoking, while those against automobile manufacturers led that industry to adopt stronger safety standards. After a series of lawsuits then began to hold particularly reckless gun businesses liable, the gun lobby convinced Congress to pass, and President Bush to sign, the Protection of Lawful Commerce in Arms Act in 2005. While the law shields gun manufacturers and dealers from liability in most arenas, it does provide for six exceptions:

1. An action brought by someone directly harmed against someone convicted of knowingly transferring a gun to a violent criminal;
2. An action brought against a seller for negligent entrustment or negligence per se;
3. An action in which a manufacturer or seller of a qualified product knowingly violated a state or federal law related to the sale or marketing of the product, and in which the violation caused the harm the action addresses;
4. An action for breach of contract or warranty in connection with the purchase of the product;
5. An action resulting directly from a design or manufacturing defect of the product when used as intended or in a reasonable manner;
6. An action taken by the Attorney General to enforce the Gun Control Act or National Firearms Act.

PREVIOUS LAWSUITS

While multiple legal challenges have been made to PLCAA, so far, none have been successful. The exceptions listed above have been construed narrowly, creating a chilling effect on attempts to hold reckless manufacturers and dealers accountable. However, in *Soto v. Bushmaster Firearms Int'l* (2019), parents of individuals killed at Sandy Hook argued that Remington—the manufacturer of the Bushmaster rifle used in the shooting—inappropriately advertised the rifle as a military weapon for unlawful civilian use. The Connecticut Supreme Court ruled that PLCAA immunity did not apply to manufacturers or sellers who promote illegal use of their products in violation of state laws, reversing a lower court's decision and allowing the case to proceed.