

Why do sellers of the most dangerous products get a free pass to act dangerously?

What is PLCAA?

PLCAA is the Protection of Lawful Commerce in Arms Act—long a top priority of the corporate gun lobby which was signed into law by President George W. Bush in 2005—and which provides the corporate gun industry special protection from civil justice law that no other industry has.

Why was it enacted?

The corporate gun lobby lobbied Congress and got special legal protection for negligently selling and designing guns when a firearm was involved in a crime. The reason was to protect profits as PLCAA allows gun companies to profit off supplying criminals and from selling guns without feasible, life-saving safety devices.

What special protections does PLCAA give gun companies?

PLCAA provides gun companies unique legal protections in many cases when they negligently sell or make a gun that ends up being used in crime. Negligence is the most fundamental principle of civil justice in our legal system; it requires everyone in society to simply use reasonable care to not expose others to harm. For example, bars can be liable for accidents when they negligently sell alcohol to people they have reason to think will drive drunk. Gun companies now have unique immunity from this basic duty in most cases.

One effect of PLCAA is to give “bad apple” gun dealers that use irresponsible practices or have even had their licenses revoked receive enhanced legal protection—actually protecting those who engage in the unlawful commerce in arms. Another effect is that gun manufacturers who negligently sell guns through “bad apple” gun dealers can profit from the criminal gun market without being held accountable to the victims they hurt.

PLCAA gives immunity to gun manufacturers who refuse to install life-saving safety devices in many cases, exempting them from basic products liability law. For example, because car manufacturers know that cars will be crashed, they are liable if they fail to make cars crashworthy – improvements that minimize the risk of injury. Gun companies now have unique protection from this basic duty.

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How is the public affected by PLCAA?

Because of PLCAA, gun manufacturers and sellers can escape accountability to victims even if their business practices are unreasonably dangerous and cause harm. Victims can bring such lawsuits when they are injured by any other product.

For example, a gun dealer escaped accountability when he enabled a drug-abusing, mentally unstable individual to simply take a gun without a Brady background check (he used it two days later to murder an innocent young man). Although he was so grossly negligent that hundreds of guns left his store without background checks, and he had his license revoked for willful violations of gun laws, the dealer was allowed to use his own negligence as a defense to a lawsuit—arguing that PLCAA prohibited ordinary negligence claims.¹

It also protected an online ammunition retailer from liability who sold thousands of rounds of ammunition to a deranged individual without verifying his identity—the same individual used that ammunition to kill twelve people in a movie theatre, including Jessica Ghawi, the daughter of Lonnie and Sandy Phillips.²

The law has prevented victims from holding manufactures accountable for not including feasible safety improvements.³

Is PLCAA constitutional?

No. PLCAA unconstitutionally deprives gun violence victims of their right to civil justice under the 5th Amendment, making them second-class citizens, unlike anyone else in America. PLCAA is also unconstitutional under the 10th Amendment because it allows the federal government to meddle in state affairs by infringing on the long-standing rights of state courts to determine the duties and obligations that are owed between the people and businesses in that community.

Q. Does PLCAA give gun companies complete immunity in all cases?

No. As bad as the PLCAA is, the Brady Center has been able to successfully litigate cases by using PLCAA's exceptions—including negligence per se, negligent entrustment and knowing violation of a state or federal law—mostly when guns are sold by dealers in straw purchases.⁴

Bernie Sanders told Jake Tapper that you don't hold a "hammer company" responsible if someone commits a crime with a hammer. Doesn't he have a point?

Hammers and firearms are two very different things, especially when you consider what each is designed to do. Guns are specifically designed, manufactured and sold for use to injure or kill. Firearms are the most dangerous product on the consumer market, taking over 30,000 lives a year and used in countless crimes and tragedies. We need gun retailers to use the highest degree of care to prevent their guns from ending up in dangerous hands. Second, unlike a gun company, a hammer company that is negligent can be held accountable to victims.

¹ Jeremy Borden, *Fresh Court Challenges to Gun Sellers Undercut by Decade-Old Law*, THE TRACE (June 29, 2015), available at <http://www.thetrace.org/2015/06/fresh-court-challenges-to-gun-sellers-undercut-by-decade-old-law/>

² Id.

³ See *Adames v. Sheahan*, 233 Ill. 2d 276 (Ill. 2009).

⁴ Teresa Tritch, *In a Brutal Gun Case, a Win for the Common Good*, N.Y. TIMES (July 2, 2015), available at http://takingnote.blogs.nytimes.com/2015/07/02/in-a-brutal-gun-case-a-win-for-the-common-good/?_r=0; Annie Sweeney, *Pawnshop that sold gun in cop killing agrees to report more on sales*, CHICAGO TRIBUNE (April 23, 2014), available at http://articles.chicagotribune.com/2014-04-23/news/ct-wortham-settlement-met-20140423_1_gun-control-advocates-slain-chicago-straw-purchase; *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 147–50 (N.Y. App. Div. 2012), amended by 103 A.D.3d 1191 (N.Y. App. Div. 2013)