

# INTERNATIONAL BUSINESS TIMES

## Protection Of Lawful Commerce In Arms Act: The Controversial Gun Law Bernie Sanders Voted For Has Kept Families From Winning Lawsuits

Adam Lidgett

October 14, 2015

Support for Democratic presidential hopeful Bernie Sanders has been surging, with some groups proclaiming him the winner in the first Democratic debate Tuesday night on CNN. But one subject that has been haunting the Vermont senator is his views on gun control, and specifically his vote in favor of a 2005 bill that has protected gun manufacturers from lawsuits in cases where their weapons have been used to commit crimes.

The Protection of Lawful Commerce in Arms Act provides a unique federal legal shield for gun manufacturers and dealers by limiting lawsuits against them when their products are used in criminal or unlawful use. Victims' advocates claim the law has kept lawsuits made by cities and families of victims of mass shootings from moving forward. But the law does have certain exceptions and attorneys are increasingly trying to use the loopholes to see their cases finally go to court.

“The law really insulated those manufacturers and sellers from a normal negligence standard,” said Josh Horwitz, executive director of the Washington, D.C.-based Coalition to Stop Gun Violence. “The law slams the door in the face of survivors and victims of gun violence.”

The 2005 law was intended to halt a campaign of litigation against gun makers and dealers by mostly cities and municipalities, who said the proliferation of guns was a public nuisance, said Walter Olson, a senior fellow at the Washington, D.C.-based think tank the Cato Institute who has written on gun legislation. During the last two to three years of the Bill Clinton administration, some 30 cases were brought against makers and dealers, causing some smaller companies to declare bankruptcy, such as Lorcin, which filed for bankruptcy in 1996 after many lawsuits were filed against it, Olson said. The National Rifle Association, the Fairfax, Virginia based pro-gun lobbying group that pushed for the law, has said the lawsuits prior to 2005 attempted to bankrupt gun makers.

While legislation is the most obvious route to limiting the amount of guns in the U.S., lawsuits against gun companies can also have a similar effect —by making the gun manufacturers and sellers pay monetary damages, it could influence them to make guns safer or limit their proliferation, said Jean Eggen, a professor at the Widener University School of Law in Wilmington, Delaware who specializes in tort law. But because the law limits lawsuits against

gun companies, limiting gun sales in the U.S. has become even more difficult. That's an unpopular position among many Democratic voters, who Sanders needs to win over to secure his party's nomination.

“If you take [the ability to sue] away by immunizing the manufacturers and sellers of guns, it takes away any kind of systemic encouragement to make guns safer or limit them in some way,” Eggen said.

Since it was passed, the Protection of Lawful Commerce in Arms Act has barred hundreds of suits against gun manufactures from moving forward. Most of these suits are thrown out before they can even make it into the courtroom, Horwitz said.

New York City sued various gun makers in 2008 for not doing enough to stop the flow of firearms onto the illegal market. A court denied the suit to move forward, citing the 2005 law, according to the Law Center to Prevent Gun Violence.

In 2009, a federal appeals court said the Protection of Lawful Commerce in Arms Act prevented a lawsuit against the gun manufacturer Glock from moving forward. In 2001, five people injured in a white supremacist's shooting spree — and the family of one person who died in the spree — sued Glock and some firearm importers and distributors, saying the companies intentionally imported more guns than the market demanded, benefiting off re-sales to illegal buyers. The same year, the Illinois Supreme Court used the 2005 law to dismiss a case against a gun manufacturer by the family of a boy shot accidentally by his friend who was playing with his father's gun. A court ruled in March that the family of a victim of the 2012 Aurora shooting couldn't sue the websites that sold ammunition and equipment to James Holmes, who killed 12 people in a Colorado movie theater, according to Reuters. Attorneys for the defendants invoked the 2005 law in their arguments.

The law does allow for a few exceptions for lawsuits against gun companies. Gun companies can be sued if they sold a weapon to someone knowing they would commit a crime. Another of these exceptions is for negligent entrustment, said Timothy Lytton, a professor at Georgia State University College of Law who studies gun violence. Negligent entrustment is when a dangerous object, such as a gun, is given to a person knowing there is a high risk, Lytton said.

Attorneys for the families of victims killed in the 2012 Sandy Hook Elementary School shooting are using the negligent entrustment argument in their lawsuit against Bushmaster, the company that made the XM15-E2S rifle used by shooter Adam Lanza in the massacre that left 28 people dead, including Lanza. Attorneys are arguing that the model used in the Newtown, Connecticut, shooting was only slightly different from a military weapon. The military has strict oversight of the similar weapon, but no oversight exists for the storage or use of the XM15-E2S, according to the Wall Street Journal.

“The argument there is that Bushmaster created a weapon for the military and that it was negligent to market that to the general public,” Lytton said.