

106TH CONGRESS
1ST SESSION

S. 534

To expand the powers of the Secretary of the Treasury to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Secretary to include firearm products and non-powder firearms.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1999

Mr. TORRICELLI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To expand the powers of the Secretary of the Treasury to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Secretary to include firearm products and non-powder firearms.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Firearms Safety and Consumer Protection Act of 1999”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—REGULATION OF FIREARM PRODUCTS

- Sec. 101. Regulatory authority.
- Sec. 102. Orders; inspections.

TITLE II—PROHIBITIONS

- Sec. 201. Prohibitions.
- Sec. 202. Inapplicability to governmental authorities.

TITLE III—ENFORCEMENT

SUBTITLE A—CIVIL ENFORCEMENT

- Sec. 301. Civil penalties.
- Sec. 302. Injunctive enforcement and seizure.
- Sec. 303. Imminently hazardous firearms.
- Sec. 304. Private cause of action.
- Sec. 305. Private enforcement of this Act.
- Sec. 306. Effect on private remedies.

SUBTITLE B—CRIMINAL ENFORCEMENT

- Sec. 351. Criminal penalties.

TITLE IV—ADMINISTRATIVE PROVISIONS

- Sec. 401. Firearm injury information and research.
- Sec. 402. Annual report to Congress.

TITLE V—RELATIONSHIP TO OTHER LAW

- Sec. 501. Subordination to the Arms Export Control Act.
- Sec. 502. Effect on State law.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to protect the public against unreasonable
 4 risk of injury and death associated with firearms
 5 and related products;

6 (2) to develop safety standards for firearms and
 7 related products;

8 (3) to assist consumers in evaluating the com-
 9 parative safety of firearms and related products;

1 (4) to promote research and investigation into
2 the causes and prevention of firearm-related deaths
3 and injuries; and

4 (5) to restrict the availability of weapons that
5 pose an unreasonable risk of death or injury.

6 **SEC. 3. DEFINITIONS.**

7 (a) **SPECIFIC TERMS.**—In this Act:

8 (1) **FIREARMS DEALER.**—The term “firearms
9 dealer” means—

10 (A) any person engaged in the business (as
11 defined in section 921(a)(21)(C) of title 18,
12 United States Code) of dealing in firearms at
13 wholesale or retail;

14 (B) any person engaged in the business (as
15 defined in section 921(a)(21)(D) of title 18,
16 United States Code) of repairing firearms or of
17 making or fitting special barrels, stocks, or trig-
18 ger mechanisms to firearms; and

19 (C) any person who is a pawnbroker.

20 (2) **FIREARM PART.**—The term “firearm part”
21 means—

22 (A) any part or component of a firearm as
23 originally manufactured;

24 (B) any good manufactured or sold—

1 (i) for replacement or improvement of
2 a firearm; or

3 (ii) as any accessory or addition to the
4 firearm; and

5 (C) any good that is not a part or compo-
6 nent of a firearm and is manufactured, sold, de-
7 livered, offered, or intended for use exclusively
8 to safeguard individuals from injury by a fire-
9 arm.

10 (3) FIREARM PRODUCT.—The term “firearm
11 product” means a firearm, firearm part, nonpowder
12 firearm, and ammunition.

13 (4) FIREARM SAFETY REGULATION.—The term
14 “firearm safety regulation” means a regulation pre-
15 scribed under this Act.

16 (5) FIREARM SAFETY STANDARD.—The term
17 “firearm safety standard” means a standard pro-
18 mulgated under this Act.

19 (6) NONPOWDER FIREARM.—The term “non-
20 powder firearm” means a device specifically designed
21 to discharge BBs, pellets, darts, or similar projec-
22 tiles by the release of stored energy.

23 (7) SECRETARY.—The term “Secretary” means
24 the Secretary of the Treasury or the designee of the
25 Secretary.

1 (b) OTHER TERMS.—Each term used in this Act that
2 is not defined in subsection (a) shall have the meaning
3 (if any) given that term in section 921(a) of title 18,
4 United States Code.

5 **TITLE I—REGULATION OF**
6 **FIREARM PRODUCTS**

7 **SEC. 101. REGULATORY AUTHORITY.**

8 (a) IN GENERAL.—The Secretary shall prescribe
9 such regulations governing the design, manufacture, and
10 performance of, and commerce in, firearm products, con-
11 sistent with this Act, as are reasonably necessary to reduce
12 or prevent unreasonable risk of injury resulting from the
13 use of those products.

14 (b) MAXIMUM INTERVAL BETWEEN ISSUANCE OF
15 PROPOSED AND FINAL REGULATION.—Not later than 120
16 days after the date on which the Secretary issues a pro-
17 posed regulation under subsection (a) with respect to a
18 matter, the Secretary shall issue a regulation in final form
19 with respect to the matter.

20 (c) PETITIONS.—

21 (1) IN GENERAL.—Any person may petition the
22 Secretary to—

23 (A) issue, amend, or repeal a regulation
24 prescribed under subsection (a) of this section;

25 or

1 (B) require the recall, repair, or replace-
2 ment of a firearm product, or the issuance of
3 refunds with respect to a firearm product.

4 (2) DEADLINE FOR ACTION ON PETITION.—Not
5 later than 120 days after the date on which the Sec-
6 retary receives a petition referred to in paragraph
7 (1), the Secretary shall—

8 (A) grant, in whole or in part, or deny the
9 petition; and

10 (B) provide the petitioner with the reasons
11 for granting or denying the petition.

12 **SEC. 102. ORDERS; INSPECTIONS.**

13 (a) AUTHORITY TO PROHIBIT MANUFACTURE, SALE,
14 OR TRANSFER OF FIREARM PRODUCTS MADE, IMPORTED,
15 TRANSFERRED, OR DISTRIBUTED IN VIOLATION OF REG-
16 ULATION.—The Secretary may issue an order prohibiting
17 the manufacture, sale, or transfer of a firearm product
18 which the Secretary finds has been manufactured, or has
19 been or is intended to be imported, transferred, or distrib-
20 uted in violation of a regulation prescribed under this Act.

21 (b) AUTHORITY TO REQUIRE THE RECALL, REPAIR,
22 OR REPLACEMENT OF, OR THE PROVISION OF REFUNDS
23 WITH RESPECT TO FIREARM PRODUCTS.—The Secretary
24 may issue an order requiring the manufacturer of, and
25 any dealer in, a firearm product that the Secretary deter-

1 mines poses an unreasonable risk of injury to the public,
2 is not in compliance with a regulation prescribed under
3 this Act, or is defective, to—

4 (1) provide notice of the risks associated with
5 the product, and of how to avoid or reduce the risks,
6 to—

7 (A) the public;

8 (B) in the case of the manufacturer of the
9 product, each dealer in the product; and

10 (C) in the case of a dealer in the product,
11 the manufacturer of the product and the other
12 persons known to the dealer as dealers in the
13 product;

14 (2) bring the product into conformity with the
15 regulations prescribed under this Act;

16 (3) repair the product;

17 (4) replace the product with a like or equivalent
18 product which is in compliance with those regula-
19 tions;

20 (5) refund the purchase price of the product,
21 or, if the product is more than 1 year old, a lesser
22 amount based on the value of the product after rea-
23 sonable use;

24 (6) recall the product from the stream of com-
25 merce; or

1 (7) submit to the Secretary a satisfactory plan
 2 for implementation of any action required under this
 3 subsection.

4 (c) **AUTHORITY TO PROHIBIT MANUFACTURE, IM-**
 5 **PORTATION, TRANSFER, DISTRIBUTION, OR EXPORT OF**
 6 **UNREASONABLY RISKY FIREARM PRODUCTS.**—The Sec-
 7 retary may issue an order prohibiting the manufacture,
 8 importation, transfer, distribution, or export of a firearm
 9 product if the Secretary determines that the exercise of
 10 other authority under this Act would not be sufficient to
 11 prevent the product from posing an unreasonable risk of
 12 injury to the public.

13 (d) **INSPECTIONS.**—In order to ascertain compliance
 14 with this Act and the regulations and orders issued under
 15 this Act, the Secretary may, at reasonable times—

16 (1) enter any place in which firearm products
 17 are manufactured, stored, or held, for distribution in
 18 commerce, and inspect those areas where the prod-
 19 ucts are manufactured, stored, or held; and

20 (2) enter and inspect any conveyance being
 21 used to transport a firearm product.

22 **TITLE II—PROHIBITIONS**

23 **SEC. 201. PROHIBITIONS.**

24 (a) **FAILURE OF MANUFACTURER TO TEST AND**
 25 **CERTIFY FIREARM PRODUCTS.**—It shall be unlawful for

1 the manufacturer of a firearm product to transfer, distrib-
2 ute, or export a firearm product unless—

3 (1) the manufacturer has tested the product in
4 order to ascertain whether the product is in con-
5 formity with the regulations prescribed under section
6 101;

7 (2) the product is in conformity with those reg-
8 ulations; and

9 (3) the manufacturer has included in the pack-
10 aging of the product, and furnished to each person
11 to whom the product is distributed, a certificate
12 stating that the product is in conformity with those
13 regulations.

14 (b) FAILURE OF MANUFACTURER TO PROVIDE NO-
15 TICE OF NEW TYPES OF FIREARM PRODUCTS.—It shall
16 be unlawful for the manufacturer of a new type of firearm
17 product to manufacture the product, unless the manufac-
18 turer has provided the Secretary with—

19 (1) notice of the intent of the manufacturer to
20 manufacture the product; and

21 (2) a description of the product.

22 (c) FAILURE OF MANUFACTURER OR DEALER TO
23 LABEL FIREARM PRODUCTS.—It shall be unlawful for a
24 manufacturer of or dealer in firearms to transfer, distrib-

1 ute, or export a firearm product unless the product is ac-
2 companied by a label that contains—

3 (1) the name and address of the manufacturer
4 of the product;

5 (2) the name and address of any importer of
6 the product;

7 (3) a specification of the regulations prescribed
8 under this Act that apply to the product; and

9 (4) the certificate required by subsection (a)(3)
10 with respect to the product.

11 (d) FAILURE TO MAINTAIN OR PERMIT INSPECTION
12 OF RECORDS.—It shall be unlawful for an importer of,
13 manufacturer of, or dealer in a firearm product to fail
14 to—

15 (1) maintain such records, and supply such in-
16 formation, as the Secretary may require in order to
17 ascertain compliance with this Act and the regula-
18 tions and orders issued under this Act; and

19 (2) permit the Secretary to inspect and copy
20 those records at reasonable times.

21 (e) IMPORTATION AND EXPORTATION OF
22 UNCERTIFIED FIREARM PRODUCTS.—It shall be unlawful
23 for any person to import into the United States or export
24 a firearm product that is not accompanied by the certifi-
25 cate required by subsection (a)(3).

1 (f) COMMERCE IN FIREARM PRODUCTS IN VIOLA-
2 TION OF ORDER ISSUED OR REGULATION PRESCRIBED.—

3 It shall be unlawful for any person to manufacture, offer
4 for sale, distribute in commerce, import into the United
5 States, or export a firearm product—

6 (1) that is not in conformity with the regula-
7 tions prescribed under this Act; or

8 (2) in violation of an order issued under this
9 Act.

10 (g) STOCKPILING.—It shall be unlawful for any per-
11 son to manufacture, purchase, or import a firearm prod-
12 uct, after the date a regulation is prescribed under this
13 Act with respect to the product and before the date the
14 regulation takes effect, at a rate that is significantly great-
15 er than the rate at which the person manufactured, pur-
16 chased, or imported the product during a base period (pre-
17 scribed by the Secretary in regulations) ending before the
18 date the regulation is so prescribed.

19 **SEC. 202. INAPPLICABILITY TO GOVERNMENTAL AUTHORI-**
20 **TIES.**

21 Section 201 does not apply to any department or
22 agency of the United States, of a State, or of a political
23 subdivision of a State, or to any official conduct of any
24 officer or employee of such a department or agency.

1 **TITLE III—ENFORCEMENT**
2 **Subtitle A—Civil Enforcement**

3 **SEC. 301. CIVIL PENALTIES.**

4 (a) **AUTHORITY TO IMPOSE FINES.—**

5 (1) **IN GENERAL.—**The Secretary shall impose
6 upon any person who violates section 201 a civil fine
7 in an amount that does not exceed the applicable
8 amount described in subsection (b).

9 (2) **SCOPE OF OFFENSE.—**Each violation of sec-
10 tion 201 (other than of subsection (a)(3) or (d) of
11 that section) shall constitute a separate offense with
12 respect to each firearm product involved.

13 (b) **APPLICABLE AMOUNT.—**

14 (1) **FIRST 5-YEAR PERIOD.—**The applicable
15 amount for the 5-year period immediately following
16 the date of enactment of this Act is \$5,000.

17 (2) **THEREAFTER.—**The applicable amount dur-
18 ing any time after the 5-year period described in
19 paragraph (1) is \$10,000.

20 **SEC. 302. INJUNCTIVE ENFORCEMENT AND SEIZURE.**

21 (a) **INJUNCTIVE ENFORCEMENT.—**Upon request of
22 the Secretary, the Attorney General of the United States
23 may bring an action to restrain any violation of section
24 201 in the United States district court for any district

1 in which the violation has occurred, or in which the de-
2 fendant is found or transacts business.

3 (b) CONDEMNATION.—

4 (1) IN GENERAL.—Upon request of the Sec-
5 retary, the Attorney General of the United States
6 may bring an action in rem for condemnation of a
7 qualified firearm product in the United States dis-
8 trict court for any district in which the Secretary
9 has found and seized for confiscation the product.

10 (2) QUALIFIED FIREARM PRODUCT DEFINED.—

11 In paragraph (1), the term “qualified firearm prod-
12 uct” means a firearm product—

13 (A) that is being transported or having
14 been transported remains unsold, is sold or of-
15 fered for sale, is imported, or is to be exported;
16 and

17 (B)(i) that is not in compliance with a reg-
18 ulation prescribed or an order issued under this
19 Act; or

20 (ii) with respect to which relief has been
21 granted under section 303.

22 **SEC. 303. IMMINENTLY HAZARDOUS FIREARMS.**

23 (a) IN GENERAL.—Notwithstanding the pendency of
24 any other proceeding in a court of the United States, the
25 Secretary may bring an action in a United States district

1 court to restrain any person who is a manufacturer of,
2 or dealer in, an imminently hazardous firearm product
3 from manufacturing, distributing, transferring, importing,
4 or exporting the product.

5 (b) IMMINENTLY HAZARDOUS FIREARM PRODUCT.—

6 In subsection (a), the term “imminently hazardous fire-
7 arm product” means any firearm product with respect to
8 which the Secretary determines that—

9 (1) the product poses an unreasonable risk of
10 injury to the public; and

11 (2) time is of the essence in protecting the pub-
12 lic from the risks posed by the product.

13 (c) RELIEF.—In an action brought under subsection
14 (a), the court may grant such temporary or permanent
15 relief as may be necessary to protect the public from the
16 risks posed by the firearm product, including—

17 (1) seizure of the product; and

18 (2) an order requiring—

19 (A) the purchasers of the product to be no-
20 tified of the risks posed by the product;

21 (B) the public to be notified of the risks
22 posed by the product; or

23 (C) the defendant to recall, repair, or re-
24 place the product, or refund the purchase price
25 of the product (or, if the product is more than

1 1 year old, a lesser amount based on the value
2 of the product after reasonable use).

3 (d) VENUE.—An action under subsection (a)(2) may
4 be brought in the United States district court for the Dis-
5 trict of Columbia or for any district in which any defend-
6 ant is found or transacts business.

7 **SEC. 304. PRIVATE CAUSE OF ACTION.**

8 (a) IN GENERAL.—Any person aggrieved by any vio-
9 lation of this Act or of any regulation prescribed or order
10 issued under this Act by another person may bring an ac-
11 tion against such other person in any United States dis-
12 trict court for damages, including consequential damages.
13 In any action under this section, the court, in its discre-
14 tion, may award to a prevailing plaintiff a reasonable at-
15 torney’s fee as part of the costs.

16 (b) RULE OF INTERPRETATION.—The remedy pro-
17 vided for in subsection (a) shall be in addition to any other
18 remedy provided by common law or under Federal or State
19 law.

20 **SEC. 305. PRIVATE ENFORCEMENT.**

21 Any interested person may bring an action in any
22 United States district court to enforce this Act, or restrain
23 any violation of this Act or of any regulation prescribed
24 or order issued under this Act. In any action under this
25 section, the court, in its discretion, may award to a pre-

1 vailing plaintiff a reasonable attorney's fee as part of the
2 costs.

3 **SEC. 306. EFFECT ON PRIVATE REMEDIES.**

4 (a) IRRELEVANCY OF COMPLIANCE.—Compliance
5 with this Act or any order issued or regulation prescribed
6 under this Act shall not relieve any person from liability
7 to any person under common law or State statutory law.

8 (b) IRRELEVANCY OF FAILURE TO TAKE ACTION.—
9 The failure of the Secretary to take any action authorized
10 under this Act shall not be admissible in litigation relating
11 to the product under common law or State statutory law.

12 **Subtitle B—Criminal Enforcement**

13 **SEC. 351. CRIMINAL PENALTIES.**

14 Any person who has received from the Secretary a
15 notice that the person has violated a provision of this Act
16 or of a regulation prescribed under this Act with respect
17 to a firearm product and knowingly violates that provision
18 with respect to the product shall be fined under title 18,
19 United States Code, imprisoned not more than 2 years,
20 or both.

21 **TITLE IV—ADMINISTRATIVE**
22 **PROVISIONS**

23 **SEC. 401. FIREARM INJURY INFORMATION AND RESEARCH.**

24 (a) IN GENERAL.—The Secretary shall—

1 (1) maintain a Firearm Injury Information
2 Clearinghouse to collect, investigate, analyze, and
3 disseminate data and information relating to the
4 causes and prevention of death and injury associated
5 with firearms;

6 (2) conduct continuing studies and investiga-
7 tions of firearm-related deaths and injuries and the
8 resulting economic costs and losses;

9 (3) collect and maintain current production and
10 sales figures for each person licensed as a firearms
11 manufacturer under section 923 of title 18, United
12 States Code;

13 (4) conduct research on, studies of, and inves-
14 tigation into the safety of firearm products and im-
15 proving the safety of firearm products; and

16 (5) develop firearm safety testing methods and
17 testing devices.

18 (b) AVAILABILITY OF INFORMATION.—On a regular
19 basis, but not less frequently than annually, the Secretary
20 shall make available to the public the results of the activi-
21 ties of the Secretary under paragraphs (1), (2), and (3)
22 of subsection (a).

23 **SEC. 402. ANNUAL REPORT TO CONGRESS.**

24 (a) IN GENERAL.—The Secretary shall prepare and
25 submit to the President and Congress at the beginning

1 of each regular session of Congress, a comprehensive re-
2 port on the administration of this Act for the most re-
3 cently completed fiscal year.

4 (b) CONTENTS.—Each report submitted under sub-
5 section (a) shall include—

6 (1) a thorough appraisal, including statistical
7 analyses and projections, of the incidence of injury
8 and death and effects on the population resulting
9 from firearm products, with a breakdown, as prac-
10 ticable, among the various types of such products as-
11 sociated with the injuries and deaths;

12 (2) a list of firearm safety regulations pre-
13 scribed that year;

14 (3) an evaluation of the degree of compliance
15 with firearm safety regulations, including a list of
16 enforcement actions, court decisions, and settlements
17 of alleged violations, by name and location of the vi-
18 olator or alleged violator, as the case may be;

19 (4) a summary of the outstanding problems
20 hindering enforcement of this Act, in the order of
21 priority; and

22 (5) a log and summary of meetings between the
23 Secretary or employees of the Secretary and rep-
24 resentatives of industry, interested groups, or other
25 interested parties.

1 **TITLE V—RELATIONSHIP TO**
2 **OTHER LAW**

3 **SEC. 501. SUBORDINATION TO ARMS EXPORT CONTROL**
4 **ACT.**

5 In the event of any conflict between any provision of
6 this Act and any provision of the Arms Export Control
7 Act, the provision of the Arms Export Control Act shall
8 control.

9 **SEC. 502. EFFECT ON STATE LAW.**

10 (a) **IN GENERAL.**—This Act shall not be construed
11 to preempt any provision of the law of any State or politi-
12 cal subdivision thereof, or prevent a State or political sub-
13 division thereof from enacting any provision of law regu-
14 lating or prohibiting conduct with respect to a firearm
15 product, except to the extent that such provision of law
16 is inconsistent with any provision of this Act, and then
17 only to the extent of the inconsistency.

18 (b) **RULE OF CONSTRUCTION.**—A provision of State
19 law is not inconsistent with this Act if the provision im-
20 poses a regulation or prohibition of greater scope or a pen-
21 alty of greater severity than any prohibition or penalty im-
22 posed by this Act.

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