

To: The House Judiciary Committee
Date: January 30, 2023
Submitted by: David Pucino
Deputy Chief Counsel
Giffords Law Center to Prevent Gun Violence

TESTIMONY IN SUPPORT OF HB 259

Chair Clippinger, Vice Chair Moon, and Members of the Judiciary Committee: thank you for the opportunity to testify in support of HB 259, the Gun Industry Accountability Act of 2023.

In nearly every industry, civil liability serves as an important check on irresponsible behavior. Companies that manufacture and sell products are held responsible for the consequences that follow from the intended use of their products. But the ordinary principles of civil liability do not apply to the gun industry. For too long, companies that manufacture, import, market, and sell firearms have hidden behind a federal statute that exempts them from normal liability under the common law. Armed with these exceptional protections, the industry has acted with impunity, flooding the streets with weapons secure in the assumption that it will be able to duck any lawsuit brought by the victims of its irresponsible practices. And survivors and the families of the victims of gun violence have been denied their day in court.

The Gun Industry Accountability Act would provide the victims of gun violence with an avenue to seek justice against the gun industry, reopening the courtroom doors for victims who have suffered as a direct result of industry's sale, manufacturing, importing, and marketing practices.

Background

Traditional legal principles provide that the law should compensate injured parties for wrongful conduct, place the burden of that compensation on the responsible party, and serve as a deterrent to prevent future harms. These principles apply generally to the consumer market, compensating those who are hurt, holding accountable those who are responsible, and creating an incentive structure that promotes consumer safety. The possibility of civil liability provides critical monetary incentives for industries to take affirmative steps to ensure the safety and safe use of their products—to internalize the “costs of doing business” so that it is the business, rather than the public, that pays. The law of civil liability thus stands as a pillar of consumer safety and injury prevention.

But these principles do not apply to the gun industry. Faced with a number of victims who came to court demanding that it bear the costs of its deadly business, in 2005 the gun industry successfully lobbied Congress to pass the Protection of Lawful Commerce in Arms Act (“PLCAA”). PLCAA prohibits courts from hearing proceedings for civil claims that “result from the criminal or lawful misuse” of firearms or ammunition. It thus provides the gun industry with

an exemption from the longstanding system of accountability, applicable to any number of other businesses, that stands at the base of our legal system.

PLCAA has been remarkably successful at shielding the gun industry from lawsuits that would otherwise have proceeded, stripping courts of jurisdiction and shutting the door on litigant after litigant in its first decade and a half of existence.

But PLCAA is not absolute: the statutory text includes six limited and enumerated exceptions. One of these exceptions applies to “[a]n action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.” This provision, which is often referred to as the “predicate exception,” keeps the door open to lawsuits that involve violations of statutes that apply to the sale or marketing of firearms.

Restoring Accountability

The Gun Industry Accountability Act would provide a statutory grounding for gun industry accountability, reopening the court doors that the industry has so far kept shut, by prohibiting specific dangerous conduct.

It would prohibit industry actors from endangering public health and safety through unlawful or unreasonable conduct. It would also require industry actors to “establish and implement reasonable controls” with respect to their manufacturing, distribution, and sale practices.

In the event that bad actors in the gun industry fail to take these basic steps, which any responsible actor in any industry would follow, the Act would properly acknowledge that such failures constitute a public nuisance that endangers the public. The law would allow for those who suffer harm as a result—whether that is the individuals who have been the direct victims, or the Attorney General acting on behalf of the People—to have their day in court.

The Gun Industry Accountability Act would thus restore accountability to an industry that has for too long acted with an impunity acquired at the expense of public health and safety. Giffords urges a favorable report on HB 259.

ABOUT GIFFORDS

Giffords is a nonprofit organization dedicated to saving lives from gun violence. Founded and led by former Congresswoman Gabrielle Giffords, Giffords inspires the courage of people from all walks of life to make America safer.