

Firearms Litigation

A Practitioner's Guide to
PLCAA and Beyond

2026 Edition

EVERYTOWNLAW

**This manual is
dedicated to our clients,**
past and present, whose bravery is our
constant source of inspiration. We hope that
this manual will serve as a useful tool for
litigators seeking justice and accountability
on behalf of their clients and working
toward a future free from gun violence.

Table of Contents

I. Introduction	1
<hr/>	
II. Types of Firearms Litigation	4
<hr/>	
A. Irresponsible Sales by Gun Dealers	5
B. Sales to Straw Purchasers	5
C. Unlawful Distribution and Marketing by Manufacturers	7
D. Ghost Guns	8
E. Product Defect Cases	10
F. Ammunition, Magazines, and Other Accessories	11
G. New Avenue: Gun Industry Accountability Laws	12
H. Non-Gun-Industry Defendants	13
III. Is Your Lawsuit a Qualified Civil Liability Action?	15
<hr/>	
A. What is a “Qualified Product?”	18
B. When is an Unlicensed Defendant a “Manufacturer or Seller?”	19
C. “Criminal or Unlawful Misuse”—Product Defect Litigation	21
D. “Criminal or Unlawful Misuse”—Other Categories	23
E. Final Aside: Constitutional Challenges to PLCAA	24
IV. Predicate Exception	28
<hr/>	
A. “Applicable To”	31
B. Knowing Violation	36
C. Proximate Causation	39
D. Negligence Claims and the Predicate Exception	40
E. Piecemeal Analysis of Claims	40
F. State Industry Accountability Laws	41

Table of Contents

V. Negligence Per Se Exception	48
<hr/>	
VI. Negligent Entrustment Exception	52
<hr/>	
A. State Law of Negligent Entrustment	53
B. Interaction of Federal and State Law	56
C. Negligent Entrustment in Straw Purchasing Cases	57
VII. Product Defect Exception	61
<hr/>	
A. “Discharge of the Product Was Caused By”	63
B. “Volitional Act That Constituted a Criminal Offense”	66
VIII. Other Exceptions	71
<hr/>	
IX. Special Topic: Basics of a Gun Sale	74
<hr/>	
A. Sales to In-State Residents	75
B. Sales to Out-of-State Residents	77
C. Red Flags of Illegal Behavior	78
D. Recordkeeping Requirements	79
X. Special Topic: Obtaining Data from ATF and Defendants in Discovery	82
<hr/>	

Table of Contents

XI. Special Topic: Removal to Federal Court	86
A. Removal Based on Federal Question Jurisdiction	87
B. Removal Based on Diversity of Citizenship Jurisdiction	92
C. Removal Based on Federal Officer Jurisdiction	94
D. Other Procedural Considerations	94
XII. Special Topic: State Industry Protection Laws	97
XIII. Special Topic: Legislative History	100
A. The Gun Industry was Facing Increased Accountability in the Courts	101
B. PLCAA Was Intended to Preempt a Narrow Category of Lawsuits	102
XIV. Appendix: Annotated Text of PLCAA	103
A. 15 U.S.C. § 7901. Findings; purposes	103
B. 15 U.S.C. § 7902. Prohibition on bringing of qualified civil liability actions in Federal or State court	104
C. 15 U.S.C. § 7903. Definitions	105

This manual is also available online at <https://everytownlaw.org/plcaa-guide/>.

Disclaimer: Neither the dissemination nor the use of this Guide gives rise to any attorney-client relationship. An attorney-client relationship with Everytown Law may only be formed by entering into a written engagement letter. This Guide is not intended to constitute and does not provide legal advice; individuals seeking legal advice or assistance should consult with their own counsel. Nothing in this Guide is or is intended to be an admission or concession with respect to any legal issues discussed. The Guide has been written and is intended only as an educational tool to assist legal practitioners engaged in firearms litigation. This publication is not intended to be a comprehensive discussion of all the case law and other legal authority in this area of the law, and there may be subsequent developments that are directly relevant to the issues discussed herein; as a result, use of this publication is no substitute for the reader undertaking their own legal research and analysis of applicable authorities.

© 2026 Everytown for Gun Safety Support Fund

I. Introduction

Who is this guide for?

This is a guidebook for litigators seeking to bring civil litigation against manufacturers, distributors, and dealers of firearms, firearms components and accessories, and ammunition that engage in wrongful conduct. It provides an overview of relevant law, with an eye toward successful strategies and techniques for holding reckless and irresponsible members of the gun industry accountable for their actions.

When someone is shot, whether in a criminal act, an unintentional shooting, or a suicide, they or their loved ones may have a viable lawsuit if there was wrongful conduct by the gun dealer, the gun's manufacturer, or others. Of course, in cases of criminal shootings, the shooter themselves can and must be held legally accountable through criminal prosecution. That said, the American legal system has long recognized that more than one person or party that has committed or contributed to a legal wrong can be held responsible in civil litigation for resulting injuries and harms. Holding members of the firearms industry accountable for their own misconduct can not only provide your client with some measure of justice and accountability, but it can also have a meaningful impact on the safety of your community and the nation by incentivizing the industry to reform reckless business practices. Cases against bad actors in the gun industry can succeed, but they face challenges that are not present in lawsuits against most other industries. This manual will help you identify and overcome these obstacles—and win.

If you are suing a member of the gun industry, the odds are good that, at some point during your lawsuit, the defendant will try to have your case dismissed by arguing that it is barred by the federal Protection of Lawful Commerce in Arms Act (PLCAA). If this is your first case against a gun-industry defendant, it may seem like an insurmountable obstacle. But plaintiffs can and do win cases against gun industry defendants, and this guide will help you figure out the best arguments to make and what strategies to employ.

What is PLCAA?

PLCAA is a federal statute that was enacted in 2005 with the aim of protecting the gun industry from liability in certain types of civil suits. It provides the gun industry with special protections enjoyed by few other industries. However, it is a common misconception that PLCAA effectively shields the gun industry from all lawsuits. While PLCAA provides significant protection for gun companies, and for nearly two decades has chilled litigation and led to the dismissal of some meritorious cases against irresponsible actors, it does not provide absolute immunity. As discussed in detail below, numerous courts have allowed for liability against gun dealers, manufacturers, and other entities for their own wrongful conduct and rejected gun-industry arguments that PLCAA provides sweeping immunity.

What does PLCAA do?

PLCAA prohibits the bringing of what it calls a “qualified civil liability action” (QCLA).¹ PLCAA first provides a general definition of a QCLA—that is, certain civil actions against a member of the gun industry for harm resulting from the criminal or unlawful misuse of firearms or ammunition. PLCAA then sets out six exceptions to the general definition.²

Once a defendant invokes PLCAA, courts generally conduct a two-step inquiry to determine whether PLCAA bars the lawsuit. They first ask whether the cause of action meets the general definition of a QCLA. Many (but not all) lawsuits against gun-industry defendants will fall within the definition, which courts have generally found to be quite broad. How to evaluate that question is explored in detail in Section III.

If a lawsuit meets the general definition of a QCLA, the second step is to ask whether any of PLCAA’s six exceptions apply. The most commonly invoked exceptions are the predicate exception (relating to violations of state or federal laws applicable to the sale or marketing of firearms), the negligence per se or negligent entrustment exception, and the product defect exception. These and other exceptions are each

discussed in depth in Sections IV through VIII. PLCAA’s exceptions are broad enough to allow numerous claims involving irresponsible gun-industry conduct to proceed.

When does PLCAA come up in a case?

Typically, defendants raise PLCAA in a motion to dismiss at the pleading stage. While this is typical, it is not exclusive: some PLCAA issues can be fact-intensive and require resolution only at summary judgment or trial. But in the majority of cases, a defendant will argue that PLCAA requires dismissal at the outset of litigation.

What does this guide cover?

This guide provides lawyers with the tools they need to understand PLCAA and effectively litigate gun-industry liability cases that can overcome PLCAA. The topics covered include:

- ✓ **A survey of gun industry accountability litigation**, highlighting notable successes and ensuring that practitioners are aware of the full range of potential defendants and theories of liability that may be pursued. (Section II)
- ✓ **Analysis of PLCAA’s QCLA definition** and related case law. (Section III)
- ✓ **Detailed analysis of PLCAA’s exceptions** for suits alleging predicate violations of law, negligence per se or negligent entrustment, and product-defect theories, as well as the trio of lesser-used exceptions—including case law that will allow many types of cases to proceed despite a PLCAA challenge. (Sections IV - VIII)

¹ See 15 U.S.C. § 7902(a).

² See 15 U.S.C. § 7903(5)(A) (defining QCLA and exceptions).

The guide concludes with a series of special topics that may be of relevance to you as you litigate a case against a gun-industry defendant.

These special topic sections include:

- ✓ **Basics of a gun sale.** This special topic provides an overview of the process and paperwork for a gun sale between a licensed dealer and a retail purchaser, as well as a summary of the suspicious behaviors that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and gun industry trade groups and consultants train dealers to recognize. This section may be of particular use to counsel preparing to engage in discovery against a gun-industry defendant.
- ✓ **Removal to federal court.** Some defendants feel the federal forum is more favorable and may seek to remove your case if you file in state court. However, many plaintiffs have succeeded in having their cases remanded back to state court. This section discusses the various grounds for removal in gun cases, as well as arguments for remand.
- ✓ **State gun-industry protection laws.** Many states have their own gun-industry immunity laws that can vary considerably from PLCAA. This section identifies a few common features of these state laws that you should look out for when determining whether they apply to your client's claims—in particular whether they contain a fee-shifting provision.
- ✓ **PLCAA's legislative history.** PLCAA has a robust, but mixed, legislative history. This section provides an overview of that history with a particular focus on portions indicating that PLCAA's scope is intended to be narrow and to bar only a limited class of lawsuits.

We hope that this will provide you with the resources you need to fight for accountability and justice on behalf of your clients.

If you have any questions or would like to consult with Everytown Law attorneys concerning gun violence prevention litigation generally or PLCAA specifically, please contact us at litigationadmin@everytown.org. To learn more about our work and our successes in holding bad actors in the gun industry accountable, visit our website at: <https://everytownlaw.org/>.

II. Types of Firearms Litigation

Before delving into the nuances of PLCAA, it is helpful to understand the potential scope of litigation against the firearms industry. If you represent the victim of a shooting or their surviving family members, or you represent a state or local government that seeks to combat gun violence through civil litigation, the first questions that you should ask are whom you might name as a defendant, and what potential theories of recovery you could pursue. This section outlines potential defendants and theories of recovery but does not discuss the implications of PLCAA for each kind of suit. Instead, it will cross-reference to other sections that address PLCAA in more depth.

In this chapter you will learn what types of lawsuits you can bring for shooting victims, including suing:

- ✓ **Dealers for negligent sales to dangerous people**
- ✓ **Dealers for sales to straw purchasers**
- ✓ **Manufacturers for unlawful distribution and marketing**
- ✓ **Manufacturers and dealers of ghost guns**
- ✓ **Manufacturers and dealers of defective firearms**
- ✓ **Law enforcement and government agencies who fail to comply with legal obligations**
- ✓ **Social media companies whose platforms are created in a way to addict users and have been known to radicalize shooters**
- ✓ **Shooters and enabling family members**
- ✓ **Negligent owners and managers of premises where a shooting occurred**

Throughout this section, there are several recurring themes. When considering a lawsuit in the wake of a shooting and/or to address gun violence in your community, you should ask yourself the following questions:

1. Is there a reason to believe that the shooter should not have been sold or given a weapon?
2. Is the shooter a minor or a member of another class of persons prohibited from buying or possessing a firearm or ammunition? If so, how did he or she obtain the firearm and/or ammunition?
3. Is there a reason to think that the firearm or any accessories may have been obtained unlawfully, such as through a straw purchase (more on this below) or from a gun trafficker?
4. Did the manufacturer, distributor, or retailer violate any laws applicable to the sale or marketing of firearms?
5. How were the gun and any accessories marketed?
6. Does your state have a gun industry accountability law, and could any claims be brought under that statute?
7. Are there other actors, outside the firearms industry, whose negligence or other wrongful conduct contributed to the harm?

A. Irresponsible Sales by Gun Dealers

On June 25, 2012, a desperate mother phoned a gun shop and begged the manager not to sell her severely mentally ill daughter a gun. The gun shop, Odessa Gun & Pawn, did not listen, and sold the daughter a firearm that she then promptly used to kill her father.

The grieving widow sued the gun shop under a negligent entrustment theory (among others) and took the case up to the Missouri Supreme Court, where she prevailed in *Delana v. CED Sales, Inc.*³ This sort of irresponsibility forms the basis of many suits against gun stores.

While not every case is as straightforward as a direct call asking a gun store not to make a sale, there are numerous instances of gun stores ignoring clear warning signs that a particular gun sale is deeply irresponsible, whether or not it is prohibited by law.⁴ If a person seems intoxicated, acts erratically in the gun store, or makes comments that suggest they plan to do something dangerous or illegal, these red flags—and others—should be a basis to deny a sale. In the section pertaining to the basics of gun sales, see *infra*, Special Topic: Basics of a Gun Sale, we discuss common indicators of dangerous gun sales, as identified by ATF and the gun industry.

B. Sales to Straw Purchasers

A related subset of dealer misconduct cases are sales to a so-called straw purchaser. A straw purchase is a transaction to buy a gun for someone else in circumstances that are not a bona fide gift.⁵ Often, the true intended owner is prohibited by law from purchasing the gun themselves, because a firearm dealer cannot lawfully sell a gun to a felon, a minor, or someone with an involuntary mental health commitment, among other prohibited categories.⁶ To get around these prohibitions (or because the true intended owner does not want his or her name recorded as the gun's buyer), the straw buyer steps in and buys the gun instead, using his or her name to pass the background check. Straw purchasing is an extremely common way that firearms end up in

³ 486 S.W.3d 316 (Mo. 2016).

⁴ See, e.g., *Brady v. Walmart Inc.*, No. 21-CV-1412, 2022 WL 2987078, at *16 (D. Md. July 28, 2022) (allowing claims to go forward against store that sold gun to employee exhibiting obvious signs of mental illness and intoxication). In May 2024, the trial court denied Walmart's motion for summary judgment, *Brady v. Walmart Inc.*, No. 21-CV-01412, 2024 WL 2273382 (D. Md. May 20, 2024), and in January 2026 a jury returned a \$10.5 million dollar verdict against Walmart, see Verdict Form, *Brady v. Walmart Inc.*, No. 21-CV-01412 (D. Md. Jan. 22, 2026), ECF No. 155.

⁵ See *Don't Lie for the Other Guy*, ATF (Apr. 29, 2024) (describing straw purchase as “the illegal buying of a gun by an individual, a ‘straw buyer,’ on behalf of” someone else, including a person “who might pose a danger to themselves or others”), <https://www.atf.gov/firearms/dont-lie-other-guy>.

⁶ See 18 U.S.C. § 922(b)(1), (g), (t).

the hands of prohibited or dangerous individuals.⁷

Straw purchases are also categorically illegal. As part of the transaction with the dealer, the straw buyer fills out a federal transaction form that asks for identifying information along with a certification that she is the true intended owner of the firearm.⁸ If she buys the gun for someone else while falsely certifying that it is for her, this false statement constitutes a crime.⁹ And a gun dealer takes part in that crime if they go through with the sale despite knowing or having reason to know that the person signing the paperwork is lying.

In certain cases, it will be obvious to a gun dealer that a straw purchase is taking place. People coordinating inside the store (or remotely, via cell phone) to select and purchase guns is one obvious indicator that stores are trained to recognize. Another warning sign is the purchase of multiple firearms, particularly if they are duplicative and/or cheap low-quality handguns or paid for all in cash—sometimes referred to as bulk purchasing. Both the ATF and industry trade groups and consultants work to educate dealers to recognize these and other red flags and prevent the illegal diversion of firearms through straw purchasing.

Still, the problem of straw purchasing persists, whether through dealer inattention or because the financial incentives to turn a blind eye and make more sales prove irresistible to some. If you have reason to think that a gun used to harm your client was obtained through a straw purchase that should have been apparent to the dealer, the dealer may be liable. In *Corporan v. Wal-Mart Stores East, LP*, the plaintiff brought suit against Walmart when, in the presence of a store employee, a convicted felon picked out a gun and then had his associate fill out the paperwork for the gun and falsely claim it was for the associate.¹⁰ The felon then used that gun to shoot people at a Jewish Community Center.¹¹ Similarly, in 2015, two police officers won a verdict after trial in Wisconsin state court against a dealer that sold a gun to an obvious straw purchaser.¹²

Beyond individual shootings traced to straw-purchased guns, straw purchasing also harms communities in the aggregate, by serving as a conduit that feeds firearms into the criminal marketplace. Data indicates that the vast majority of guns recovered at crime scenes are sold by a small percentage of bad-apple dealers,¹³ and municipal and state governments may consider investigating the extent to which such dealers that disproportionately sell crime guns are in fact knowingly transacting with straw purchasers.

⁷ See *Don't Lie for the Other Guy*, *supra* note 5 (“Straw purchased firearms often end up in the hands of criminals and are used in violent crimes, including homicides, robberies, and gang-related activities.”).

⁸ In a gun sale at a licensed dealer, the buyer and seller each complete sections of an ATF Firearms Transaction Record. See ATF Form 4473 (Aug. 2023), <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>.

⁹ 18 U.S.C. § 922(a)(6) (criminalizing knowing false oral or written statements with respect to any fact material to the lawfulness of the sale); see also *Abramski v. United States*, 573 U.S. 169, 193 (2014) (affirming straw purchasing conviction, and holding that “[n]o piece of information is more important under federal firearms law than the identity of a gun’s purchaser...”). In 2022, Congress passed the Bipartisan Safer Communities Act, which codified the related crime of purchasing a firearm for someone prohibited by law or who the purchaser knows or has reasonable cause to believe will use the gun in furtherance of a crime. See 18 U.S.C. § 932(b).

¹⁰ No. 16-2305, 2016 WL 3881341, at *1 (D. Kan. July 18, 2016).

¹¹ *Id.*

¹² See John Diedrich, *Wounded officers’ lawsuit against Badger Guns settles for \$1 million*, MILWAUKEE JOURNAL SENTINEL (Dec. 11, 2015), <https://archive.jsonline.com/watchdog/watchdogreports/wounded-officers-lawsuit-against-badger-guns-settles-for-1-million-b99632780z1-361609031.html/>; see also *City of Chicago v. Westforth Sports, Inc.*, 2025 IL App. (1st) 231908, ¶ 3 (Ill. App. Ct. 2025) (holding that an Illinois court could exercise personal jurisdiction over an Indiana gun store that facilitated straw purchases that the gun store knew would be trafficked to Illinois).

¹³ See Brady Campaign & Brady Center to Prevent Gun Violence, *The Truth About Gun Dealers in America*, <https://gunviolence.issuelab.org/resources/30185/30185.pdf>.

C. Unlawful Distribution and Marketing by Manufacturers

Manufacturers of firearms, firearm components, and accessories may also be liable for unlawful distribution practices that violate firearms laws, as well as deceptive or unfair marketing, such as ads that promote the illegal use of their products through violent or militaristic imagery, or social media posts that promote engaging in unsafe conduct, such as allowing toddlers to handle weapons without any safety warnings.

Practice Pointer:

Gun industry defendants sometimes argue that their marketing conduct is protected under the First Amendment. But the First Amendment does not protect commercial speech that is misleading or promotes unlawful activity.¹⁴

For example, beginning in the 2000s, as the gun industry shifted its messaging from hunting and sport to self-defense, many companies began to emphasize the purported combat benefits of their products, often associating their guns with law enforcement or military imagery in an effort to target young male consumers.¹⁵ One paradigmatic example of this type of marketing is Remington's ad campaign for Bushmaster AR-15 platform rifles, which exhorted readers to "CONSIDER YOUR MAN CARD REISSUED."¹⁶



Twitter post by firearms manufacturer Daniel Defense (May 16, 2022)

Bushmaster's advertisements featured prominently in the lawsuit over the mass shooting at Sandy Hook Elementary School in Newtown, Connecticut. In that case, the plaintiffs alleged that Remington's militaristic advertising influenced the shooter's actions and was a cause of the mass shooting.¹⁷

¹⁴ See *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 367 (2002); see also *Roberts v. Smith & Wesson Brands, Inc.*, No. 22 LA 00000487, 2025 WL 1295092, at *15-18 (Ill. Cir. Ct. Apr. 1, 2025) (finding that Illinois's gun industry accountability law, which prohibits certain marketing of firearms, does not violate the First Amendment).

¹⁵ See Mike McIntire et al., *Gun Sellers' Message to Americans: Man Up*, N.Y. TIMES (June 18, 2022), <https://www.nytimes.com/2022/06/18/us/firearm-gun-sales.html>; see also Alex Horton et al., *Flannel, muddy girl camo and man cards. See the ads used to sell the AR-15.*, WASH. POST (Mar. 27, 2023), <https://www.washingtonpost.com/business/interactive/2023/history-of-ar-15-marketing/>.

¹⁶ See Horton *supra* note 15 (depicting Bushmaster ad from 2009 Maxim magazine). Additional examples of this type of marketing are cited in Everytown and Brady's letter to the Federal Trade Commission concerning Smith & Wesson Brands, Inc.'s marketing of its "Military & Police" line of products, see Complaint and Request for Investigation of Smith & Wesson Brands, Inc. from Everytown & Brady to Andrew Smith, Dir., Bureau of Consumer Prot., FTC (May 31, 2020), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2020/06/ftc-letter.pdf>, and Everytown's letter to the FTC concerning Daniel Defense LLC's marketing efforts, see Complaint and Request for Investigation of Daniel Defense LLC from Everytown to Samuel Levine, Dir., Bureau of Consumer Prot., FTC (July 15, 2022), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2022/07/Daniel-Defense-FTC-Complaint.pdf>.

¹⁷ *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262, 272 (Conn. 2019).

The ads at issue depicted U.S. special forces carrying the defendant's rifles and touted the rifle's capabilities for offensive, assault-type combat.¹⁸ Plaintiffs contended that these marketing efforts targeting young, unstable males and promoting the illegal use of their firearms violated Connecticut's unfair trade practices act. After the Connecticut Supreme Court rejected Remington's efforts to have the lawsuit dismissed under PLCAA and for failure to state a viable claim, the parties settled for \$73 million.¹⁹

Despite plaintiffs' notable success in *Soto*, many firearms manufacturers continue to use militaristic imagery and product placements in violent video games to market their firearms. For example, the gun manufacturer Daniel Defense, whose AR-15-style assault weapon was used in the mass shooting at Robb Elementary School in Uvalde, Texas, in 2022, is known for utilizing militaristic imagery in its marketing. Families of some of the victims of that shooting have sued Daniel Defense for its unfair marketing.²⁰

Other cases involve allegations that a manufacturer has misrepresented the legality of its product. For example, victims and survivors of the white supremacist attack at the Tops supermarket in Buffalo, New York, alleged that the manufacturer of the magazine lock removed by

the shooter engaged in deceptive business practices by misrepresenting that the lock rendered the AR-15-style assault weapon compliant with New York's firearm laws.²¹ In early 2024 the Buffalo lawsuit survived a motion to dismiss on PLCAA grounds, and the New York appellate court affirmed the trial court decision.²²

Manufacturers have also been sued for marketing short-barreled rifles as if they were pistols, a misclassification in violation of federal gun laws,²³ and—as discussed further below—for failing to take reasonable steps to prevent their firearms from being easily converted into illegal machine guns, in violation of various laws including a new state industry accountability law.²⁴ For more information about state industry accountability laws, see Section IV. Predicate Exception, *infra*, at the sub-heading for “State Industry Accountability Laws.”

D. Ghost Guns

On the evening of September 12, 2020, two Los Angeles County Sheriff's deputies were ambushed while sitting in their patrol vehicle outside a transit station in Compton, California.²⁵ Shot repeatedly through the windows by an unseen attacker, the deputies suffered grievous injuries but miraculously survived. A few days later, police recovered the attempted murder weapon

¹⁸ *Id.* at 277-78.

¹⁹ Rick Rojas et al., *Sandy Hook Families Settle With Gunmaker for \$73 Million Over Massacre*, N.Y. TIMES (Feb. 15, 2022), <https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html>.

²⁰ Amended Complaint, *Torres v. Daniel Defense*, No. 22-CV-00059 (W.D. Tex. Feb. 2, 2023), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2023/02/2023.02.23-Amended-Complaint-redactions.pdf>.

²¹ Amended Complaint ¶¶ 329-344, *Harris Stanfield v. Mean LLC*, Index No. 810317/2023 (NY Sup. Ct. Erie Cnty. Sept. 14, 2023), available at https://everytownlaw.org/wp-content/uploads/sites/5/2023/09/810317_2023_Fragrance_Harris_Stanf_v_Fragrance_Harris_Stanf_COMPLAINT__AMENDED__3.pdf.

²² *Stanfield v. Mean LLC*, Index. No. 810317/2023, Decision and Order at 11 (NY Sup. Ct. Erie Cnty. Feb. 23, 2024), available at https://everytownlaw.org/wp-content/uploads/sites/5/2024/02/810317_2023_Fragrance_Harris_Stanf_v_Fragrance_Harris_Stanf_DECISION__ORDER_ON_109-1.pdf, affirmed by No. CA 24-00459 at 1 (N.Y. App. Div. July 25, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2023/08/2025.07.25-4AD-MEAN-Decision.pdf>.

²³ See *Stanisic v. Sturm, Ruger & Co., Inc.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *6 (Conn. Super. Ct. Nov. 12, 2025).

²⁴ See Memorandum Opinion and Order, *City of Chicago v. Glock*, No. 2024CH06875, at 1 (Ill. Cir. Ct. Sep. 18, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2025/09/Memorandum-and-Opinion-in-City-of-Chicago-v.-Glock-Inc.pdf>.

²⁵ *Compton man found guilty in ambush-style shooting of 2 LA County sheriff's deputies*, ABC EYEWITNESS NEWS 7 (Sept. 28, 2023), <https://abc7.com/compton-deputies-shot-guilty-verdict-convicted-sheriff/13839855/>; see also Complaint ¶ 9, *Apolinar v. Polymer80, Inc.*, No. 21STCV29196 (Cal. Super Ct. Los Angeles Cnty. Aug. 9, 2021), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2021/08/Complaint-1.pdf>.

during a car chase. The gun was a “ghost gun,” and the attacker was a felon with a lengthy criminal record. This criminal record would have prevented him from buying a firearm from a licensed dealer, as he would have failed a background check. But he was nonetheless able to obtain the ghost gun used to shoot the deputies.

Practice Pointer:

A ghost gun, sometimes referred to as a privately made firearm (or “PMF”), is a homemade firearm completed or assembled by someone other than a licensed manufacturer. Two critical aspects of ghost guns are that they are often sold without a background check and they don’t have a serial number, making it difficult for police to trace them back to a purchaser or seller when they are recovered at a crime scene.

Ghost guns can be manufactured using a kit of parts and basic tools that, until a 2022 ATF Rule, were freely sold online (though they can also be 3-D printed). Depending on the level of completion at the time the parts are shipped to the retail purchaser, the manufacturer and distributor may take the position that the product was not legally a “firearm” and thus was not subject to a background check or other limitations under the Gun Control Act that prevent individuals such as felons and minors from purchasing guns.

Because manufacturers and distributors of ghost gun building kits often sell their products without conducting a background check (and indeed, deliberately market their products this way), ghost guns have become a desirable commodity for felons, minors, and others who cannot legally purchase a gun from a licensed dealer.

They are also particularly desirable for criminal use because the lack of serialization frustrates law enforcement’s ability to trace the gun from a crime scene back to its original purchaser. In recent years when ghost gun recoveries were at their peak, nearly 33% of all firearms recovered from federal criminal investigations across California lacked serial numbers²⁶ and ATF reported a 1,083% increase in the number of ghost guns submitted for attempted tracing from 2017 to 2021.²⁷

When a minor, criminal, or other dangerous user obtains a ghost gun illegally, it may be the basis for a lawsuit against the manufacturer and any others in the distribution chain—provided you can overcome the challenges of identifying these companies (or individuals) and piece together how the prohibited user obtained the ghost gun.

In 2022, the ATF promulgated a new administrative rule interpreting the Gun Control Act to include ghost gun kits in its scope.²⁸ This rule makes clear that background checks, licensing, record-keeping, and serialization requirements apply to gun kit sales.²⁹ In response, a group of ghost gun industry members and ghost gun users filed a facial challenge to the ATF’s rule under the Administrative Procedure Act, arguing that the rule exceeded the mandates of the Gun Control Act.³⁰

The case made its way to the Supreme Court, and in 2025, the Court issued its decision in *Bondi v. VanDerStok*, upholding the rule and affirming that manufacturers of gun building kits and many partially complete frames and receivers are subject to the same requirements as other gun manufacturers.³¹ VanDerStok made crystal clear that the ATF’s Rule applies to gun kits from 2022 onwards. But the Court’s interpretation of the Gun Control Act applies to gun kits

²⁶ Alain Stephens, *Ghost Guns Are Everywhere in California*, THE TRACE (May 17, 2019), <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

²⁷ ATF, *National Firearms Commerce and Trafficking Assessment: Crime Guns – Volume Two, Part III: Crime Guns Recovered and Traced Within the United States and its Territories*, at 5 (Mar. 27, 2024), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download>.

²⁸ See *Bondi v. VanDerStok*, 604 U.S. 458, 464-65 (2025).

²⁹ *Id.*

³⁰ *Id.* at 466.

³¹ *Id.* at 468-69.

and many partially complete frames and receivers sold prior to 2022 as well.³²

Numerous lawsuits have been filed and successfully litigated against the manufacturers and distributors of kits to build ghost guns or containing component parts of ghost guns, several of which settled on favorable terms for plaintiffs.³³ In fact, in 2025, the City of Baltimore won a \$62 million jury verdict against Hanover Armory, a large distributor of ghost gun kits.³⁴ As explained below, in some of these lawsuits PLCAA will not apply, and claims may proceed on general negligence theories. Others may rely on the fact that ghost gun kits and their key components are “firearms” under federal and state law and thus assert that selling them without safeguards required for firearm sales breaks the law. These cases generally center around the fact that ghost gun kits are marketed to evade these restrictions and place untraceable guns in the hands of criminals or other prohibited persons.

E. Product Defect Cases

A final potential theory against gun manufacturers and sellers—albeit one more often applied to unintentional as opposed to criminal shootings—is product defect. If, for example, a manufacturing or design defect causes a gun to misfire, the manufacturer (and potentially others

in the supply and distribution chain) may be liable. For example, Sig Sauer’s P320 pistols are the subject of a flurry of lawsuits, because they allegedly fire without their triggers being pulled. The plaintiffs in those cases are typically gun owners injured by an unintentional discharge.³⁵ Similarly, a manufacturer that fails to incorporate safety features to prevent an unintentional shooting by a young child may likewise be liable for that omission. Tragically, unintentional shootings by children are an all too frequent occurrence.³⁶

One notable example is a lawsuit brought by Los Angeles police officer Enrique Chavez, who was shot by his three-year-old son with a Glock handgun stored temporarily under the seat of the officer’s personal vehicle.³⁷ While the car was stopped at a red light, the child gained access to the gun and discharged it into the back of the driver’s seat, rendering Chavez paraplegic. Chavez sued Glock on a design-defect theory, alleging that the gun was defective for lack of a grip safety, manual safety, or heavier trigger pull that could have prevented his toddler from firing it. Although the trial court granted summary judgment for Glock, the appellate court reversed,³⁸ and the lawsuit settled thereafter on undisclosed terms.³⁹ For more information on PLCAA’s product-defect exception, see *infra*, Section VII.

³² *Cluney v. Brownells, Inc.*, 777 F. Supp. 3d 1, 13 (D. Me. 2025) (finding the Supreme Court’s statutory interpretation of the Gun Control Act in *VanDerStok* “instructive” in assessing a 2021 sale of a ghost gun to a 16-year-old).

³³ See, e.g., *Everytown Law Helps Los Angeles City Attorney Win \$5M Settlement From Biggest U.S. Ghost Gun Manufacturer*, EVERYTOWN LAW, <https://everytownlaw.org/case/people-of-the-state-of-california-v-polymer80/> (last visited Feb. 11, 2026); see also Press Release, Everytown Law, Everytown Law Announces Settlement Between Los Angeles Sheriff’s Deputies and Polymer80 (Dec. 5, 2023), <https://everytownlaw.org/press/everytown-law-announces-settlement-between-los-angeles-sheriffs-deputies-and-polymer80/>.

³⁴ *Largest Ever Verdict Dealt Against Gun Dealer Rendered for City of Baltimore*, CITY OF BALTIMORE (Aug. 27, 2025), <https://www.baltimorecity.gov/mayor/news-media/press-releases/2025-08-27-largest-ever-verdict-dealt-against-gun-dealer-rendered-for-the-city-of-baltimore>.

³⁵ See Champe Barton & Tom Jackman, *One of America’s Favorite Handguns Is Allegedly Firing on Its Owners*, THE TRACE (Apr. 11, 2023), <https://www.thetrace.org/2023/04/sig-sauer-p320-upgrade-safety/>; see, e.g., *Armendariz v. Sig Sauer, Inc.*, No. 1:22-CV-00536-JL, 2023 WL 4204666, at *1 (D.N.H. June 27, 2023) (outlining the consolidated cases against Sig Sauer); *Glasscock v. Sig Sauer, Inc.*, No. 6:22-CV-03095-MDH, 2025 WL 2147385, at *16 (W.D. Mo. July 28, 2025) (granting a motion to certify a damages class against Sig Sauer).

³⁶ See #NotAnAccident Index, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/maps/notanaccident/> (documenting between 305 and 411 unintentional shootings by children per year, 2015-2024, around 40% of which are fatal).

³⁷ See *Chavez v. Glock, Inc.*, 144 Cal. Rptr. 3d 326, 335 (Ct. App. 2012).

³⁸ See *id.* at 345-52.

³⁹ *Glock, Ex-LA Policeman Settle Suit over Shooting by Child*, SAN DIEGO UNION-TRIBUNE (May 12, 2016 5:17 AM), <https://www.sandiegouniontribune.com/sdut-glock-ex-la-policeman-settle-suit-over-shooting-2016may12-story.html>.

F. Ammunition, Magazines, and Other Accessories

Beyond the makers and sellers of firearms, companies that violate firearms laws or otherwise act recklessly in selling ammunition and accessories may also be liable when their products are used in a shooting. Unlike firearms, which are subject to a background check and other restrictions when sold by licensed dealers, sales of ammunition and accessories are frequently consummated online without background checks or age verification.

One such purchaser was the 17-year-old alleged perpetrator of the Santa Fe High School shooting in May 2018. As a minor, the shooter could not legally purchase handgun ammunition.⁴⁰ Yet, as alleged in a subsequent lawsuit, this did not stop him from buying more than 150 rounds of handgun and shotgun ammunition from online vendor Luckygunner.com.⁴¹ Using gift cards and his home address, the shooter completed these transactions without a background check or any age or identity verification.⁴² Two months later, he used the ammunition in a rampage at his school, shooting

and killing ten classmates and teachers and wounding more than a dozen others. Survivors sued Luckygunner, alleging that it acted negligently and with willful blindness as to the age and identity of its customers. The lawsuit settled in 2023, after the Texas Supreme Court rejected Luckygunner's bid for dismissal.⁴³ The settlement required Luckygunner to maintain an age verification system.⁴⁴

The use of accessories in shootings has also prompted litigation. Often, a suit against an accessory maker alleges that the accessory enhanced the lethality of an attack, emboldened the shooter, or was intended to circumvent state or federal law by transforming a legal firearm into an illegal one. For example, in the 2017 Las Vegas music-festival shooting that resulted in the death of 61 people, the shooter notoriously used "bump stocks" to increase the rate of fire of his semiautomatic AR-15-style assault weapons.⁴⁵ In *Prescott v. Slide Fire Solutions, LP*, plaintiffs sued the maker of those bump stocks on several different theories, including a general negligence theory that the bump-stock manufacturer marketed its product as a means to convert an assault weapon into an illegal machine gun.⁴⁶ The court ruled

We must verify THE RECIPIENT'S age before we ship this order. If you enter an incorrect date of birth, or we are unable to verify the recipient's age using the information you provide, then the order will be held until we are able to verify the recipient's age. Your credit card WILL be charged once you select "Place Order".

Please verify [REDACTED]'s date of birth: [REDACTED] [REDACTED] [REDACTED] ⓘ

Place Order

⁴⁰ See 18 U.S.C. § 922(x)(1).

⁴¹ See Fourth Amended Petition and Request for Disclosure ¶¶ 73, *Yanas v. Pagourtzis*, No. CV0081158 (Tex. Galv. Cnty. Ct. Apr. 25, 2022), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2022/06/2022.04.25-4th-Amended-Petition-File-Stamped.pdf>.

⁴² See *id.* ¶ 22.

⁴³ See Press Release, Everytown for Gun Safety Support Fund, Everytown Law Announces Settlement Agreement Between Santa Fe High School Shooting Survivors and Online Ammunition Seller Luckygunner (Feb. 9, 2023), <https://everytownlaw.org/press/everytown-law-announces-settlement-agreement-between-santa-fe-high-school-shooting-survivors-and-online-ammunition-seller-luckygunner/>.

⁴⁴ See *id.*

⁴⁵ A semiautomatic firearm discharges one bullet for each pull of the trigger. An automatic firearm, also known as a machine gun, can discharge multiple bullets with a single trigger pull. A bump stock harnesses the recoil of a semiautomatic weapon to rapidly action the trigger without repeated finger movement by the shooter, allowing the gun to fire at a rate that approaches machine gun fire.

⁴⁶ See 410 F. Supp. 3d 1123, 1141-42 (D. Nev. 2019).

in the plaintiffs' favor at the motion-to-dismiss stage.⁴⁷

Another recurring issue is the sale of large-capacity magazines, generally defined as any detachable magazine capable of accepting more than 10 rounds of ammunition. During a mass shooting in Dayton, Ohio, the shooter used a drum magazine capable of holding 100 rounds of ammunition. Plaintiffs sued the company that manufactured the magazine on a theory that such an accessory serves no legitimate purpose and facilitates mass-casualty events like the Dayton shooting.⁴⁸ The case survived a motion to dismiss on PLCAA grounds and remains pending as of this writing.⁴⁹ While not every large-capacity magazine carries 100 rounds, large-capacity magazines are often used in mass shootings because they allow shooters to harm more people more quickly and reduce the frequency with which the shooter must reload and thus leave himself temporarily vulnerable.

G. New Avenue: Gun Industry Accountability Laws

Starting with New York in 2021, several states have passed laws that expressly regulate the gun industry, many of which contain private rights of action.⁵⁰

While these laws vary state-to-state, they typically share several common provisions, including:

1. Provisions requiring gun dealers to take reasonable precautions to prevent straw purchasing, theft, and gun trafficking, as well as other criminal misuse.
2. Provisions requiring gun manufacturers to ensure that the dealers to whom they sell firearms have reasonable precautions in place and are not facilitating straw purchasing or gun trafficking.
3. Prohibitions on unfair and deceptive marketing.
4. Express provisions stating that the firearms industry is governed by state unfair competition laws.
5. Provisions stating that knowing violations of these underlying requirements or prohibitions constitute a public nuisance.

Only a small number of suits have been filed under these laws thus far, while the gun industry is currently challenging most of these statutes on constitutional grounds in the federal courts, even in the absence of pending enforcement efforts. When bringing a lawsuit against the gun industry, it will be worth checking to see if your claim fits within one of these newly created causes of action. There is a discussion of state industry accountability laws at the end of Section IV – Predicate Exception, below, with more information.

⁴⁷ See *id.* at 1146.

⁴⁸ See Press Release, Brady, Victims of 2019 Mass Shooting in Dayton, Ohio, File First-of-Its-Kind Lawsuit Against Manufacturer of High-Capacity Magazine Used in the Shooting (Aug. 2, 2021), <https://www.bradyunited.org/press-releases/lawsuit-dayton-mass-shooting-high-capacity-magazine>.

⁴⁹ See *Green v. Kyung Chang Indus. USA, Inc.*, No. A-21-8387632-C (Nev. Dist. Ct. Mar. 23, 2022); see also *Kyung Chang Indus. USA, Inc. v. Eighth Jud. Dist. Ct.*, 525 P.3d 836 (Nev.) (denying petition for writ of mandamus challenging district court order denying motion to dismiss), *cert. denied* 144 S. Ct. 98 (2023). This case is discussed in more depth in Chapter III.A of this Manual.

⁵⁰ See N.Y. Gen. Bus. Law §§ 898-a to -e; see also Del. Code Ann. tit. 10, § 3930; N.J. Stat. Ann. § 2C:58-35; Cal. Civ. Code §§ 3273.50-.55; Haw. Rev. Stat. Ann. §§ 134-101 to -104; Wash. Rev. Code Ann. § 7.48.330; Colo. Rev. Stat. Ann. §§ 6-27-101 to -106; 815 Ill. Comp. Stat. Ann. 505/2BBBB; Md. Code Ann., Cts. & Jud. Proc. §§ 3-2301 to -2304. Of these, only New Jersey's and Maryland's laws lack private rights of action.

H. Non-Gun-Industry Defendants

There may also be non-gun-industry defendants whose negligence or misconduct contributes to instances of gun violence. While suits against non-gun-industry defendants are not the focus of this guide, it is worth briefly listing some examples.

1. **The Shooter and the Shooter's Family:** The shooter, of course, is responsible for his or her actions and can be sued, although he will typically be held accountable—and punished—through criminal prosecution. Additionally, there have been occasions where a shooter who is clearly unfit to have a gun gets one from a family member, or where parents miss obvious red flags and fail to intervene. Those family members may also be liable for negligence.⁵¹
2. **Government Agencies:** In several high-profile mass shootings, families and victims alleged liability on the part of the government for failing to comply with reporting obligations that could have prevented the shooter from obtaining a weapon or for failing to adequately investigate threats prior to the shooting. For example, survivors of the 2017 Sutherland Springs mass shooting obtained a \$230 million verdict against the federal government (later settled for a lesser amount, while an appeal was pending) based on a failure to properly report the shooter's domestic-

violence conviction while he was in the U.S. Air Force—a conviction that should have barred him from purchasing a firearm.⁵² Survivors of the 2018 Parkland school shooting settled with the FBI for \$127.5 million for its failure to investigate warnings about the shooter several weeks before the attack.⁵³

3. **Social Media Companies:** Often, mass shooters will have a troubling online presence and a history of radicalization through social media. After the mass shooting at the Tops supermarket in Buffalo, New York, several lawsuits named social media companies as defendants, on the theory that they addicted and then helped radicalize, arm, and train the shooter for his attack.⁵⁴ The plaintiffs alleged that, in order to maximize engagement with and addiction to their websites, the defendants specifically designed their products to promote radicalization, racist conspiracy theories, gun violence, and circumvention of gun safety laws.⁵⁵ More recently, families of victims of the Uvalde, Texas, school shooting have also sued social media and video game companies for their role in marketing assault weapons (and their use in simulated combat) to American teenagers.⁵⁶

⁵¹ See, e.g., Amended Complaint ¶¶ 273-94, *Roberts v. Smith & Wesson Brands, Inc.*, No. 22LA00000487 (III. Cir. Ct., July 2, 2024), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2025/02/2024.07.02-1.1-Roberts-v.-Smith-Wesson-Brands-First-Amended-Complaint-1.pdf> (alleging that Highland Park shooter's father sponsored his application for a firearm permit used to obtain murder weapon); Amended Complaint ¶¶ 298-304, *Harris-Stanfield*, *supra* note 21 (alleging that parents of Buffalo supermarket shooter negligently permitted their son to amass weapons and combat gear while living at their house).

⁵² Jacob Charles, *Government Faces Massive Civil Liability for Sutherland Springs Mass Shooting*, DUKE CTR. FOR FIREARMS L. (Feb. 9, 2022), <https://firearmslaw.duke.edu/2022/02/government-faces-massive-civil-liability-for-sutherland-springs-mass-shooting>.

⁵³ See *Families of Parkland Shooting Victims to Get \$127.5 Million for FBI's Inaction*, NBC NEWS (Mar. 16, 2022, 7:38 PM), <https://www.nbcnews.com/politics/justice-department/families-parkland-shooting-victims-get-1275-million-fbis-inaction-rcna20380>.

⁵⁴ *Buffalo Shooting Survivors Say Social Media Companies Enabled the Killer*, POLITICO (Aug. 16, 2023, 11:55 PM), <https://www.politico.com/news/2023/08/16/buffalo-shooting-survivors-say-social-media-companies-enabled-the-killer-00111598>; see also, e.g., Amended Complaint ¶¶ 150-83, *Harris Stanfield*, *supra* note 21.

⁵⁵ See, e.g., Amended Complaint, *Harris Stanfield*, *supra* note 21.

⁵⁶ See J. David Goodman, *Uvalde Families Accuse Instagram, 'Call of Duty' and Rifle Maker of 'Grooming' Gunman*, N.Y. TIMES (May 24, 2024), <https://www.nytimes.com/2024/05/24/us/uvalde-gun-instagram-activision-lawsuit.html>.

4. **Premises Liability:** Following the Las Vegas mass shooting, families of victims settled with the MGM Grand for \$800 million.⁵⁷ The lawsuits underlying this settlement alleged that MGM was negligent in failing to prevent the shooter from amassing an arsenal of more than 20 rifles in his hotel room, which he used to stage and then launch the attack on the Route 91 Harvest Music Festival below. Plaintiffs also sued the concert organizer for providing inadequate security and inadequate means of egress for concertgoers. Similarly, a lawsuit was filed in the wake of the July 2025 mass shooting at 345 Park Avenue in New York City against the building owner, building management company, and building security, alleging that they failed to adequately plan for, detect, or mitigate the threat of an armed assailant to building occupants.⁵⁸

⁵⁷ Richard A. Oppel Jr., *MGM Agrees to Pay Las Vegas Shooting Victims Up to \$800 Million*, N.Y. TIMES (Oct. 3, 2019), <https://www.nytimes.com/2019/10/03/us/mgm-las-vegas-shooting-settlement.html>.

⁵⁸ See Summons & Verified Complaint ¶¶ 55-82, 87-99, *Akhter v. Rudin Mgmt. Co., Inc.*, Index. No. 166122/2025 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 6, 2025), available at <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=HQFSW55hbqvfQLiDoFmmSA==>.

III. Is Your Lawsuit a Qualified Civil Liability Action?

In this chapter, we begin a two-step analysis of whether your lawsuit falls within PLCAA's scope.

1. Does your lawsuit meet the general definition of “qualified civil liability action” by being a:
 - ✓ civil action against a manufacturer, importer, or dealer
 - ✓ of a qualified product (a firearm, ammunition, or their components)
 - ✓ for damages or other relief resulting from the plaintiff's or third party's criminal or unlawful misuse of the firearm or ammunition?

***If NO:** your lawsuit is not covered by PLCAA. **If YES,** move on to step two, which is covered in subsequent chapters:*

2. Does your lawsuit satisfy any of PLCAA's exceptions?

Determining whether PLCAA applies to your lawsuit is a two-step analysis. The first question is whether the lawsuit meets the general definition of a “**qualified civil liability action**” (QCLA) under section 7903(5)(A) of the statute.⁵⁹ If so, the second question is whether any exceptions apply that would preclude dismissal.⁶⁰ This section analyzes step one: what types of lawsuits fall within the general definition of a QCLA, and what types of lawsuits fall outside the definition. If you determine that your lawsuit fits the general definition of a QCLA, then you should proceed to the second step and evaluate whether any of PLCAA’s exceptions apply (see, *infra*, Sections IV through VIII).

PLCAA’s operative clause prohibits bringing any “qualified civil liability action” in federal or state court.⁶¹ A qualified civil liability action is defined as:

A civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.⁶²

This definition is complicated by the fact that several of its terms have their own definitions (and those definitions also have embedded terms that are separately defined).

Understanding the complexities of what is and is not a QCLA requires looking at these incorporated definitions. The full text of PLCAA, annotated with several of the key cross-referenced definitions, is reprinted in an Appendix to this guide.⁶³

Three aspects of the QCLA definition that you should evaluate with particular care as they apply to your facts are (1) whether the defendant’s product is a “**qualified product**,” (2) whether the defendant is a “**manufacturer or seller**” of that product, and (3) whether your client’s injuries or the relief you seek resulted from the “**criminal or unlawful misuse**” of that product.

- ✓ A “**qualified product**” means a firearm or ammunition (as those are defined under federal law), or a component part of a firearm or ammunition, that has moved in interstate or foreign commerce.⁶⁴ It does not encompass firearm “accessories,” and there has been litigation over whether removable magazines, bump stocks, and firearm locks are covered “components” or non-covered “accessories” under PLCAA. Part III.A discusses “qualified product” in detail.
- ✓ A “**manufacturer or seller**” means different things depending on whether the defendant’s product is a firearm or ammunition. For firearms, only persons and companies that are licensed under federal law as a manufacturer, importer, or dealer of firearms fall within this definition and are protected by PLCAA.⁶⁵

⁵⁹ 15 U.S.C. § 7903(5)(A).

⁶⁰ *Id.*; see also, e.g., *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1131-32 (9th Cir. 2009) (determining first whether lawsuit met “the elements of that [QCLA] general definition,” then whether any of the “specified exceptions applies”); *Adames v. Sheahan*, 909 N.E.2d 742, 762 (Ill. 2009) (same).

⁶¹ 15 U.S.C. § 7902(a).

⁶² 15 U.S.C. § 7903(5)(A).

⁶³ In this section and those that follow, you will notice that we focus almost exclusively on 15 U.S.C. § 7903 (“Definitions”). In PLCAA, most of the work is done by this section. The other two sections of the statute are 15 U.S.C. § 7901, which is a preamble describing Congress’s findings and purposes, and 15 U.S.C. § 7902, which simply provides that “[a] qualified civil liability action may not be brought in any Federal or State court” and that any QCLA pending as of PLCAA’s effective date shall be dismissed. The Definitions section does the heavy lifting for PLCAA, and it will form the basis of almost all of your textual arguments.

⁶⁴ See 15 U.S.C. § 7903(4).

⁶⁵ 15 U.S.C. § 7903(2) (defining “manufacturer”); 15 U.S.C. § 7903(6)(A)-(B) (defining “seller”).

As explained in more detail below, unlicensed (often foreign) gun makers, and unlicensed sellers of build-at-home gun kits (sometimes referred to as “ghost guns”), fall outside the definition and are not covered by PLCAA.⁶⁶ For ammunition, manufacturers and importers must be licensed under federal law to fall within the definition, but ammunition sellers can be licensed or unlicensed and still qualify for PLCAA protection.⁶⁷ Federal law does not require ammunition sellers to have a federal firearms license (“FFL”), though many do because they sell both firearms and ammunition. Part III.B discusses “manufacturer or seller” in detail.

- ✓ The “**resulting from the criminal or unlawful misuse**” clause generally brings within the definition of QCLA cases seeking remedies that result from criminal use of the product, or from non-criminal “conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.”⁶⁸ While remedies for harms caused by criminal shootings will likely fall within this definition, harms caused by many types of unintentional shootings—such as those involving defective products—will not. Firearm suicide also may fall outside this definition, as it is typically

not prohibited by law.⁶⁹ This clause is of particular importance to government offices litigating under PLCAA, as many claims brought and remedies sought under consumer protection statutes are not dependent on (or “resulting from”) the existence of harms caused by shootings. Part III.C discusses “criminal or unlawful misuse” in detail.

Synthesizing the definitions in PLCAA and the cross-referenced portions of federal law, a QCLA is a lawsuit that meets the following requirements:

1. A civil⁷⁰ or administrative action or proceeding brought by any natural person⁷¹ or entity (including a governmental entity);⁷²
2. That is brought against:
 - a. A licensed manufacturer of firearms,⁷³ ammunition,⁷⁴ or components⁷⁵ thereof;
 - b. A licensed importer of firearms, ammunition, or components thereof;
 - c. A licensed seller of firearms,⁷⁶ or components thereof;⁷⁷
 - d. A licensed or unlicensed seller of ammunition;⁷⁸ or
 - e. A trade association;

⁶⁶ As discussed in Section II.D, in 2022, ATF promulgated an administrative rule that interpreted the Gun Control Act to apply to most gun kits and gun kit manufacturers. See *Bondi v. VanDerStok*, 604 U.S. 458, 464-65 (2025). Before this rule, many ghost gun kit manufacturers were unlicensed and claimed not to be manufacturing or selling firearms (though *VanDerStok* refutes that position). Since 2022, ghost gun kit manufacturers that remain in business should have federal firearms licenses (“FFLs”).

⁶⁷ 15 U.S.C. § 7903(2) (defining “manufacturer”); 15 U.S.C. § 7903(6)(c) (defining “seller” of ammunition).

⁶⁸ See 15 U.S.C. § 7903(9).

⁶⁹ See, e.g., *Brady v. Walmart Inc.*, No. 21-CV-1412, 2022 WL 2987078, at *3-4 (D. Md. July 28, 2022) (declining to find criminal or unlawful use of firearm and noting uncontested argument that “suicide has been decriminalized in Maryland”).

⁷⁰ See, e.g., *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1131-32 (9th Cir. 2009) (civil action).

⁷¹ See, e.g., *id.* (natural person).

⁷² See, e.g., *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 840-41 (D. Minn. 2023) (assuming that lawsuit brought by government entity fell within PLCAA’s general definition of QCLA, but concluding that exceptions applied); *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 429-34 (Ind. Ct. App. 2007) (same).

⁷³ See, e.g., *Ileto*, 565 F.3d at 1131-32 (manufacturer of firearms).

⁷⁴ See, e.g., *Doyle v. Combined Sys., Inc.*, No.22-CV-01536, 2023 WL 5945857, at *7 (N.D. Tex. Sep. 11, 2023) (manufacturer of rubber bullets and launchers).

⁷⁵ See, e.g., *Prescott v. Slide Fire Solutions, LP*, 341 F. Supp. 3d 1175, 1187-90 (D. Nev. 2018) (manufacturer and seller of firearm components).

⁷⁶ See, e.g., *Ileto*, 565 F.3d at 1131-32 (seller of firearms).

⁷⁷ See, e.g., *Prescott*, 341 F. Supp. 3d at 1180, 1190-91 (manufacturer and seller of firearm components).

3. That seeks any form of monetary or equitable relief;
4. For damages or other remedies resulting from the misuse of a firearm or ammunition that either constituted a crime or violated a statute, ordinance, or regulation.⁷⁹

Practice Pointer:

Most courts will find that cases brought by private plaintiffs against a member of the gun industry arising out of a criminal shooting will meet the general definition of a QCLA. While you should be sure that there are no arguments that your case falls outside this definition, it may make tactical sense to focus your arguments on invoking one or more of PLCAA's exceptions.

A. What is a “Qualified Product?”

Firearms and ammunition fall squarely within PLCAA's definition of a qualified product; that much is clear.⁸⁰ But the definition also covers “component part[s]” of firearms and ammunition,⁸¹ an undefined term that leads to questions about which particular products fall within this definition and which ones are excluded. There are only a handful of reported decisions on this issue, and thus litigants will have latitude to argue for or against the inclusion of any particular product within the definition. To some extent, however, courts have coalesced around an understanding that “component” means a part or product that is integral to the operation of the firearm,

and without which the firearm could not properly function as intended.⁸²

In *Mitchell v. River City Firearms, Inc.*, a Kentucky trial court concluded that a large-capacity magazine, a red-dot sight, and a vertical grip were accessories, not component parts. The large-capacity magazine was the closest question, but the court emphasized that the firearm did not require a magazine to “function and fire a shot.”⁸³ Similarly, in *Green v. Kyung Change Industry USA, Inc.*, a Nevada trial court found that a 100-round magazine is not a component part for purposes of PLCAA “because it is not required for the subject gun to operate and fire projectiles”—reasoning complemented by the fact that the magazine was not included with the firearm by the manufacturer.⁸⁴ Finally, in *Sambrano v. Savage Arms, Inc.*, the New Mexico Court of Appeals granted dismissal on PLCAA grounds against the manufacturer of a firearm, but stated that a cable lock sold with the firearm was “merely an accessory” and thus PLCAA did not bar claims against the lock's distributor.⁸⁵

By contrast, in *Salter v. Meta Platforms, Inc.*, a New York appellate court held that an aftermarket lock, designed to be affixed to an AR-15-style rifle to prevent the use of detachable magazines and render the firearm (allegedly, according to the lock manufacturer) compliant with New York law, was a “component part” rather than an “accessory” for purposes of PLCAA.⁸⁶

The court reasoned that the lock was “essential or integral to [the] use or operation” of the firearm, because it replaced an existing part—the magazine release button—which the court deemed a component

⁷⁸ See, e.g., *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216, 1222 (D. Colo. 2015) (holding that PLCAA protected ammunition seller).

⁷⁹ See, e.g., *Adames v. Sheahan*, 909 N.E.2d 742, 760-62 (Ill. 2009) (harm resulting from criminal or unlawful misuse).

⁸⁰ See 15 U.S.C. § 7903(4) (defining qualified product to include “a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of Title 18)” and “ammunition (as defined in section 921(a)(17)(A) of such title”).

⁸¹ *Id.*

⁸² See *Mitchell v. River City Firearms Inc.*, No. 24-CI-0518, slip op. at 4 (Jefferson Ky. Cir. Ct. May 19, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2024/01/Decision.pdf> (finding that an “accessory” “enhances the firearm's effectiveness or aesthetics,” while a “component part” is “essential to the functioning of the firearm”).

⁸³ *Mitchell*, slip op. at *3-4.

⁸⁴ No. A-21-838762-C, 2022 WL 987555, at *5 (Nev. Dist. Ct. Mar. 23, 2022).

⁸⁵ 338 P.3d 103, 105 (N.M. Ct. App. 2014).

⁸⁶ *Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 617 (App. Div. 2025).

part (even though the rifle could fire a single shot without it).⁸⁷

Similarly, a federal court in *Prescott v. Slide Fire Solutions, LP* held that bump stocks⁸⁸ are a component of a firearm once installed. The court reasoned that a bump stock becomes functionally the rifle's stock, and "a stock is an integral component of a rifle as it permits the firearm to be fired from the shoulder."⁸⁹ Thus, according to the court, because "a rifle cannot operate as a rifle without a stock," a bump stock that fulfills this role becomes a component "upon installation" even if it adds additional functionality to the weapon.⁹⁰

B. When is an Unlicensed Defendant a "Manufacturer or Seller?"

Because of criminal penalties for unlicensed dealing in firearms, the vast majority of importers, manufacturers, distributors, and dealers are likely to hold a federal firearms license (FFL), and thus qualify as a "manufacturer or seller" under PLCAA. The exception to this general rule is ammunition sellers, who fall within PLCAA's definition even without holding an FFL.⁹¹ Thus, most members of the gun industry are likely to count as manufacturers or sellers under the definition of a QCLA.⁹²

However, some entities nonetheless manufacture or sell qualified products without holding an FFL, and therefore fall outside PLCAA's protections. These defendants largely fall within two categories: (1) foreign manufacturers, and (2) unlicensed manufacturers and sellers of ghost guns (see Section II.D) above for a description of ghost guns).

One other important thing to bear in mind is that status as a licensed "manufacturer" or "seller" does not entitle a defendant to blanket PLCAA protection as to all of its product lines—particularly those that are not "qualified products."⁹³

i. Foreign Manufacturers

The Ninth Circuit's decision in *Ileto v. Glock, Inc.* is instructive on whether a defendant can claim PLCAA protection when it is unlicensed.⁹⁴ In *Ileto*, a foreign firearm manufacturer, China North, appealed a trial court's determination that it could not avail itself of PLCAA's protections because it did not have an FFL.⁹⁵ China North argued that because it was also a seller of ammunition, it therefore fell within the QCLA definition even though it lacked an FFL for either its firearm or ammunition lines of business.⁹⁶

⁸⁷ *Id.* The *Salter* court nevertheless allowed the action to proceed under PLCAA's predicate exception.

⁸⁸ A bump stock is a device that replaces a rifle's standard stock and allows the weapon to slide back and forth rapidly against the stock and grip, harnessing the energy from the firearm's recoil to allow the trigger to be depressed rapidly in succession by maintaining constant static pressure with the trigger finger. This greatly increases the firing rate in a way that mimics an automatic weapon (like a machine gun). See *Bump-Stock-Type Devices*, 83 Fed. Reg. 66514, 66515-16 (Mar. 26, 2019) (ATF final rule on bump stocks amending 27 C.F.R. 447.11, 478.11, and 479.11). This rule was declared invalid on unrelated grounds in *Garland v. Cargill*, 602 U.S. 406 (2024).

⁸⁹ 341 F. Supp. 3d 1175, 1189 (D. Nev. 2018).

⁹⁰ *Id.* at 1189-90. The court's qualification of this holding with the phrase "upon installation" underscores the weakness of its reasoning. The bump stock was sold separately from the rifle and installed after purchase, and thus was in no sense integral or essential to the rifle as manufactured and sold.

⁹¹ See 15 U.S.C. § 7903(6)(c) (defining "seller" of ammunition).

⁹² At least one plaintiff has argued that PLCAA only covers gun industry members *if a sale was completed*. But the Missouri Court of Appeals rejected this argument: "Under the plain language of the PLCAA, immunity is provided to manufacturers and sellers of qualified products regardless of whether a sale was made." *Hendrick v. Acad. I, LP*, 705 S.W.3d 585, 589 (Mo. Ct. App. 2024).

⁹³ *Mitchell v. River City Firearms Inc.*, No. 24-CI-0518, slip op. at 4 (Jefferson Ky. Cir. Ct. May 19, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2024/01/Decision.pdf> (finding that PLCAA did not apply because the products at issue were not "qualified products," even though the defendant distributor and manufacturer both had federal firearms licenses).

⁹⁴ 565 F.3d 1126, 1145 (9th Cir. 2009).

⁹⁵ *Id.* at 1131, 1145.

⁹⁶ *Id.* at 1145.

The Ninth Circuit was “unpersuaded” because “Plaintiffs’ claims concern only China North’s actions as a manufacturer and seller of firearms and have nothing to do with China North’s coincidental status as a seller of ammunition.”⁹⁷ The Court emphasized that following China North’s reasoning would “eviscerate” the requirement that a manufacturer have an FFL in order to claim PLCAA protection.⁹⁸ That is plainly the correct reading of the licensure requirement.

Similarly, the Minnesota Court of Appeals noted that PLCAA does not apply to Glock Ges.m.b.H., the Austrian parent corporation of U.S. gunmaker Glock, Inc., as the parent corporation does not hold a federal firearms license: “[W]e note that the PLCAA issues only affect the claims against Glock, Inc. The state asserts all of the same claims against Glock Ges.m.b.H., which concedes that the PLCAA does not apply to it.”⁹⁹

Practice Pointer:

If you are considering bringing suit against a foreign manufacturer of firearms, ammunition, or components thereof, your first step should be to check whether the manufacturer or its subsidiary is licensed by the ATF. The ATF publishes monthly a list of all FFLs on its Federal Firearms Listings page, both currently (with a slight lag) and for the last several years, and broken down nationally and by state/territory.¹⁰⁰

ii. Manufacturers and Sellers of Ghost Guns

Many manufacturers and sellers of ghost gun kits and component parts have, historically, taken the position that their products are not firearms and therefore that they do not need to possess an FFL (or complete a background check or comply with other aspects of the Gun Control Act when making a sale to the public).¹⁰¹ Accordingly, many of these manufacturers and sellers were unlicensed, and any lawsuit against them was not a QCLA. This paradigm has shifted after the ATF’s 2022 Ghost Gun Rule and the *VanDerStok* decision upholding it: today, most gun kit and component manufacturers must have an FFL.

If, however, you find yourself litigating against an unlicensed ghost gun manufacturer or seller, you should argue that PLCAA does not apply as the case is not a QCLA. This argument was successfully deployed in *Tretta v. Osman*, brought by a survivor of a school shooting against the seller of a ghost gun kit that was ordered and assembled by a prohibited possessor and then used by his underage son to kill two classmates and injure three others at the local high school.¹⁰² The defendant manufacturer, who did not possess an FFL, claimed immunity from suit under PLCAA on a demurrer to the complaint. The court rejected the invocation of PLCAA for several reasons, including that the defendant was not a licensed dealer and thus the lawsuit against it was not a QCLA.¹⁰³ The court then reaffirmed this conclusion when denying the defendant’s subsequent motion for summary judgment, noting that “the lack of a[n] FFL bars any protections under the PLCAA regarding the duties of care from the lawful sale of firearms.”¹⁰⁴

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Minnesota v. Glock, Inc.*, No. A25-1567, 2025 WL 2992700, at *1 (Minn. Ct. App. Oct. 21, 2025).

¹⁰⁰ See ATF, *Federal Firearms Listings*, <https://www.atf.gov/firearms/listing-federal-firearms-licensees> (last visited January 29, 2026).

¹⁰¹ See, e.g., *Tretta v. Osman*, No. 20 STCV48910, 2022 WL 3334319, *2 (Cal. Super. Ct. Los Angeles Cnty. June 29, 2022) (“Defendant seeks a ruling finding the subject kit falls outside the definition of a firearm, thereby relieving any finding of a duty to conduct a background check on the purchaser....”), <https://everytownlaw.org/wp-content/uploads/sites/5/2022/07/2022.06.29-Summary-Judgment-Order-2.pdf>.

¹⁰² See Complaint at ¶¶ 1-4, *Tretta v. Osman*, No. 20STCV48910 (Cal. Super. Ct. Los Angeles Cnty. Dec. 22, 2020), <https://everytownlaw.org/wp-content/uploads/sites/5/2021/06/2020.12.22-Complaint.pdf>.

¹⁰³ See *Tretta v. Osman*, No. 20 STCV48910, Minute Order at *5 (Cal. Super. Ct. Los Angeles Cnty. June 28, 2021), https://everytownlaw.org/wp-content/uploads/sites/5/2021/06/2021.06.28_Minute_Order_MINUTE_ORDER_HEARING_ON_DEMURRER_WIT.pdf.

¹⁰⁴ See *Tretta*, *supra* note 101, 2022 WL 3334319 at *3.

A federal court in New York reached a similar conclusion in *New York v. Arm or Ally, LLC*.¹⁰⁵ In that case, an enforcement action by the New York Attorney General under the state’s firearms industry accountability law, the court denied a motion to dismiss on PLCAA and other grounds by ghost-gun manufacturers and sellers, some of whom held no FFL. As to the unlicensed defendants, the court held that they “cannot invoke the PLCAA at all because the statute does not apply to any entity who is not an FFL.”¹⁰⁶

Sidebar:

The Gun Control Act requires anyone engaged in the business of manufacturing firearms to obtain a federal firearms license. The statute has long defined “firearm” to include both a fully assembled weapon and its core component part: the frame (for handguns) or receiver (for rifles and shotguns).¹⁰⁷ Licensed manufacturers must engrave a serial number on any firearm they produce, including a frame or receiver. However, for several years, a cottage industry exploited a perceived gap in the law by manufacturing and selling *partially finished* frames and receivers—core components that needed some extra drilling or machining before they could be assembled with other parts to make a complete, functional firearm.

Manufacturers often sold these unserialized frames and receivers with jigs, drill bits, instructions, parts, and other items that made building a firearm a DIY project. Anyone with a credit card could buy everything needed to make a gun, no background check or record-keeping required.

The homemade firearms made with these products are known as “ghost guns” because they lack a background check and a serial number and cannot readily be traced to a manufacturer, dealer, or purchaser. (“Ghost gun” can also refer to a firearm constructed with 3D-printed parts.) Some manufacturers and distributors obtained federal firearms licenses. Others did not, and took the position that federal law did not require them to do so because they produced and sold nothing that ATF classified as a firearm.

Recognizing the public safety threat posed by ghost guns, ATF issued new regulations that took effect in August 2022 that confirmed that many partially-finished frames and receivers and “weapons parts kits” are firearms.¹⁰⁸ The Supreme Court in *Bondi v. VanDerStok* upheld this rule, and today, gun kit manufacturers must be licensed.¹⁰⁹

C. “Criminal or Unlawful Misuse”— Product Defect Litigation

The final component of a QCLA is that the plaintiff’s injuries or the remedies sought resulted from the criminal or unlawful misuse of a firearm or other qualified product. In most cases in which private plaintiffs are seeking remedies resulting from assault, homicide, and other forms of criminal activity, this element is basically a foregone conclusion.¹¹⁰ But in some unintentional shootings, the injury does not result from a criminal or unlawful act, and PLCAA does not apply. This is true, for example, of many product defect lawsuits, such as cases involving firearms that discharge when dropped or jostled, or when being assembled or disassembled

¹⁰⁵ 718 F. Supp. 3d 310 (S.D.N.Y. 2024), *motion to certify appeal granted*, No. 22-CV-6124 (JMF), 2024 WL 2270351 (S.D.N.Y. May 20, 2024).

¹⁰⁶ *Id.* at 329 n.9 (alteration adopted and citation omitted).

¹⁰⁷ See 18 U.S.C. § 921(a)(3).

¹⁰⁸ See 27 C.F.R. §§ 478.11, 478.12; 87 Fed. Reg. 24,652 (Apr. 26, 2022).

¹⁰⁹ *Bondi v. VanDerStok*, 604 U.S. 458, 468 (2025).

¹¹⁰ We note that PLCAA’s preamble states that the purpose of the statute is to “prohibit causes of action” against the gun industry “for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products . . .” 15 U.S.C. § 7901(b)(1). Some plaintiffs have tried to argue that PLCAA’s protections only apply when the criminal or unlawful misuse is the sole cause of the injury. Courts have rejected this argument, reasoning that this interpretation would relegate PLCAA’s exceptions to surplusage. See, e.g., *Gustafson v. Springfield, Inc.*, 333 A.3d 651, 660, 665-67 (Pa. 2025).

for cleaning. PLCAA was not a bar, for example, to a series of lawsuits against Sig Sauer alleging that its P320 pistols discharged without their triggers being pulled. The plaintiffs in those cases were typically gun owners injured when their guns discharged on their own.¹¹¹

Another category of product defect cases that may fall outside the definition of a QCLA are cases arising out of the unintentional discharge of a gun by a young child. In *Chavez v. Glock, Inc.*, the California Court of Appeal (Second District) considered an unintentional shooting by a three-year-old boy of his police officer father, using his father's service weapon that he had found under a car seat.¹¹² The parties had "presumed" that Chavez's case fell within the statutory definition of a QCLA, but the court expressed "serious doubts whether this assumption was correct and whether Chavez's action is a qualified civil liability action as defined by the PLCAA."¹¹³

Because the shooter was only three, there was little basis for Glock to contend that his acts were criminal as a basis to invoke PLCAA. Instead, Glock focused on the father's alleged misconduct in storing the gun, arguing that this had violated California's penal code.¹¹⁴ But a contested issue of fact precluded judgment in Glock's favor: the father contended that he was keeping his gun at the ready while off-duty in accordance with police department policy—furnishing a potential exception to California's secure storage rules.¹¹⁵

On the other hand, three state high courts have been of the view that cases involving unintentional shootings by older children should be considered QCLAs and subject to PLCAA—particularly if there is evidence that the gun was deliberately pointed at someone, or if the shooter was later adjudicated delinquent. In *Adames v. Sheahan*,¹¹⁶ the Illinois Supreme Court considered a case involving a 13-year-old who fatally shot his friend with a semiautomatic handgun after pointing it at the victim and pulling the trigger, believing the gun to be unloaded. The shooter was adjudicated a delinquent based on a finding that he had committed involuntary manslaughter, which the court found to be criminal and unlawful misuse of a firearm for purposes of PLCAA.¹¹⁷ In *Gustafson v. Springfield, Inc.*, the Pennsylvania Supreme Court reached a similar conclusion on similar facts.¹¹⁸ The Kansas Supreme Court applied similar reasoning in *Johnson v. Bass Pro Outdoor World, LLC*, involving a young adult who discharged a firearm while attempting to disassemble it in a car, striking a passenger.¹¹⁹ The Court concluded that this constituted the crime of discharging a firearm on a public road even though the shooter was never charged, rendering PLCAA's product defect exception inapplicable.¹²⁰

The bottom line is that the shooter's age, as well as other factual details about how the gun was stored, accessed, and handled, can matter a great deal in determining whether injuries from an unintentional shooting were the product of a "criminal or unlawful misuse" of the gun and

¹¹¹ For a detailed write-up of this problem, see Champe Barton & Tom Jackman, *One of America's Favorite Handguns is Allegedly Firing on its Owners*, THE TRACE (Apr. 11, 2023), <https://www.thetrace.org/2023/04/sig-sauer-p320-upgrade-safety/>; see, e.g., *Armendariz v. Sig Sauer, Inc.*, No. 1:22-CV-00536-JL, 2023 WL 4204666, *1 (D.N.H. June 27, 2023) (outlining the consolidated cases against Sig Sauer); *Glasscock v. Sig Sauer, Inc.*, No. 6:22-CV-03095-MDH, 2025 WL 2147385 (W.D. Mo. July 28, 2025) (granting a motion to certify a damages class against Sig Sauer).

¹¹² 207 Cal. App. 4th 1283, 1290-92 (2012).

¹¹³ *Id.* at 1317-18. Regardless, the court allowed Chavez' claim against Glock to proceed under PLCAA's product defect exception. See *id.* at 1317-18.

¹¹⁴ *Id.*

¹¹⁵ *Id.* This passage also highlights an important consideration: in some instances, whether a lawsuit is a QCLA cannot be decided at the motion to dismiss stage because it requires factual development.

¹¹⁶ 909 N.E.2d 742, 745-46 (Ill. 2009).

¹¹⁷ *Id.* at 738-39.

¹¹⁸ See 333 A.3d at 670-73.

¹¹⁹ 567 P.3d 810, 814-15 (Kan. 2025).

¹²⁰ *Id.* at 815-16.

therefore fall within the definition of a QCLA. However, for product defect cases in particular it is important to remember that the application of PLCAA proceeds in two steps, and that even if your case fits the general definition of a QCLA, there is a specific exception to PLCAA that allows certain types of product defect claims. This product defect exception is discussed in more detail in Section VII—Product Defect Exception, below.

D. “Criminal or Unlawful Misuse”— Other Categories

Beyond product defect, there are a few other categories of lawsuit where the injury or relief sought will likely not have resulted from the “criminal or unlawful misuse” of a firearm, and therefore fall outside the definition of a QCLA and preclude the defendant from invoking PLCAA. One such type of case is firearm suicide, because suicide is decriminalized in many states.¹²¹

This is also an area where careful pleading is necessary. In *Brady v. Walmart, Inc.*, the family of a man who died by firearm suicide sued the store where he both worked and had purchased the gun, after he used it to kill himself in a nearby parking lot.¹²² The store moved for judgment on the pleadings, arguing that the decedent had violated a state law prohibiting “discharge [of] a gun or weapon on the land of another without first obtaining written permission from the owner or possessor of the land.”¹²³ According to the store, this was an “unlawful misuse” of the firearm and thus a basis to invoke PLCAA. But, because the pleadings did not contain details about

on whose property the decedent had died, the court denied the defendant’s motion. It explained that “[t]o simply presume that the parking lot was owned by a third party from which [decedent] lacked permission, without any allegations in the pleadings, one way or the other, would be inapposite to the relevant standard of review at this stage of the proceedings.”¹²⁴

In contrast to self-inflicted injury, injuries caused by law enforcement misconduct can fall *within* the definition of a QCLA, shielding the manufacturers and sellers of police weaponry from liability. This outcome is somewhat intuitive where police misconduct is so egregious that it results in criminal charges for the officers. But even where officers are not charged with a crime, one court has held that law enforcement violation of federal civil rights laws can constitute “unlawful misuse” of a firearm and trigger PLCAA protections for the makers and sellers of the weapons and ammunition involved. Thus, in *Doyle v. Combined Systems, Inc.*, injuries caused by the Dallas Police Department’s use of rubber bullets for crowd control counted as a QCLA where the injured plaintiffs had filed a separate civil rights claim against the officers involved.¹²⁵ Plaintiffs’ contention in the separate civil-rights lawsuit that the officers’ conduct violated 42 U.S.C § 1983 counted as a “non-binding admission[]” that the firearms and bullets were “unlawfully misused” for purposes of PLCAA.¹²⁶ The court then held that the lawsuit against the manufacturers and sellers of the launchers and rubber bullets was a QCLA.¹²⁷

¹²¹ Compare Md. Code Ann., Crim. Law § 3-101.1 (“Attempted suicide is not a crime in the State.”) with *Fee v. Ellison*, 90 Va. Cir. 251, *1 (2015) (noting that suicide “remains a common law crime in Virginia”) (quotation omitted).

¹²² No. 21-CV-1412, 2022 WL 2987078, at *2 (D. Md. July 28, 2022).

¹²³ *Id.* at *3 (quoting Md. Code Ann., Crim. Law § 4-108(a)).

¹²⁴ *Id.* at *4. The court revisited the issue on summary judgment, concluding based on new evidence that the discharge was unauthorized and thus that the lawsuit was a QCLA. However, it also held that both the predicate and negligent entrustment exceptions applied and allowed the case to proceed to a jury. *Brady v. Walmart Inc.*, 21-CV-01412, 2024 WL 2273382, *7, *14, *17 (D. Md. May 20, 2024).

¹²⁵ No. 22-CV-01536, 2023 WL 5945857, *7 (N.D. Tex. Sept. 11, 2023).

¹²⁶ *Id.* at *7-8.

¹²⁷ See *id.* The court also noted that several officers had been charged criminally in connection with the shootings, but made clear that its ruling was based exclusively on the alleged civil rights violations rather than any allegedly criminal conduct. See *id.* at *8 (“[T]he Court makes clear that it does not rely on the Dallas County District Attorney’s allegations in the Separate Criminal Proceedings against the DPD officers who allegedly shot Plaintiffs. Plaintiffs may fairly be expected to explain their own earlier admissions in subsequent pleadings or briefing, but Plaintiffs cannot be presumed to possess sufficient information to rebut the allegations of the District Attorney at the pleading stage.”).

Finally, it bears note that many cases to enforce antitrust, consumer protection, environmental protection, and similar statutes may not be QCLAs—and this may include many actions brought by state or local governments to enforce new industry accountability laws, as discussed above at Section II.G. In such cases, the harm or legal violation or remedies sought often are not related to and/or dependent on any criminal or unlawful misuse of firearms and ammunition, but rather the effects on competitors, consumers, the general public, and the environment. This argument prevailed in *People v. Blackhawk Manufacturing Group, Inc.*, a case brought by the San Francisco District Attorney in August 2021 against a group of ghost gun manufacturers and retailers alleging violations of California’s unfair competition and false advertising laws.¹²⁸ Plaintiff contended that the ghost gun companies had engaged in a variety of unfair forms of competition by misleading consumers about the legality of their products and failing to properly disclose the legal ramifications and obligations of manufacturing firearms.¹²⁹ Defendants moved for judgment on the pleadings, citing PLCAA, but plaintiffs opposed, arguing that PLCAA was inapplicable where the claims “seek to hold Blackhawk liable for its direct violations of California and federal law—not for harm ‘solely caused’ by the criminal ‘misuse’ of its products by the parties.”¹³⁰ The court sided with

plaintiffs, holding that PLCAA did not apply because “this is not a qualified civil liability action under the PLCAA as the relief sought here does not result from the criminal or unlawful misuse of a qualified product by the [plaintiff] or a third party.”¹³¹ The City of Los Angeles raised a similar argument as to claims against a different ghost gun company, Polymer80, but the lawsuit settled before the court issued a ruling.¹³²

E. Final Aside: Constitutional Challenges to PLCAA

Since PLCAA’s enactment, some plaintiffs have argued that the statute is unconstitutional. These constitutional arguments have thus far been unsuccessful. The types of challenges have changed over time, with early plaintiffs whose cases were pending at the time of PLCAA’s enactment arguing that Congress had violated the separation of powers doctrine by directing the judicial branch to reach a particular outcome in the case.¹³³ Subsequent cases have raised challenges under the First Amendment,¹³⁴ the Due Process Clause,¹³⁵ the Takings Clause,¹³⁶ the Equal Protection Clause,¹³⁷ and the Tenth Amendment.¹³⁸ Courts have fairly uniformly rejected these arguments to date.¹³⁹ Analyzing the constitutionality of PLCAA is beyond the scope of this manual.

¹²⁸ Complaint, *People v. Blackhawk Mfg. Grp. Inc.*, No. CGC-21-594577 (Cal. Super. Ct. San Francisco Cnty. Aug. 18, 2021), <https://everytownlaw.org/wp-content/uploads/sites/5/2026/02/2021.08.18-Complaint-People-v.-Blackhawk.pdf>.

¹²⁹ *Id.* ¶¶166-69, 171-72.

¹³⁰ *People v. Blackhawk Mfg Grp Inc.*, No. CGC-21-594577, Order at 5 (Cal. Super. Ct. San Francisco Cnty. May 2, 2023) (quoting opposition brief) <https://everytownlaw.org/wp-content/uploads/sites/5/2026/02/2023.05.02-Order-People-v.-Blackhawk.pdf>.

¹³¹ *Id.* at 8.

¹³² See Plaintiffs’ Opposition to Defendant’s Motion for Judgment on the Pleadings at 4-5, *People v. Polymer80, Inc.*, No. 21STCV06257 (Cal. Super. Ct. Los Angeles Cnty. May 8, 2023) <https://everytownlaw.org/wp-content/uploads/sites/5/2023/05/2023.05.08-Pl.s-Oppn-to-Def.s.-Motion-for-Judgment-on-the-Pleadings-or-for-a-Stay.pdf>.

¹³³ See, e.g., *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 167 (D.C. 2008); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 395-96 (2d Cir. 2008); *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1138-39 (9th Cir. 2009); *Estate of Kim v. Coxe*, 295 P.3d 380, 389-90 (Alaska 2013).

¹³⁴ See, e.g., *N.Y. v. Beretta*, 524 F.3d at 397-98; *Kim*, 295 P.3d at 390.

¹³⁵ See, e.g., *Ileto*, 565 F.3d at 1140-42; *Kim*, 295 P.3d at 390; *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 324 (Mo. 2016).

¹³⁶ See, e.g., *D.C. v. Beretta*, 940 A.2d at 180-82.

¹³⁷ See, e.g., *Kim*, 295 P.3d at 391-92.

¹³⁸ See, e.g., *N.Y. v. Beretta*, 524 F.3d at 396-97; *Adames v. Sheahan*, 909 N.E.2d 742, 764 (Ill. 2009); *Kim*, 295 P.3d at 388-89; *Delana*, 486 S.W.3d at 323.

¹³⁹ See, e.g., *Gustafson v. Springfield, Inc.*, 333 A.3d 651, 673-83 (Pa. 2025) (rejecting plaintiffs attempts to invalidate PLCAA as unconstitutional).

Further Reading on Qualified Civil Liability Actions:

Key Cases

- ***Delana v. CED Sales, Inc.***, 486 S.W.3d 316 (Mo. 2016) (applying two-step analysis to conclude that negligent entrustment claim against store that sold firearm to mentally ill woman was a QCLA but fell within an exception to PLCAA)
- ***Williams v. Beemiller, Inc.***, 952 N.Y.S.2d 333 (App. Div. 2012) (applying two-step analysis to claim arising from shooting using straw purchased gun, concluding that claim was a QCLA but fell within predicate exception), *opinion amended on reargument*, 962 N.Y.S.2d 834 (App. Div. 2013)
- ***Ileto v. Glock, Inc.***, 565 F.3d 1126 (9th Cir. 2009) (applying two-step analysis, and concluding that unlicensed foreign firearm manufacturer could not invoke PLCAA but that tort claims against FFLs were barred because they did not fall within predicate exception despite codification of California tort law)
- ***Adames v. Sheahan***, 909 N.E.2d 742 (Ill. 2009) (affirming summary judgment for defendant gun manufacturer in case arising from unintentional shooting by teenager, and holding that shooting constituted “criminal or unlawful misuse” where shooter was adjudicated delinquent as a result)
- ***Chavez v. Glock, Inc.***, 144 Cal. Rptr. 3d 326 (Cal. App. 2012) (assuming—but expressing “serious doubts” about whether—product defect claim arising from unintentional shooting was a QCLA, but finding that questions of material fact precluded judgment for defendants as to whether plaintiff’s improper storage of firearm constituted a “criminal or unlawful misuse”)
- ***Chiapperini v. Gander Mountain Co.***, 13 N.Y.S.3d 777 (N.Y. Sup. Ct. 2014) (applying two-step analysis to conclude that claim relating to straw-purchased gun used in homicides of first responders was a QCLA but fell within PLCAA exceptions)
- ***Corporan v. Wal-Mart Stores E., LP***, No. 16-CV-2305, 2016 WL 3881341 (D. Kan. July 18, 2016) (applying two-step analysis to conclude that claim relating to straw-purchased gun used in homicide was a QCLA but would fall within PLCAA exceptions if amended)
- ***Al-Salihi v. Gander Mountain, Inc.***, No. 11-CV-00384, 2013 WL 5310214 (N.D.N.Y. Sept. 20, 2013) (applying two-step analysis to conclude that claim against gun store that sold firearm used in mass shooting was a QCLA and did not fall within PLCAA’s negligent entrustment exception)
- ***Salter v. Meta Platforms, Inc.***, 240 N.Y.S.3d 610, 617 (App. Div. 2025) (holding that an after-market magazine lock was a component part of a firearm and was, therefore, a qualified product under PLCAA)

Further Reading on Qualified Civil Liability Actions:

Additional Cases

- ***In re Academy, Ltd.***, 625 S.W.3d 19 (Tex. 2021) (claim against store that sold rifle and large-capacity magazine used in Sutherland Springs, TX, church shooting was a QCLA, and did not fall within PLCAA's predicate or negligent entrustment exceptions)
- ***Prescott v. Slide Fire Solutions, LP***, 410 F. Supp. 3d 1123 (D. Nev. 2019) (bump stock was a firearm component and therefore a "qualified product" for purposes of QCLA definition, but claim against manufacturer could proceed under PLCAA's predicate exception)
- ***Sambrano v. Savage Arms, Inc.***, 338 P.3d 103, 105 (N.M. Ct. App. 2014) (cable lock packaged with rifle was not a "component" within meaning of "qualified product" for purposes of QCLA, and thus lock distributor was not protected by PLCAA)
- ***New York v. Arm or Ally, LLC***, 718 F. Supp. 3d 310 (S.D.N.Y. 2024) (seller of ghost gun parts and/or kit was not a "seller" of firearms within definition of QCLA where it was not a licensed FFL, and thus could not invoke PLCAA)
- ***Brady v. Walmart, Inc.***, No. 21-CV-1412, 2022 WL 2987078 (D. Md. July 28, 2022) (claim relating to sale of gun used in suicide was not a QCLA, because suicide was not "criminal or unlawful misuse" and court could not resolve at the pleading stage whether discharge of firearm was unlawful at the location where suicide took place)
- ***Martinez v. Taurus Int'l Mfg., Inc.***, 251 So. 3d 328 (Fla. 3d DCA 2018) (where gun manufacturer contended that purchase and possession of a firearm used to commit suicide constituted "criminal or unlawful misuse" under PLCAA because of purchaser/decendent's drug use, court vacated summary judgment for defendant because of factual dispute over extent and timing of drug use)
- ***Doyle v. Combined Systems, Inc.***, No. 22-CV-01536, 2023 WL 5945857 (N.D. Tex. Sept. 11, 2023) (civil rights violations by law enforcement could constitute "unlawful misuse" within meaning of QCLA, and thus preclude liability on the part of the manufacturers or sellers of police weaponry)
- ***King v. Klocek***, 133 N.Y.S. 3d 356 (N.Y. Sup. Ct. 2020) (applying two-step analysis to conclude that claim relating to sale of handgun ammunition to minor used in shooting was a QCLA but fell within PLCAA's predicate exception)

Further Reading on Qualified Civil Liability Actions:

- ***Noble v. Shawnee Gun Shop, Inc.***, 409 S.W.3d 476 (Mo. Ct. App. 2013) (claim against store that sold ammunition and magazines used in mass shooting was QCLA but fell within PLCAA's negligent entrustment exception, but failed to state a viable claim under state law), *abrogated in part by Delana v. CED Sales, Inc.*, 486 S.W.3d. 316 (Mo. 2016)
- ***Ryan v. Hughes-Ortiz***, 959 N.E.2d 1000 (Mass. App. Ct. 2012) (claim arising from self-inflicted injury by felon who had stolen handgun was QCLA, because theft and possession while being a felon constituted “criminal or unlawful misuse” within meaning of PLCAA)

IV. Predicate Exception

In this chapter, we continue the two-step analysis of whether your lawsuit falls within PLCAA's scope.

First, you should determine whether your lawsuit is a “qualified civil liability action,” as described in the prior chapter. If it is, then you will need to determine whether one of PLCAA's exceptions apply. This chapter will help you learn whether the **predicate exception** will allow you to proceed with your lawsuit.

Your lawsuit may proceed under the predicate exception if:

- ✓ the defendant violated a law applicable to the sale or marketing of firearms and ammunition;
- ✓ the violation was knowing;
- ✓ the violation proximately caused harm; and
- ✓ your claims are independently viable under the laws of your jurisdiction.

We will also examine other issues related to the predicate exception, including:

- ✓ how satisfying the predicate exception may allow you to bring negligence and other additional claims;
- ✓ how new “industry accountability laws” passed in many states can satisfy the predicate exception.

If the parties and claims in your client’s lawsuit fall within the general definition of a Qualified Civil Liability Action (QCLA), you will need to successfully invoke one or more exceptions to PLCAA in order to avoid dismissal.¹⁴⁰ If you think of PLCAA as a door that bars access to the courthouse for certain claims against the gun industry, its exceptions can be thought of as keys that unlock that door. Of these, the predicate exception arguably opens the courthouse door to the widest variety of claims. But while the predicate exception can provide access to court, it is important to understand that none of PLCAA’s exceptions—the predicate exception included—are themselves a basis for liability, as PLCAA expressly states that it does not create a cause of action.¹⁴¹ You will still need to plead one or more viable statutory or common law claims.

The predicate exception excludes from the definition of a QCLA any “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.”¹⁴² This breaks down to three elements: a lawsuit can proceed notwithstanding PLCAA if the gun industry defendant (1) violated a statute applicable to the marketing or sale of firearms, ammunition, or their components, (2) that violation was knowing, and (3) it was a proximate cause of the plaintiff’s injury.¹⁴³ This reference to an underlying statutory violation is what gives the predicate exception its name.

As Justice Kagan put it:

If a plaintiff can show that provision is satisfied—that, say, a manufacturer committed a gun-sale violation proximately causing the harm at issue—then a suit can proceed, even though it arises from a third party’s later misuse of a gun. Or otherwise said, the predicate violation opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.¹⁴⁴

Chiapperini v. Gander Mountain provides a useful illustration about how the predicate exception works in practice.¹⁴⁵ In that case, the plaintiffs were representatives of four firefighters ambushed by a convicted felon with an assault weapon while responding to a 911 dispatch on Christmas Eve 2012. The shooter, who was prohibited from possessing firearms, had acquired the assault weapon in an obvious straw purchase at a local retailer, Gander Mountain. The plaintiffs brought a negligence claim (among others) against Gander Mountain for facilitating the illegal gun sale. The negligence claim was supported by allegations that Gander Mountain had violated numerous provisions of the federal Gun Control Act, including by falsifying federal gun transaction records when making the sale.¹⁴⁶ The court rejected Gander Mountain’s motion to dismiss under PLCAA, holding that the negligence claim predicated on alleged violations of federal gun laws satisfied the predicate exception.¹⁴⁷

¹⁴⁰ This manual refers to PLCAA’s “exceptions” because PLCAA itself does so, see 15 U.S.C. § 7903(5)(C), as does the United States Supreme Court, see *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025).

¹⁴¹ 15 U.S.C. § 7903(5)(C).

¹⁴² *Id.* § 7903(5)(A)(iii).

¹⁴³ See, e.g., *Doyle v. Combined Sys., Inc.*, No. 3:22-CV-01536-K, 2023 WL 5945857, at *9 (N.D. Tex. Sept. 11, 2023) (predicate exception requires proof of a knowing violation of a statute applicable to the sale or marketing of a qualified product, plus proximate causation).

¹⁴⁴ *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025); see also *Ileto v. Glock, Inc.*, 565 F.3d 1126,1132 (9th Cir. 2009) (internal quotations omitted); *Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 274 n.12 (Conn. 2019); *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 337 (App. Div. 2012).

¹⁴⁵ *Chiapperini v. Gander Mountain Co.*, 13 N.Y.S.3d 777 (Sup. Ct. 2014).

¹⁴⁶ *Id.* at 786 (citing 18 U.S.C. § 922(m)).

¹⁴⁷ *Id.* at 786–88.

As the above example illustrates, the predicate statute that is violated does not need to provide—and often does not provide—the cause of action itself.¹⁴⁸ Rather, a complaint that brings a claim for negligence (or a similar common law tort) is viable pursuant to the predicate exception so long as the tortious conduct also constituted a knowing violation of a predicate statute that was a proximate cause of the harm.¹⁴⁹ This section covers what counts as a qualifying statute and what else is required to successfully invoke the exception.

Before diving into the main elements of the predicate exception, it is worth noting that this is the only PLCAA exception that provides examples of qualifying cases. The text of the predicate exception states that it includes:

- I. Any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or

fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

- II. Any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18.¹⁵⁰

These examples are illustrative, not exhaustive: no court has held that the enumerated statutes are the only ones that will qualify under the predicate exception.¹⁵¹ However, as explained below, some courts have looked to this list to varying degrees for guidance as to what qualifies as a valid predicate statute (among other techniques for statutory interpretation).¹⁵²

¹⁴⁸ See *Stanisic v. Sturm, Ruger & Co., Inc.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *21 (Conn. Super. Ct. Nov. 12, 2025) (collecting cases and writing that “a statute does not need to create a private right of action, or a particular remedy under a private right of action, in order to qualify as a predicate statute under the PLCAA”). Further support for this conclusion can be found in the text of PLCAA itself, which lists as examples statutes (18 U.S.C. § 922(g) and (n)) that do not have private rights of action and instead are enforced through criminal prosecution by the U.S. government. See 15 U.S.C. § 7903(5)(A)(iii)(II).

¹⁴⁹ See, e.g., *King v. Klocek*, 133 N.Y.S.3d 356 (App. Div. 2020) (permitting negligence case to proceed against gun store that sold handgun ammunition to an underage individual in violation of Gun Control Act); *Williams*, 952 N.Y.S.2d at 33-38 (permitting negligence and public nuisance claims to go forward where plaintiff alleged dealer’s violation of Gun Control Act provisions relating to straw purchasing, along with liability for aiding and abetting the illegal purchases); *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 434-35 (Ind. Ct. App. 2007) (allowing negligence and public nuisance claims to proceed predicated on alleged violation of a statutory public nuisance law); *Corporan v. Wal-Mart Stores E., LP*, No. 16-CV-2305, 2016 WL 3881341, *3-4 (D. Kan. July 18, 2016) (permitting negligence claim to proceed where the defendant’s alleged conduct, with anticipated amendments to the complaint, violated Gun Control Act provisions relating to straw purchasing); *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1138-40 (D. Nev. 2019) (denying motion to dismiss of negligence claim against bump stock manufacturer where plaintiffs alleged manufacturer’s predicate violation of Nevada’s Deceptive Trade Practices Act); *Brady v. Walmart Inc.*, No. 8:21-cv-1412, 2022 WL 2987078, at *6-10 (D. Md. July 28, 2022) (denying motion to dismiss negligence claims where plaintiff alleged violation of statute prohibiting firearms possession by individuals with certain mental health disorders).

¹⁵⁰ 15 U.S.C. § 7903(5)(A)(iii)(I)-(II).

¹⁵¹ See *Nat’l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 111 (2d Cir. 2025) (“[W]e have already determined that the predicate exception’s scope is not limited to causes of action brought under statutes similar to the enumerated examples in 15 U.S.C. § 7903(5)(A)(iii)(I)-(II).”).

¹⁵² See, e.g., *id.*; *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 402 (2d Cir. 2008) (concluding that examples indicate congressional intent to encompass “statutes that clearly can be said to regulate the firearms industry”); *Ileto v. Glock, Inc.*, 565 F.3d 1126,1135 (9th Cir. 2009) (citing examples to reject the parties’ proffered interpretations, but holding that “the text of the statute alone is inconclusive as to Congress’ intent”); *Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262, 314-17 (Conn. 2019) (rejecting argument that enumerated examples limit the scope of the predicate exception to statutes that specifically relate to firearms). See also *Smith & Wesson Corp.*, 875 N.E.2d at 434 & n.12 (declining to consider *ejusdem generis* argument based on enumerated examples, because “the predicate exception is unambiguous”).

A. “Applicable To”

Not every statute qualifies as a valid predicate that can be used to get through PLCAA. To trigger the predicate exception, the statute must be “applicable to the sale or marketing” of firearms or ammunition.¹⁵³ But the phrase “applicable to” has prompted significant litigation about how narrowly or broadly it should be read. Generally, plaintiffs argue for a broader reading akin to “capable of being applied,” while defendants argue for a narrower reading confining the predicate exception to laws that specifically or expressly regulate firearms or ammunition.¹⁵⁴

Courts have tended towards a middle ground, rejecting readings that “would allow the predicate exception to swallow the statute” while likewise rejecting requests to limit the exception to statutes that expressly regulate gun sales.¹⁵⁵ Certainly, courts have recognized that laws expressly regulating the gun industry are valid predicates.¹⁵⁶ But they have also, in some circumstances, recognized that generally applicable laws can be a basis to invoke the exception too.¹⁵⁷ Two early court cases interpreting the “applicable to” language have guided courts in subsequent litigation and merit detailed discussion.

In *City of New York v. Beretta U.S.A. Corp.*, the question was whether New York’s general criminal nuisance statute was “applicable to the sale or marketing” of

firearms.¹⁵⁸ A panel of the Second Circuit held that it was not. The City of New York alleged, among other things, that several retailers, distributors, and manufacturers of firearms knew that their products were being diverted into the illegal marketplace but chose not to put into place safeguards that would prevent this from happening.¹⁵⁹ The City alleged that this conduct violated Section 240.45 of N.Y. Penal Law, a public nuisance statute that did not mention firearms or ammunition and that had “never been applied to firearms suppliers for conduct like that complained of by the City.”¹⁶⁰

To fit New York’s public nuisance statute within PLCAA’s predicate exception, the City argued that the court should apply “the dictionary definition of ‘applicable,’ which is, simply, ‘capable of being applied.’”¹⁶¹ The gun industry defendants, by contrast, argued that the “predicate exception [was] necessarily limited to statutes that expressly regulate the firearms industry.”¹⁶² The court rejected both approaches, concluding that the phrase “applicable to” was ambiguous. After reviewing the legislative history and context of the statute, the Second Circuit concluded that PLCAA’s predicate exception encompassed three categories of laws: (1) those “that expressly regulate firearms,” (2) statutes “that courts have applied to the sale and marketing of firearms,” and (3) statutes “that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms.”¹⁶³

¹⁵³ 15 U.S.C. § 7903(5)(A)(iii).

¹⁵⁴ See, e.g., *City of New York*, 524 F.3d at 399-400.

¹⁵⁵ See, e.g., *id.* at 399-400, 403; *Ileto*, 565 F.3d at 1134 (“We conclude from those illustrations that Plaintiffs’ asserted meaning of ‘applicable’ appears too broad, but that Defendants’ proposed restrictive meaning appears too narrow.”).

¹⁵⁶ See, e.g., *Nat’l Shooting Sports Found.*, 144 F.4th at 111; King, 133 N.Y.S.3d at 358 (recognizing that both the Gun Control Act and New York penal law regulating sale of handgun ammunition were valid predicates under PLCAA); see also *Brady*, 2022 WL 2987078 at *8 (noting that gun industry defendants were not “able to identify a single case in which a court held that a statute which explicitly mentioned firearms was an insufficient predicate”); *Brady v. Walmart Inc.*, No. 21-cv-1412-AAQ, 2024 WL 5075200, at *4 (D. Md. Dec. 11, 2024) (finding consensus among courts that a statute “expressly regulat[ing] firearms falls within the predicate exception”).

¹⁵⁷ See, e.g., *Soto*, 202 A.3d at 308 (state unfair trade practices law); *Prescott*, 410 F. Supp. 3d at 1138 (same); *City of Gary*, 875 N.E.2d 434-45 (state public nuisance statute).

¹⁵⁸ 524 F.3d at 399-404.

¹⁵⁹ *Id.* at 391.

¹⁶⁰ *Id.* at 399.

¹⁶¹ *Id.* at 400.

¹⁶² *Id.*

¹⁶³ *Id.* at 404.

The court ultimately found that New York’s public nuisance statute fell outside these categories, and thus was not a valid predicate under PLCAA.

The second case, *Ileto v. Glock*, rejected similar proposed readings of the predicate exception and declined to recognize a generally applicable statute as a PLCAA predicate.¹⁶⁴ The plaintiffs in *Ileto* had brought negligence, nuisance, and public nuisance claims against several gun industry defendants following a mass shooting. California, unlike most states, has codified its common-law tort claims, creating a broad category of statutory violations that could be, if interpreted broadly, “applicable to” firearms. The plaintiffs argued for that broader reading, pointing to these codified general torts as both the cause of action and the predicate statute.¹⁶⁵ A panel of the Ninth Circuit rejected this argument. *Ileto* is often cited by gun industry defendants opposing an invocation of the predicate exception, but on close examination it offers little firm guidance other than to reject California’s particular statutory tort framework as a PLCAA predicate.

As in *Beretta*, the plaintiffs and defendants in *Ileto* offered divergent definitions for “applicable to,” with the plaintiffs arguing for “capable of being applied” and defendants arguing that the statute must “pertain[] exclusively to the sale or marketing of firearms.”¹⁶⁶ The court concluded that “the term ‘applicable’ has a spectrum of meanings” and rejected the definitions proffered by both parties.¹⁶⁷ But unlike the Second Circuit’s decision in *Beretta*, the *Ileto* court did not spell out what types of statutes would satisfy the predicate exception. Instead, the court concluded that “Congress clearly intended to preempt common-law claims,” and the plaintiffs’ predicate statutes were simply codifications of “classic negligence and nuisance” torts.¹⁶⁸

Practice Pointer:

Reading *Beretta* and *Ileto* together, you will be on strong legal footing if you rely on a predicate statute that expressly applies to the sale or marketing of firearms, that has previously been applied to the sale or marketing of firearms, OR that “implicates” the sale or marketing of firearms, so long as that statute is not merely a generally applicable codification of a state’s general tort laws.

In the seminal case of *Soto v. Bushmaster Firearms Int’l, LLC*, the Connecticut Supreme Court applied similar reasoning but allowed a generally applicable statute to serve as a PLCAA predicate.¹⁶⁹ The plaintiffs in *Soto* were surviving family members of the Sandy Hook Elementary School shooting in Newtown, Connecticut, in which 20 young children and six adults were murdered. They sued the manufacturer of the AR-15-style rifle used in the shooting, alleging that the company’s marketing violated the Connecticut Unfair Trade Practices Act (“CUTPA”).

The Connecticut Supreme Court concluded that CUTPA could serve as a predicate statute, based on the plain language of PLCAA as well as its legislative history.¹⁷⁰ It noted that this was consistent with the Second Circuit’s decision in *Beretta* (which was persuasive but non-binding authority), inasmuch as CUTPA had previously been applied to the sale of firearms in other contexts and could be said to “implicate” the sale and marketing of firearms.¹⁷¹ The Court further explained that its holding was consistent with *Ileto* because, although the Ninth Circuit had construed the predicate exception more narrowly, it also “rejected a reading

¹⁶⁴ 565 F.3d 1126, 1132-33 (9th Cir. 2009).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 1133-34.

¹⁶⁷ *Id.* at 1134-35.

¹⁶⁸ *Id.* at 1135-36.

¹⁶⁹ 202 A.3d 262 (Conn. 2019).

¹⁷⁰ *Id.* at 302 (“If Congress had intended to limit the scope of the predicate exception to violations of statutes that are directly, expressly, or exclusively applicable to firearms, however, it easily could have used such language, as it has on other occasions.”).

¹⁷¹ *Id.* at 306-07.

that would limit predicate statutes to those that pertain exclusively to the sale or marketing of firearms.”¹⁷² Note that in *Soto*, CUTPA served both as the cause of action itself and the necessary predicate statute.

In 2025, the Second Circuit extended and clarified this line of cases. In *National Shooting Sports Foundation v. James*, the court held that PLCAA did not facially preempt New York’s industry accountability law, which amends New York’s General Business Law (GBL) to add firearms-specific provisions. In other words, the court held that the law was applicable to the sale or marketing of firearms within PLCAA’s predicate exception.¹⁷³ The court rejected NSSF’s cramped reading of the predicate exception, which would limit predicate statutes to those “expressly regulat[ing] firearms with the same specificity as the two examples of qualifying statutes provided in PLCAA’s text.”¹⁷⁴ Instead, the court concluded that those examples are illustrative but not exhaustive, reiterating its holding in *Beretta* “that PLCAA’s predicate exception encompassed statutes that expressly regulated firearms, statutes that courts have applied to the sale and marketing of firearms, and statutes that do not expressly regulate firearms but that clearly can be said to implicate the sale and purchase of firearms.”¹⁷⁵

Similarly, in *Prescott v. Slide Fire Solutions, LP*, the U.S. District Court for the District of Nevada considered

a claim predicated on the Nevada Deceptive Trade Practices Act (“NDTPA”) against the company that manufactured and marketed the bump stocks used by the shooter in the Route 91 Harvest Festival shooting.¹⁷⁶ The Court applied *Ileto* and found that, “unlike the general common law tort theories of negligence and nuisance at issue in *Ileto*, which can apply to any private conduct capable of being tortious, the NDTPA specifically regulates the sale and marketing of goods.”¹⁷⁷

As a result, the court concluded that “*Ileto* does not foreclose the NDTPA from serving as a predicate statute, and instead appears to permit it.”¹⁷⁸ Likewise, a New York appellate court held that the provisions of New York’s GBL prohibiting deceptive acts or practices and false advertising were valid predicates. The marketing provisions of the GBL do not expressly mention firearms, but the court held that they satisfy PLCAA’s predicate exception because they “specifically deal with the sale or marketing of any product in New York,”¹⁷⁹ unlike general criminal or negligence statutes.

Another avenue for satisfying the predicate exception is through alleging that one defendant aided and abetted another’s knowing violation of a predicate statute. In fact, one of the two example predicate violations described in PLCAA’s text is an aiding and abetting

¹⁷² *Id.* at 306 n.47 (distinguishing *Ileto* on the basis that “(1) California had codified its common law of tort, which remained subject to judicial evolution . . . and (2) during the legislative debates, members of Congress had referenced that very case as an example of one that PLCAA would preclude”).

¹⁷³ *Nat’l Shooting Sports Found.*, 144 F.4th at 110-11.

¹⁷⁴ *Id.* at 110.

¹⁷⁵ *Id.*

¹⁷⁶ 410 F. Supp. 3d 1123 (D. Nev. 2019).

¹⁷⁷ *Id.* at 1138.

¹⁷⁸ *Id.* at 1138-39. Other courts have also concluded that non-firearm-specific statutes that regulate the purchase, sale, and marketing of goods—including firearms—satisfy the predicate exception. See, e.g., *Roberts v. Smith & Wesson Brands, Inc.*, No. 22 LA 0000487, 2025 WL 1295092, at *12-14 (Ill. Cir. Ct. Apr. 1, 2025) (finding that the Illinois consumer protection statutes were “applicable to the sale or marketing of firearms”); *Doyle*, 2023 WL 5945857, at *10 (holding that the Texas Deceptive Trade Practices Act qualifies as a predicate statute because, unlike the statutes at issue in *Ileto* and *Beretta*, the provisions “specifically regulate the marketing and sale of goods,” which encompass firearms and ammunition); *Goldstein v. Earnest*, No. 37-2020-00016638, slip op. at 4-6 (Cal. Super. Ct. July 2, 2021) (concluding that California’s Unlawful Competition Law, which prohibits, among other things, “deceptive, untrue or misleading advertising” qualifies as a predicate statute, but dismissing the claim for lack of standing); *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007) (holding that Indiana’s public nuisance statute qualified as predicate statute).

¹⁷⁹ *Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 618 (N.Y. App. Div. 2025).

violation.¹⁸⁰ In order to allege aiding and abetting as the predicate violation, litigants must satisfy the standard in the Supreme Court’s decision in *Smith & Wesson v. Estados Unidos Mexicanos*.¹⁸¹

Supreme Court Update

Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos

605 U.S. 280 (2025)

In 2025, the Supreme Court issued its first and only decision related to PLCAA. While *Smith & Wesson v. Estados Unidos* did not address whether a particular statute is applicable to the sale and marketing of firearms, it is worth reviewing what the decision did hold, as defendants may raise it for issues both applicable and inapplicable.

The government of Mexico brought suit in 2021 against seven major gun manufacturers, as well as a single gun distributor, alleging that the defendants’ irresponsible business conduct aided and abetted unlawful downstream gun sales that led to cartel violence in Mexico.¹⁸² More specifically, the complaint alleged that the defendants: (1) supplied firearms retailers that they know illegally sell guns to Mexico-bound gun traffickers; (2) failed to set up controls on their distribution network that would prevent illegal gun sales to Mexico; and (3) made design and marketing decisions intended to appeal to cartel members.¹⁸³

The Supreme Court unanimously held that these allegations did not adequately establish aiding and abetting of illegal gun sales under federal law, and thus did not plead a predicate violation under PLCAA.¹⁸⁴ However, the Court made it clear that aiding and abetting predicate violations could in theory satisfy the predicate exception, and there are also numerous factual distinctions that future cases can draw. While *Smith & Wesson* is the first PLCAA case to reach the Supreme Court, the narrowness of its ruling should not alter the landscape for the vast majority of PLCAA cases.

In its opinion, the Court emphasized that the complaint had to meet a high bar to sufficiently allege aiding and abetting because its allegations focused on a broad category of misconduct, as opposed to any specific illegal transactions.¹⁸⁵ In addition, the Court stated that “passive nonfeasance”—which is how it described the defendants’ failure to implement controls on their distribution networks—is “rarely the stuff of aiding-and-abetting liability.”¹⁸⁶ Finally, the Court rejected the complaint’s marketing and design allegations, holding that these allegations did not show that the defendants had “joined both mind and hand with lawbreakers in the way needed to aid and abet.”¹⁸⁷ The Court concluded by stating that “Mexico’s suit closely resembles the [lawsuits] Congress had in mind” to stop when it passed PLCAA, noting that the plaintiff’s broad reading of aiding and abetting liability would allow the predicate exception to “swallow most of the rule.”¹⁸⁸

¹⁸⁰ 15 U.S.C. § 7903(5)(A)(iii)(I)-(II) (listing as illustrative examples of predicate violations: “any case in which a manufacturer or seller . . . aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]” or “any case in which a manufacturer or seller aided, abetted, or conspired . . . to sell or otherwise dispose of [a firearm], knowing, or having reasonable cause to believe, that the actual buyer . . . was prohibited from possessing [the firearm]”).

¹⁸¹ *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 282 (2025).

¹⁸² *Id.* at 287-88.

¹⁸³ *Id.* at 288-90.

¹⁸⁴ *Id.* at 298.

¹⁸⁵ *Id.* at 294.

¹⁸⁶ *Id.* at 297.

¹⁸⁷ *Id.* at 298 (cleaned up).

¹⁸⁸ *Id.* at 299.

But again, the Court’s opinion was narrow. While the Supreme Court held that the plaintiff’s allegations did not meet the requirements of federal aiding and abetting law, the Court left room for plaintiffs to bring other types of claims based on aiding and abetting.

First, the Court confirmed that a federal aiding and abetting theory can still be viable when a complaint alleges specific wrongful transactions in violation of federal firearms laws, and those transactions involve active assistance of the gun industry defendant.¹⁸⁹ Second, the opinion was explicitly limited to “federal aiding-and-abetting law.”¹⁹⁰ It did not say anything about state-law claims for aiding and abetting or variations of accomplice liability, which often have different standards than federal aiding and abetting law that would apply when the defendant is accused of aiding and abetting violations of state law.

Several courts have already distinguished *Smith & Wesson* on factual grounds. For example, in *Wiley v. Fleet Farm LLC*, the Minnesota federal district court denied a gun retailer’s motion to dismiss an aiding and abetting claim involving a gun that it sold to a straw purchaser.¹⁹¹ The court favorably compared the plaintiffs’ allegations to the allegations in *Smith & Wesson* and concluded: “[T]he complaint alleges that Fleet Farm had particular knowledge that one very specific bad actor (Horton) engaged in straw purchasing from Fleet Farm. Those allegations go beyond pleading an ‘arm’s length, passive, and largely indifferent’ relationship between Fleet Farm and Horton.”¹⁹²

Similarly, a New York state appellate court distinguished

Smith & Wesson and held that victims of a mass shooting had adequately pled that the manufacturer of a removable magazine lock aided and abetted the shooter in converting his rifle into a prohibited assault weapon.¹⁹³ Specifically, the lawsuit alleged that the manufacturer falsely advertised the lock as rendering otherwise prohibited assault weapons compliant with New York law, when in fact the lock allowed the shooter and others to buy illegal firearms.¹⁹⁴ By “instruct[ing] people, through videos and on its packaging, on how to remove the ‘permanent’ lock,” thereby converting “a lawful rifle with a fixed 10-round magazine into an unlawful assault rifle,” the manufacturer “facilitate[d] a violation of the [law]” sufficient to constitute aiding and abetting, at least at the motion-to-dismiss stage.¹⁹⁵

Thus, the court found the aiding and abetting claim “stronger and more direct than those found wanting in *Smith & Wesson Brands, Inc.*” and allowed the case to go forward.¹⁹⁶

As to the distinction between federal versus state aiding-and-abetting laws, a state court in *Minnesota v. Glock, Inc.*, allowed a state-law aiding and abetting claim to move forward, as the standard under Minnesota law was distinguishable from the federal standard discussed in *Smith & Wesson*.¹⁹⁷

On the other hand, at least one court has relied on *Smith & Wesson* to dismiss claims. In *Towner v. Century Arms*, the U.S. District Court in Vermont initially found that plaintiffs adequately pled aiding and abetting, but on reconsideration post-*Smith & Wesson*, dismissed the claims.¹⁹⁸ The case concerned

¹⁸⁹ See *id.* at 292-93 (citing *Direct Sales Co. v. United States*, 319 U.S. 703 (1943)).

¹⁹⁰ *Id.* at 291.

¹⁹¹ No. 24-CV-4135 (LMP/JFD), 2025 WL 2601952, at *18 (D. Minn. Sept. 9, 2025).

¹⁹² *Id.*; see also *Platkin v. Glock, Inc.*, No. ESX-C-000286-24, 2025 WL 3636266, at *6 (N.J. Super. Ct. Oct. 14, 2025) (distinguishing the “generalized and conclusory allegations” in *Smith & Wesson* from New Jersey’s detailed allegations in its suit against Glock).

¹⁹³ *Salter*, 240 A.D.3d at 1385.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Minnesota v. Glock*, No. 27-CV-24-18827, 2025 WL 2531619, at *10 (Minn. Dist. Ct. Aug. 21, 2025) (applying state aiding and abetting standard).

¹⁹⁸ No. 2:22-CV-145, 2025 WL 2772615, at *4 (D. Vt. Sept. 29, 2025).

a 2019 mass shooting in California; the shooter was a Nevada resident and purchased the weapon legally in Nevada. Plaintiffs alleged that the defendants, who were the manufacturer and distributor of the weapon used in the shooting, aided and abetted the illegal possession of assault weapons in California through their overall sales and marketing strategies in Nevada, where assault weapons are legal.¹⁹⁹ While initially the federal judge held that this conduct amounted to aiding and abetting, the court reconsidered based on *Smith & Wesson's* focus on “specific criminal transactions.”²⁰⁰ The court held that the plaintiffs’ allegations did not “amount to a plausible claim that the Defendants aided and abetted this specific shooting.”²⁰¹

B. Knowing Violation

A plaintiff must also show that the gun industry defendant “knowingly violated” the underlying predicate statute. It is generally not necessary to show that the defendant knew that the law proscribed their conduct, only that they knew the factual underpinnings giving rise to the violation of law.²⁰² As one federal district court explained in interpreting the predicate exception’s “knowing” requirement, “[i]t is well established . . . that the phrase ‘knowingly violates’ requires knowledge of facts and attendant circumstances that comprise a violation of the statute, *not* specific knowledge that one’s conduct is illegal.”²⁰³ In the context of retail gun sales, for example, this often means that it may be necessary to prove that a defendant knew (or, as discussed below, had reasonable cause to believe) that the customer was not the actual purchaser, or that they were prohibited from owning a gun (e.g., that they have a felony conviction, or are under age, among others).

But it should not be necessary to show that the dealer knew that the law prohibited the transfer of a gun to that person.

Practice Pointer:

Although it is not necessary to allege and prove a defendant’s knowledge of federal firearms laws, it can be useful to establish that the defendant knew the laws that you allege they violated (especially if you are seeking punitive damages). You can FOIA the ATF for inspection and licensing records of the business(es) that you are suing.

These records should include a document, signed by the president or owner of the company, affirming that they have received copies of the federal regulations and laws governing the sale of firearms and that they understand that it is their responsibility to familiarize themselves with all laws and regulations governing their business.²⁰⁴

There are circumstances in which having “reason to know” that an act or transaction is unlawful—as opposed to actual knowledge that it is—can suffice to establish a predicate violation. The text of PLCAA makes this clear, stating that a knowing predicate violation includes cases in which a manufacturer or seller aids, abets, or conspires to sell or transfer a firearm “knowing, or *having reasonable cause to believe*” that the actual buyer is prohibited under federal law.²⁰⁵

¹⁹⁹ *Id.* at *3.

²⁰⁰ *Id.* (citing *Smith & Wesson Brands*, 605 U.S. at 294).

²⁰¹ *Id.*

²⁰² See *Bryan v. United States*, 524 U.S. 184, 192, 193 (1998) (explaining that “the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law,” and holding that “unless the text of the statute dictates a different result, the term ‘knowingly’ merely requires proof of knowledge of the facts that constitute the offense”) (citation omitted).

²⁰³ *New York v. Arm or Ally*, 718 F. Supp. 3d 310, 330-31 & n.11 (S.D.N.Y. 2024) (quotation marks omitted).

²⁰⁴ For an example of compliance records obtained pursuant to a FOIA request, see Exhibits A-19, A-20, A-21, and A-22 to the City of Chicago’s Opposition to Westforth Sports’ Motion to Dismiss, *City of Chicago v. Westforth Sports, Inc.*, No. 2021CH01987 (Ill. Cir. Ct., Cook Cnty. Sept. 15, 2022), <https://everytownlaw.org/wp-content/uploads/sites/5/2022/09/Binder3Exhibits-A-17-A-21.pdf> (PDF pages 222-63).

²⁰⁵ See 15 U.S.C. § 7903(5)(A)(iii)(II).

A defendant having reason to know that a transaction is unlawful has in several instances sufficed to establish a predicate violation. One example is *Williams v. Beemiller, Inc.*, a case brought by a shooting victim against an Ohio gun store that had sold over a hundred guns to a trafficker, including the one used to harm the victim.²⁰⁶ The plaintiff alleged that the gun store had violated federal law by selling these firearms to people that it knew or reasonably should have known were not real buyers but instead were straw purchasers.²⁰⁷ The *Williams* court held that this adequately pled a violation of 18 U.S.C. § 922(m), quoting a Seventh Circuit opinion holding that “[a] dealer violates the [Gun Control Act] if the dealer transfers a firearm based upon information in ATF Form 4473 that he [or she] knows or has reason to believe is false.”²⁰⁸ As evidence of the store’s knowledge, the court cited a combination of alleged factors like the prohibited buyer’s participation in selecting guns to be straw purchased, the large volume of guns purchased over multiple transactions, cash payments, and the selection of low quality handguns unsuitable for collecting.²⁰⁹

The *Chiapperini* case is a second example, building on *Williams*. As previously discussed, the trial court in *Chiapperini* rejected a motion to dismiss brought

on PLCAA grounds, finding that the plaintiff had adequately alleged a gun store’s knowing violation of federal law during a straw sale that ultimately put firearms in the hands of a felon.²¹⁰ One of the alleged predicate violations was 18 U.S.C. § 922(m).²¹¹ Citing *Williams* and *Shawano*, the court explained that a “violation [of § 922(m)] can occur when a seller knows, or has reason to believe, that the information entered on the ATF Form 4473 is false, including information about the actual buyer.”²¹²

One reason for these conclusions is the federal firearms regulation that requires federal licensees to certify on Form 4473 that they “do[] not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473.”²¹³ Because this certification concerns the seller’s state of mind, a seller who signs Form 4473 despite having reason to believe that the “transferee” is “disqualified by law” makes a knowing false statement about his or her state of mind, even if he or she is not actually certain whether the buyer at the counter is a straw purchaser.²¹⁴

Another way to establish knowledge is through proof of willful blindness (sometimes called deliberate

²⁰⁶ See 100 A.D.3d 143, 145 (N.Y. App. Div. 2012).

²⁰⁷ *Id.* at 149.

²⁰⁸ See *id.* at 150 (quoting *Shawano Gun & Loan, LLC v Hughes*, 650 F.3d 1070, 1073 (7th Cir. 2011)) (second and third alterations in original). 18 U.S.C. § 922(m) prohibits licensed dealers from “knowingly making any false entry in, failing to make an appropriate entry in, or failing to properly maintain any record required by [Section 923] or any regulation promulgated thereunder.”

²⁰⁹ See *id.*

²¹⁰ 13 N.Y.S.3d 777, 795 (N.Y. Sup. Ct. 2014).

²¹¹ *Id.* at 786.

²¹² *Id.* at 787; see also *Corporan v. Wal-Mart Stores E., LP*, No. 16-CV-2305, 2016 WL 3881341, *3 (D. Kan. July 18, 2016) (“A dealer violates the Gun Control Act—and the specific provisions highlighted by plaintiff—if the dealer transfers a firearm based upon information in Form 4473 that he knows or has reason to believe is false.”).

²¹³ 27 C.F.R. § 478.124(c)(5). For a more detailed description of the Form 4473 and the legal requirements for firearm sales, see Special Topic: Basics of a Gun Sale (quoting, *inter alia*, Form 4473 instruction to licensee that it “must stop the transaction if there is reasonable cause to believe that the sale or disposition of a firearm to the transferee/buyer is prohibited”).

²¹⁴ The text of ATF Form 4473 provides some additional support for this argument. The C.F.R. requires the FFL to certify his or her state of mind about whether the buyer is “disqualified by law”; the text of Form 4473 uses a different formulation, providing in relevant part:

I further certify on the basis of—(1) the transferee’s/buyer’s responses in Section B (and Section D, if applicable); (2) the verification of the identification recorded in question 26 (and the re-verification at the time of transfer, if Section D was completed); and (3) State or local law applicable to the firearms business—it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section B.

ATF Form 4473, Section E.7.

ignorance), which originated in criminal law and has been applied to establish knowledge in the context of civil litigation. As the United States Supreme Court has explained:

The doctrine of willful blindness is well established in criminal law. Many criminal statutes require proof that a defendant acted knowingly or willfully, and courts applying the doctrine of willful blindness hold that defendants cannot escape the reach of these statutes by deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances. The traditional rationale for this doctrine is that defendants who behave in this manner are just as culpable as those who have actual knowledge.

Edwards, *The Criminal Degrees of Knowledge*, 17 Mod. L.Rev. 294, 302 (1954) (hereinafter Edwards) (observing on the basis of English authorities that “up to the present day, no real doubt has been cast on the proposition that [willful blindness] is as culpable as actual knowledge”). It is also said that persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts.²¹⁵

The Court further noted, in that case, that “every Court of Appeals—with the possible exception of the District of Columbia Circuit—has fully embraced willful blindness.”²¹⁶ To establish willful blindness, a plaintiff typically must show: “(1) The defendant . . . subjectively

believe[s] that there is a high probability that a fact exists and (2) the defendant [has] take[n] deliberate actions to avoid learning of that fact.”²¹⁷

At least two courts have permitted a PLCAA predicate exception claim to proceed based on a theory of willful blindness. First, survivors of the 2018 Santa Fe High School shooting argued that the online ammunition seller that sold ammunition to the 17-year-old shooter was willfully blind to its customers’ ages, because it knew there was a high probability that juveniles would use the seller’s website to purchase ammunition illegally and took steps to remain ignorant of the age of the purchaser through the design of its website and other means.²¹⁸ The defendant in that case moved to dismiss, arguing among other things that the complaint did not allege that it knew the purchaser’s age. The trial court, intermediate court of appeals, and the Texas Supreme Court all ruled against the defendant (although no court issued a decision explaining its reasoning).²¹⁹

Second, in *Cluney v. Brownells, Inc.*, the District of Maine followed similar logic in finding that an online seller of ghost gun kits was willfully blind to a 16-year-old purchaser’s age, and therefore, constructively knew that it was violating the Gun Control Act.²²⁰ The plaintiff alleged that the defendant’s online purchasing system “[did] not require any age verification, [did] not provide any option for purchasers to input their age, and [did] not employ any of the age verification procedures used by other retailers of age-restricted goods such as alcohol and prescription medications.”²²¹ At the pleadings stage, the court was “satisfied that [the plaintiff] has alleged enough factual matter to support and inference that [seller] was willfully blind to the fact that minors could and did purchase ammunition from

²¹⁵ *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011).

²¹⁶ *Id.* at 767-78 (internal citation omitted).

²¹⁷ *Id.* at 769.

²¹⁸ See Merits Brief of the Real Parties in Interest at 37-48, *In re LuckyGunner, LLC*, No. 21-0463 (Tex. Dec. 21, 2021), <https://everytownlaw.org/wp-content/uploads/sites/5/2021/12/2021.12.21-Merits-Brief-of-the-Real-Parties-in-Interest-FILE-STAMPED.pdf>.

²¹⁹ See *In re LuckyGunner, LLC*, No. 14-21-00194-cv, 2021 WL 1904703, at *1 (Tex. App. May 12, 2021) (denying defendant’s petition for writ of mandamus); *In re LuckyGunner, LLC*, No. 21-0463 (Tex. Feb. 18, 2022), <https://everytownlaw.org/wp-content/uploads/sites/5/2022/02/supreme-court-of-texas-orders-02-18-2022-3.pdf> (same).

²²⁰ *Cluney v. Brownells, Inc.*, 777 F. Supp. 3d 1, 10 (D. Me. 2025).

²²¹ *Id.*

its website.”²²² Accordingly, the plaintiff satisfied the “knowing” requirement of the predicate exception.²²³

C. Proximate Causation

The final element of the predicate exception is proximate causation: the exception applies only where “the violation [of the predicate statute] was a *proximate cause* of the harm for which relief is sought.”²²⁴ PLCAA does not supply a definition for “proximate cause,” and no court has directly addressed whether state tort law or federal common law is the appropriate reference.

It is worth noting that proximate causation is a core part of state tort law. PLCAA’s drafters expressed concerns about “important principles of federalism, State sovereignty and comity between the sister States.” 15 U.S.C. § 7901(a)(8). The absence of a federal definition in PLCAA, coupled with drafters’ federalism concerns, strongly suggest that Congress intended for courts to look to state law in determining whether the violation of the predicate statute proximately caused the harm suffered.

Practice Pointer:

Courts are often reticent to rule on proximate causation at the motion to dismiss stage, when PLCAA is typically first raised. Accordingly, plaintiffs may want to argue that the court should defer resolution of this factual question, as the appellate court in *Salter* and the trial court in *Chiapperini* did.²²⁵

Additionally, it is worth emphasizing that PLCAA plainly contemplates the possibility that a harm may have more than one proximate cause, i.e., the shooter’s actions as well as the gun industry defendant’s wrongful actions, with the predicate exception specifically using the phrasing “a proximate cause,” not “*the proximate cause*.” As one scholarly amicus brief helpfully explains, “the *only* lawsuits that are subject to PLCAA preemption are lawsuits for harm resulting from unlawful third-party misuse, and therefore if the predicate exception permits any lawsuits at all (and it must, otherwise it would be a nullity), then it *must* permit a subset of lawsuits in which the harm resulted from unlawful third-party misuse.”²²⁶ Put succinctly, “the predicate violation opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.”²²⁷

Furthermore, the fact that a harm can have multiple proximate causes is consistent with black-letter principles of tort law, and “[I]iability for foreseeably increasing the risk of third-party criminal misconduct is commonplace.”²²⁸ For instance, in *Mitchell*, a Kentucky court found that a gun store’s conduct proximately caused harm to victims in a mass shooting, despite the shooter’s intervening criminal acts.²²⁹ “The hazard is that a noticeably disturbed person will be upsold dangerous accessories they do not need and embark on a murderous rampage, enabled and enhanced by those accessories. It was entirely foreseeable that this outcome would occur.”²³⁰ Thus, to the extent that a defendant argues that PLCAA categorically does not permit recovery against a gun industry defendant where there is an intervening criminal act, the plain language of the exception—confirmed by the Supreme

²²² *Id.*

²²³ *Id.*

²²⁴ 15 U.S.C. § 7903(5)(A)(iii) (emphasis added).

²²⁵ *Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 619 (N.Y. App. Div. 2025); *Chiapperini v. Gander Mountain Co.*, 13 N.Y.S.3d 777, 786 (Sup. Ct. 2014) (rejecting motion to dismiss for lack of proximate cause and holding that “[w]ithout the benefit of discovery, this Court is not convinced that it can be definitively stated that all of these federal laws do not apply, or were not related to [the shooter’s] ambush. Proximate cause is normally a question of fact for a jury.”).

²²⁶ Brief of Legal Scholars as *Amici Curiae* in Support of Defendant-Appellant at 15-16, *Nat’l Shooting Sports Found. v. Att’y Gen. N.J.*, No. 23-1214 (3d Cir. 2023) (emphasis in original) (internal citation omitted), <https://firearmslaw.duke.edu/wp-content/uploads/2023/04/2023-04-07-Legal-Scholars-Brief-Filed.pdf>.

²²⁷ *Smith & Wesson Brands, Inc.*, 605 U.S. 280, 286 (2025).

²²⁸ Brief of Legal Scholars as *Amici Curiae*, *supra* note 226, at 14-15 (collecting cases).

Court in the *Smith & Wesson* case—conclusively shows otherwise.²³¹ In addition, a number of courts have interpreted “proximate cause” under PLCAA to mean a “substantial factor” in causing the harm, consistent with the common law of many states.²³²

D. Negligence Claims and the Predicate Exception

The predicate exception requires that a plaintiff plead a “knowing violation of a ‘predicate statute,’” in addition to “present[ing] a cognizable claim.”²³³ As indicated previously, sometimes, a single statute provides both the plaintiff’s cause of action and the underlying predicate violation. In other cases, a plaintiff can plead a violation of a predicate statute where the statute violated provides no private right of action and instead the cause of action is created by the common law.²³⁴ Both of these approaches are permissible under PLCAA. The text makes this plain: the two examples provided as predicate statutes are federal criminal statutes that do not have a private right of action. The only way that this could make sense is if the predicate statute violation could be separate from the cause of action. Moreover, while other PLCAA exceptions exempt suits

“for” specific causes of action, the predicate exception exempts actions “in which” the gun industry defendant violated a predicate statute.²³⁵ The result is that once the plaintiff adequately alleges a predicate violation, the door is opened to viable state law claims that proximately flow from the violation.

This includes negligence claims. Occasionally, defendants have argued that PLCAA does not have an “an ordinary negligence exception,” and thus that the law bars negligence claims predicated on a statutory violation. But this argument betrays a lack of familiarity with the statutory text, which plainly allows plaintiffs to plead a statutory predicate violation that is distinct from their common law cause of action. It also ignores that courts have universally held that negligence claims are not barred by PLCAA when they are predicated on knowing violations of statutes applicable to the sale of firearms and ammunition.²³⁶

E. Piecemeal Analysis of Claims

The predicate exception is different from all the other PLCAA exceptions because, once the predicate exception is satisfied as to one claim, the entire

²²⁹ *Dana Mitchell*, slip op. at 6-7.

²³⁰ *Id.* at 7.

²³¹ See *Salter v. Meta Platforms, Inc.*, 240 N.Y.S.3d 610, 619 (N.Y. App. Div. 2025); *City of Chicago v. Glock*, No. 2024CH06875, at *8 (Cook Cnty. Cir. Ct. Sep. 18, 2025) (finding that Glock’s sale and marketing of pistols that are easily modified into machine guns proximately caused harm to Chicago and that “[t]o hold otherwise would permit firearm manufacturers and distributors to evade the law, despite knowingly perpetuating conditions that endanger the health and safety of the public”), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2025/09/Memorandum-and-Opinion-in-City-of-Chicago-v.-Glock-Inc.pdf>.

²³² See *Stanisic v. Sturm, Ruger & Co., Inc.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *25 (Conn. Super. Ct. Nov. 12, 2025); *Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860, 887, 897 (D. Minn. 2025) (straw sale was “substantial factor” in later shooting, satisfying proximate cause analysis under Minnesota law and PLCAA); *Hernandez v. Jensen*, 61 Cal. App. 5th 1056, 1069 (Cal. Ct. App. 2021).

²³³ *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009).

²³⁴ Compare *Soto v. Bushmaster*, 202 A.3d 262, 285, 308 (Conn. 2019) (alleged violation of Connecticut Unfair Trade Practice Act served as both the predicate violation and the cause of action), with *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1130-31, 1134-41 (D. Nev. 2019) (plaintiffs relied on violation of Nevada Deceptive Trade Practices Act as predicate violation, and then alleged negligence, products liability, nuisance, and false advertising causes of action).

²³⁵ See *Corporan v. Wal-Mart Stores E., LP*, No. 16-2305, 2016 WL 3881341, *4 n.4 (D. Kan. July 18, 2016) (“[B]ecause the court finds the predicate exception applicable to this action, it declines to engage in the claim-by-claim analysis advanced by defendants.”).

²³⁶ See, e.g., *Salter*, 240 N.Y.S.3d at 614, 619; *King v. Klocek*, 187 A.D.3d 1614, 1614-15 (N.Y. App. Div. 2020); *Prescott*, 410 F. Supp. 3d at 1139; *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422, 434-35 (Ind. Ct. App. 2007); *Corporan*, 2016 WL 3881341, at *2 (“[P]laintiff’s state law negligence claims must fall into one [of] the exceptions enumerated in the PLCAA before plaintiff will be permitted to proceed with her claims.”); cf. *Smith & Wesson*, 605 U.S. 280, 287 (2025) (analyzing the predicate violation for a complaint that pled only claims “sounding in negligence,” which indicates that PLCAA does not bar negligence claims, so long as there is a viable predicate violation); *Wiley*, 799 F. Supp. 3d at 888.

case should be allowed to proceed without the court resorting to a claim-by-claim analysis. This is because the predicate exception exempts “an action in which” a manufacturer or seller knowingly violated a predicate statute.²³⁷ Most published decisions that have considered this issue have rejected defendants’ requests to do a “claim-by-claim analysis,” and have instead held that once the case “falls within the predicate exception,” PLCAA does not bar any claim.²³⁸

For example, in *Williams*, the court found that the complaint adequately pled knowing violations of law by gun industry defendants that had sold firearms to a straw purchaser. This satisfied PLCAA’s predicate exception, and as a result the court held that it “need not address plaintiffs’ further contention that this action falls within the PLCAA’s negligent entrustment or negligence per se exception.”²³⁹

Logically, this makes sense because when there is an underlying violation of law (as the predicate exception requires), that violation likely permeates the entire lawsuit. While some courts have suggested that satisfying any of PLCAA’s exceptions allows all claims to proceed, the majority view appears to be that only the predicate exception opens the door for other claims.²⁴⁰

F. State Industry Accountability Laws

In recent years, ten states have passed gun industry accountability statutes that define and codify standards of conduct for members of the gun industry. Because they are statutory and apply expressly to the marketing and sale of firearms, these standards satisfy the requirements for PLCAA’s predicate exception, and may also provide a private right of action. New York passed the first of these laws in 2021, which prohibits gun industry members from knowingly creating, maintaining, or contributing to a nuisance and requires that gun industry members “establish and utilize reasonable controls and procedures to prevent its qualified products from being possessed, used, marketed or sold unlawfully in New York state.”²⁴¹ “Reasonable controls and procedures” is defined as:

[P]olicies that include, but are not limited to: (a) instituting screening, security, inventory and other business practices to prevent thefts of qualified products as well as sales of qualified products to straw purchasers, traffickers, persons prohibited from possessing firearms under state or federal law, or persons at risk of injuring themselves

²³⁷ 15 U.S.C. § 7903(5)(A)(iii) (emphasis added).

²³⁸ *Corporan*, 2016 WL 3881341, at *4 n.4; see also *Salter*, 240 N.Y.S.3d at 614, 619 (holding that it need not analyze other exceptions “in light of our conclusion that plaintiffs’ actions may fall within the PLCAA’s predicate exception and therefore are not precluded by the PLCAA[.]”); *Stanisic v. Sturm, Ruger & Co., Inc.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *25 (Conn. Super. Ct. Nov. 12, 2025); *Englund v. World Pawn Exch.*, No. 16CV00598, 2017 WL 7518923, at *4, *6 (Multnomah County, Or., June 30, 2017) (declining to engage in piecemeal analysis of claims once one claim satisfied predicate exception); *Chiapperini v. Gander Mountain Co.*, 13 N.Y.S.3d 777, 787 (N.Y. Sup. Ct. 2014) (same); *Brady v. Walmart Inc.*, 2022 WL 2987078, at *12 (D. Md. July 28, 2022) (explaining that, because the court found the predicate exception was satisfied, it need not determine whether other exceptions were satisfied as well); *Prescott*, 410 F. Supp. 3d 1123 (concluding predicate exception was satisfied based on violation of Nevada Deceptive Trade Practices Act, without conducting separate analysis as to each claim). But see *Doyle v. Combined Sys., Inc.*, 2023 WL 5945857 (N.D. Tex. Sept. 11, 2023) (concluding PLCAA applies to specific claims and not to entire suits, and thus dismissing claims for marketing defect and negligent failure to warn even though other claims satisfied predicate exception); *Est. of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 393-96 (Alaska 2013) (considering whether a PLCAA exception existed for each claim, and concluding that the negligence claim was barred because PLCAA had no exception for simple negligence); *Wiley*, 799 F. Supp. 3d at 886-87.

²³⁹ *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 339-40 (N.Y. App. Div. 2012).

²⁴⁰ See *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 840-41 (D. Minn. 2023) (“The question before the Court is whether any of the State’s claims fall under the exceptions to the PLCAA. Only one claim needs to survive the preemption analysis for the entire suit to move forward because the PLCAA preempts ‘qualified civil liability actions,’ not claims.”); *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457, 464-65 (E.D. Pa. 2016). Notably, both *Fleet Farm* and *Ramos* rely on case law that specifically analyzes the predicate exception. See *Fleet Farm*, 679 F. Supp. 3d at 840-41 (first citing *Chiapperini v. Gander Mountain Co.*, 48 Misc. 3d 865, 877 (N.Y. Sup. Ct. 2014); then citing *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 151 (N.Y. App. Div. 2012), opinion amended on reargument, 103 A.D.3d 1191 (N.Y. App. Div. 2013)); *Ramos*, 202 F. Supp. 3d at 465 (first citing *Corporan v. Wal-Mart Stores E., LP*, No. 16-2305-JWL, 2016 WL 3881341, at *4 n.4 (D. Kan. July 18, 2016); then citing *Chiapperini*, 48 Misc. 3d at 876).

²⁴¹ N.Y. Gen. Bus. Law § 898-b.

or others; and (b) preventing deceptive acts and practices and false advertising. . . .”²⁴²

The statute contains a private right of action to “[a]ny person, firm, corporation or association that has been damaged as a result of a gun industry member’s acts or omissions in violation of” this statute.²⁴³

Since 2021, nine other states have enacted similar laws that are aimed at requiring members of the gun industry to follow basic standards for the safe and responsible operations of their businesses.²⁴⁴ The gun industry’s trade association, the National Shooting Sports Federation, has brought pre-enforcement suits against many of these statutes, to no avail.

In 2025, the Second Circuit issued a first-of-its-kind appellate decision in *National Shooting Sports Foundation v. James*, upholding New York’s industry accountability law against NSSF’s facial challenge. The Second Circuit rejected NSSF’s argument that PLCAA preempts the law. The Court found that PLCAA’s text and history do not support NSSF’s argument that Congress intended “to prevent state legislatures from creating avenues to hold gun manufacturers liable for downstream harms caused by their products.”²⁴⁵

And it explained that PLCAA plainly was “not [intended] to protect those manufacturers who violate state or federal laws.”²⁴⁶ The Court concluded that “[b]ecause Section 898 expressly regulates firearms” and is a duly enacted state law, it is consistent with PLCAA’s predicate exception and therefore not preempted.²⁴⁷

Additionally, the court upheld the law, at least facially, against several constitutional challenges, including under the Dormant Commerce Clause and Due Process Clause.²⁴⁸ With respect to the Dormant Commerce Clause, the Court found that NSSF had not shown that Section 898 discriminates against or imposes an undue burden on interstate commerce or that it regulates wholly extraterritorial conduct in every application of the statute.²⁴⁹ The Court also rejected the argument that Section 898 is unconstitutionally vague on its face.²⁵⁰ While NSSF argued that Section 898 is insufficiently specific on what conduct—including what reasonable controls—are required or forbidden, the Court explained that “reasonableness is a well-established legal standard that is employed in a wide range of statutes consistent with the requirements of the Due Process Clause” and emphasized that the law’s definition of “reasonable controls and procedures” provides specific examples and is “sufficiently clear.”²⁵¹

²⁴² *Id.* § 898-a.

²⁴³ *Id.* § 898-e.

²⁴⁴ Del. Code Ann. tit. 10, § 3930; N.J. Stat. Ann. § 2C:58-35; Cal. Civ. Code § 3273.50, et seq.; Haw. Rev. Stat. Ann. § 134-101, et seq.; Wash. Rev. Code Ann. § 7.48.330; Colo. Rev. Stat. Ann. § 6-27-101 et seq.; 815 Ill. Comp. Stat. Ann. 505/2DDDD; Md. Code Ann., Cts. & Jud. Proc. § 3-2501 et seq. (effective June 1, 2024); Conn. Pub. Act No. 25-43, § 2 (2025).

²⁴⁵ *Nat’l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 109-10 (2d Cir. 2025).

²⁴⁶ *Id.* at 109.

²⁴⁷ *Id.* at 109-10.

²⁴⁸ *Id.* at 114-18.

²⁴⁹ *Id.* at 113-17.

²⁵⁰ *Id.* at 117-18.

²⁵¹ *Id.* at 118. Judge Jacobs concurred with the result—making the decision unanimous—but expressed the view that New York’s industry accountability law “is nothing short of an attempt to end-run PLCAA.” *Id.* at 120 (Jacobs, J., concurring). He nevertheless concurred because he felt bound by *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008). *Id.* at 121.

²⁵² *Nat’l Shooting Sports Found. v. Platkin*, No. 22-6646 (ZNQ) (TJB), 2025 WL 1904415, at *12 (D.N.J. July 10, 2025) (denying NSSF’s motion for preliminary injunction on *Younger* abstention grounds); *Nat’l Shooting Sports Found. v. Jennings*, No. 22-1499-RGA, 2023 WL 5835812, at*2 (D. Del. Sep. 8, 2023) (dismissing challenge to Delaware’s law for lack of standing); *Nat’l Shooting Sports Found. v. Bonta*, 718 F. Supp. 3d 1244, 1254-55 (S.D. Cal. 2024) (dismissing challenge to business practices regulation for lack of standing, but issuing preliminary injunction as to prohibition on the sale or marketing of “abnormally dangerous” firearm-related products); *Nat’l Shooting Sports Found., Inc. v. Ferguson*, 722 F. Supp. 3d 1150, 1156, 1161 (E.D. Wash. 2024) (dismissing challenge to Washington’s law for lack of standing); *Nat’l Shooting Sports Found. v. Lopez*, 730 F. Supp. 3d 1073, 1090 (D. Haw. 2024) (denying motion for preliminary injunction for lack of standing); *Complaint, Nat’l Shooting Sports Found., Inc. v. Raoul*, No. 23-CV-02791 (S.D. Ill. Aug. 14, 2023).

Some of these NSSF cases are ongoing, but none have successfully challenged these statutes.²⁵² In addition, some gun industry defendants have attacked the state industry accountability laws as-applied. For instance, the City of Chicago sued Glock for designing, selling, and marketing easily modifiable pistols under the Illinois industry accountability law, and Glock argued that the law was invalid in its motion to dismiss.²⁵³ The court rejected Glock's arguments, upholding the law,²⁵⁴ as did a New Jersey court in a similar lawsuit.²⁵⁵

Second Amendment Practice Pointer:

Gun industry litigants sometimes argue that state industry accountability laws violate the Second Amendment. This is meritless. As a threshold matter, a law may potentially violate the Second Amendment only if its regulated conduct falls within the Amendment's text.²⁵⁶ These laws do not.²⁵⁷ The Second Amendment sets out a right to "keep and bear" arms; it does not establish a right to sell or manufacture firearms, divorced from any individual's ability to keep or bear.²⁵⁸

Indeed, the Supreme Court has made clear that "laws imposing conditions and qualifications on the commercial sale of arms" are "presumptively lawful regulatory measures."²⁵⁹

Even if a gun industry litigant could somehow show that a state industry accountability law regulates conduct within the Second Amendment's text, the law is constitutional so long as it is "consistent with the Nation's historical tradition of firearm regulation."²⁶⁰ There are strong arguments to be made on this point as well.

Take one example. The City of Chicago sued Glock for designing, selling, and marketing pistols that can be easily modified into machine guns.²⁶¹ Glock argued that the Illinois industry accountability law, which served as the predicate statute in that case, violated the Second Amendment.²⁶² The court found that the conduct regulated by the Illinois industry accountability law did not fall within the text of the Second Amendment.

²⁵³ *City of Chicago v. Glock*, No. 2024CH06875, at *9-12 (Cook Cnty. Cir. Ct. Sep. 18, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2025/09/Memorandum-and-Opinion-in-City-of-Chicago-v.-Glock-Inc.pdf>.

²⁵⁴ *Id.* (rejecting Glock's constitutional and preemption challenges to Illinois's state industry accountability law); see also *Roberts v. Smith & Wesson Brands, Inc.*, No. 22 LA 00000487, 2025 WL 1295092, at *14 (Ill. Cir. Ct. Apr. 1, 2025) (rejecting Smith & Wesson's argument that Illinois's industry accountability law is unconstitutional).

²⁵⁵ See *Platkin v. Glock, Inc.*, No. ESX-C-000286-24 (N.J. Super Ct. Ch. Div. Dec. 12, 2024), https://www.nj.gov/oag/newsreleases25/2025-1014_Glock-MTD-Order-Op.pdf.

²⁵⁶ See *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 19 (2022); *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 220 (4th Cir. 2024) (en banc).

²⁵⁷ Gun industry defendants have the burden to show that the regulated conduct falls within the text of the Second Amendment. See *Hanson v. District of Columbia*, 120 F.4th 223, 231-32 (D.C. Cir. 2024) ("The [challenging party] bears the burden of proof at the first step . . ."); see also *Moore*, 116 F.4th at 221.

²⁵⁸ See, e.g., *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 117-18 (9th Cir. 2024) (explaining that, "[o]n its face, [the Second Amendment] says nothing about commerce," and "only prohibits meaningful constraints on the right to acquire firearms"), *cert. denied*, 145 S. Ct. 1958 (2025); see also *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017) (en banc) ("[T]he Second Amendment does not confer a freestanding right, wholly detached from any customer's ability to acquire firearms, upon a proprietor of a commercial establishment to sell firearms").

²⁵⁹ *United States v. Gould*, 146 F.4th 421, 425 (4th Cir. 2025) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626-27, 627 n.26 (2008)); see also *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 120 (10th Cir. 2024) ("[L]aws imposing conditions and qualifications on the sale and purchase of arms do not implicate the plain text of the Second Amendment."); *Roberts*, 2025 WL 1295092, at *19 ("The Second Amendment does not provide businesses a right to sell firearms free of regulations."); *United States v. Barrera-Esteves*, No. 22-CR-50045-1, 2024 WL 3495156, at *2 (N.D. Ill. July 22, 2024) ("[T]he commercial sale of arms is beyond the scope of [the Second Amendment's] protections"); *United States v. Kazmende*, No. 22-CR-236, 2023 WL 3872209, at *5 (N.D. Ga. May 17, 2023) ("[T]he Second Amendment does not cover the commercial selling of firearms."), *report and recommendation adopted*, 2023 WL 3867792 (N.D. Ga. June 7, 2023).

Moreover, the City of Chicago argued that, even if it had, there is a history and tradition of regulating “exceedingly dangerous weapons” that become a widespread and favored weapon of choice for criminals—like, in that case, Glock pistols easily converted into machine guns.²⁶³

A number of cases have been brought under these state industry accountability laws. For example, in New York, the Attorney General sued ten companies involved in the manufacture and sale of ghost guns, arguing that they marketed these products to individuals who could not legally purchase or possess firearms, and that they misled consumers about the products’ legality.²⁶⁴

The lawsuit seeks restitution, disgorgement, and a permanent injunction, among other relief, and survived a motion to dismiss in early 2024.²⁶⁵ As noted above, the City of Chicago sued Glock, Inc., a manufacturer of semiautomatic handguns, alleging that it unlawfully markets and sells firearms that can be readily converted into illegal machineguns.²⁶⁶

In Maryland, the City of Baltimore and the Maryland Attorney General filed a similar suit against Glock, Inc.,²⁶⁷ as did the New Jersey Attorney General.²⁶⁸ In New Jersey, the Attorney General also brought two other public nuisance lawsuits: one against a gun show operator and ghost gun seller for marketing ghost guns to New Jersey residents that are illegal to purchase and possess in the state, and a second against a gun store that failed to properly secure its inventory, resulting in the bulk theft of firearms by traffickers.²⁶⁹

Practice Pointer:

If you are bringing a case in a state that has passed a gun industry accountability law, these can be used as both the predicate statute and to provide a cause of action (with the exception of New Jersey and Maryland, where only certain government offices have standing to enforce the gun industry accountability statute directly).

²⁶⁰ *Bruen*, 597 U.S. at 24.

²⁶¹ See *City of Chicago v. Glock*, No. 2024CH06875, at *1 (Cook Cnty. Cir. Ct. Sep. 18, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2025/09/Memorandum-and-Opinion-in-City-of-Chicago-v.-Glock-Inc.pdf>.

²⁶² *Id.* at *12.

²⁶³ *Id.* (outlining plaintiff’s argument that the regulation of “exceedingly dangerous weapons, such as handguns that are capable of being easily converted into illegal fully automatic machine guns, are within the historical tradition of this nation’s laws”).

²⁶⁴ See *New York v. Arm or Ally, LLC*, 718 F. Supp. 3d 310, 319 (S.D.N.Y. Feb. 23, 2024).

²⁶⁵ See *id.* at *1.

²⁶⁶ See Complaint, *City of Chicago v. Glock, Inc.*, No. 2024CH06875 (Ill. Cir. Ct. Cook Cnty. July 22, 2024), <https://everytownlaw.org/wp-content/uploads/sites/5/2024/07/2024.07.22-Complaint-Chicago-v.-Glock-et-al.pdf>.

²⁶⁷ See Complaint, *Mayor & City Council of Baltimore v. Glock, Inc.*, No. C-24-CV-25-001450 (Balt. City Cir. Ct. Feb. 12, 2025), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2025/02/2025.02.12-Final-Baltimore-Maryland-Glock-Complaint.pdf>.

²⁶⁸ See Complaint, *Platkin v. Glock, Inc.*, No. ESX-C-000286-24 (N.J. Super Ct. Ch. Div. Essex Cnty., Dec. 12, 2024), <https://nj.gov/oag/newsreleases24/Glock-complaint.pdf>.

²⁶⁹ See Complaint, *Platkin v. Patriot Enters. Worldwide LLC*, No. C-93-23 (N.J. Super Ct. Ch. Div. Mercer Cnty., Dec. 12, 2023), https://www.nj.gov/oag/newsreleases23/2023-1212_JSD-Complaint.pdf; Complaint, *Platkin v. FSS Armory, Inc.*, No. C-102-23 (N.J. Super Ct. Ch. Div. Morris Cnty., Dec. 12, 2023), https://www.nj.gov/oag/newsreleases23/2023-1212_FSS-Armory-Complaint.pdf.

Further Reading on the Predicate Exception:

Key Cases

- ***City of New York v. Beretta U.S.A. Corp.***, 524 F.3d 384 (2d Cir. 2008) (predicate exception did not encompass New York’s generally applicable criminal public nuisance statute because it (1) did not expressly regulate firearms, (2) had not previously been applied to the marketing and sale of firearms, and (3) could not clearly be said to implicate the purchase and sale of firearms)
- ***Ileto v. Glock, Inc.***, 565 F.3d 1126 (9th Cir. 2009) (predicate exception did not encompass California’s generally applicable negligence and public nuisance tort laws despite California codifying those common law claims in its civil code)
- ***Soto v. Bushmaster Firearms Int’l, LLC***, 202 A.3d 262 (Conn. 2019) (adopting broad reading of “applicable to” and holding that state consumer protection statute could serve as PLCAA predicate where it had previously been applied to the sale of firearms)
- ***Nat’l Shooting Sports Found., Inc. v. James***, 144 F.4th 98 (2d Cir. 2025) (affirming that New York’s firearms industry accountability law is constitutional and not preempted by PLCAA, and can serve as a predicate statute for PLCAA exception)
- ***Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos***, 605 U.S. 280 (2025) (generalized allegations that manufacturers failed to prevent downstream distribution of firearms to cartels, and marketed firearms with features that cartels found appealing, was insufficient to plead aiding and abetting under federal law sufficient to establish a predicate violation under PLCAA)
- ***Smith & Wesson Corp. v. City of Gary***, 875 N.E.2d 422 (Ind. Ct. App. 2007) (predicate exception encompasses statutory public nuisance law, allowing common law and statutory claims predicated on violation of that law to proceed)
- ***Chiapperini v. Gander Mountain Co.***, 13 N.Y.S.3d 777 (N.Y. Sup. Ct. 2014) (allowing negligence, public nuisance, and related common law claims against gun dealer to proceed based on predicate exception, where plaintiff alleged that dealer sold a gun to a straw purchaser with actual or constructive knowledge that buyer was a straw purchaser, in violation of the Gun Control Act)
- ***Williams v. Beemiller, Inc.***, 952 N.Y.S.2d 333 (App. Div 2012) (allowing common law claims to proceed against gun dealer based on predicate exception, where dealer allegedly “knowingly violated federal gun laws” when it sold about 140 weapons to straw purchasers in a series of suspicious transactions)

Further Reading on the Predicate Exception:

- ***Salter v. Meta Platforms, Inc.***, 240 N.Y.S.3d 610 (2025) (holding that the state general marketing and commercial products law was a valid predicate statute, distinguishing Supreme Court’s *Smith & Wesson* decision based on allegations that defendant marketed its product in violation of New York law, and allowing claims to proceed under predicate exception)

Additional Cases

- ***Prescott v. Slide Fire Sols., LP***, 410 F. Supp. 3d 1123 (D. Nev. 2019) (misrepresentations to the public about the legality of bump stocks that violated the Nevada Deceptive Trade Practices Act could satisfy predicate exception because, unlike common law tort theories, the Act specifically regulates the sale and marketing of goods)
- ***Corporan v. Wal-Mart Stores E., LP***, No. 16-CV-2305, 2016 WL 3881341 (D. Kan. July 18, 2016) (dismissing complaint where plaintiff failed to plausibly allege that gun dealer violated Gun Control Act during sale to straw purchaser, but noting that complaint would survive under PLCAA if amended to include allegations of knowing violation on the part of defendant)
- ***King v. Klocek***, 133 N.Y.S.3d 356 (App. Div. 2020) (plaintiff adequately pled a predicate violation under PLCAA by alleging that ammunition seller knowingly sold handgun ammunition to a minor in violation of federal and state law prohibitions)
- ***Brady v. Walmart Inc.***, No. 21-CV-1412, 2022 WL 2987078 (D. Md. July 28, 2022) (denying motion to dismiss negligence claims where plaintiff alleged defendants violated the law by selling a firearm to a customer in violation of state law prohibiting possession of a rifle or shotgun by a person who “suffers from a mental disorder”)
- ***New York v. Arm or Ally, LLC***, 718 F. Supp. 3d 310 (S.D.N.Y. 2024) (finding that PLCAA’s predicate exception applied to claim brought under state firearms industry accountability statute, which codified public nuisance claims concerning certain firearm-industry specific conduct, and concluding that PLCAA did not bar claims)
- ***Minnesota v. Fleet Farm LLC***, 679 F. Supp. 3d 825 (D. Minn. 2023) (allowing state law tort claims like negligence and public nuisance to survive PLCAA because they were predicated on the violation of federal or state law statutes regarding the regulation of firearms)

Further Reading on the Predicate Exception:

- ***City of Chicago v. Glock***, No. 2024CH06875 (Cook Cnty. Cir. Ct. Sep. 18, 2025), (allowing common law claims to proceed against Glock based on predicate exception, in part, because “[t]o hold otherwise would permit firearm manufacturers and distributors to evade the law, despite knowingly perpetuating conditions that endanger the health and safety of the public”)
- ***Minnesota v. Glock***, No. 27-CV-24-18827 (4th Dist. Ct. Aug. 21, 2025), available (finding that generally applicable state laws concerning consumer fraud and deceptive trade practices was valid predicate statute, and allowing claims against manufacturer of firearms that could be readily converted to illegal machine guns to proceed under predicate exception)
- ***Stanisic v. Sturm, Ruger & Co., Inc.***, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692 (Conn. Super. Ct. Nov. 12, 2025) (finding that the predicate exception applies to Connecticut’s general unfair marketing statute and that the predicate exception applies to the entire action, not just piecemeal claims)

V. Negligence Per Se Exception

This chapter covers PLCAA's negligence per se exception.

PLCAA's exceptions are the second step of a two-step analysis to determine if the statute bars your claims. **First**, you should determine whether your lawsuit is a “qualified civil liability action,” as described in Section III. If it is, this chapter will help you learn whether the **negligence per se exception** will allow any of your claims to proceed.

PLCAA's negligence per se exception depends on underlying state law, which varies between states but typically requires:

- ✓ A statutory violation;
- ✓ A statute intended to protect against the type of harm at issue; and
- ✓ A victim within the class of persons that the statute is intended to protect.

A State law “action brought against a seller for . . . negligence per se”²⁷⁰ provides another means of unlocking the courthouse door for a lawsuit that would otherwise be barred by PLCAA. If a dealer committed the tort of negligence per se, that claim falls outside the definition of a Qualified Civil Liability Action (QCLA) and may proceed. Note, however, that this exception applies only to “sellers” (retailers, distributors, and importers), not manufacturers.

While PLCAA offers its own definition of “negligent entrustment,” see *infra* Section VI, it does not define “negligence per se.” Without a definition intrinsic to the statute, courts have looked to the relevant state’s definition of negligence per se. State-by-state law on negligence per se varies significantly, and practitioners are advised to closely review the case law of the state that is the source of substantive law for their client’s lawsuit. However, the general rule is that negligence per se requires: (1) a statutory violation; (2) of a statute designed to protect against the type of harm the actor’s conduct caused; and (3) a victim who falls within the class of persons the statute is designed to protect.²⁷¹ In essence, the statute creates the duty that is allegedly breached. As PLCAA itself does not create any causes of action, a claim under a negligence per se theory must arise under state law.²⁷²

The likelihood of success for a negligence per se theory, therefore, depends on the state in which the suit is brought or whose substantive law applies. For example, in *Corporan v. Wal-Mart Stores East, LP*, a Kansas federal court evaluated a motion to dismiss under PLCAA after

the case came before it on diversity jurisdiction.²⁷³ The plaintiff sued a dealer for selling a firearm to a straw purchaser in Missouri that was later used in a shooting in Kansas.²⁷⁴ The plaintiff claimed that the dealer violated the Gun Control Act and was thus negligent per se when it sold a gun under suspicious circumstances despite knowing or having reasonable cause to know that the firearm would be transferred to another person (the shooter). The Plaintiff also alleged that the dealer should have known that the shooter—who picked out the firearm but then let an accomplice pay for it—would have failed a background check because he was a convicted felon and therefore barred from purchasing or possessing a firearm.²⁷⁵ The plaintiff brought claims for negligence, negligent entrustment, negligence per se, and aiding and abetting a straw purchase.²⁷⁶

The court noted that plaintiff had not sufficiently pled a knowing violation of the Gun Control Act to bring her lawsuit within PLCAA’s predicate exception, but acknowledged that this deficiency could be easily addressed through amendment.²⁷⁷ Because the predicate exception did not save the claims as a blanket matter, the court then evaluated whether individual claims could survive under their own specific PLCAA exceptions, including the negligence per se claim. To determine this, the court evaluated whether the plaintiff had stated a valid claim for negligence per se under either Missouri or Kansas law.²⁷⁸ Under Missouri law as it existed at the time, the federal court predicted that Missouri would recognize that the Gun Control Act was a statute intended to protect the public from gun crimes and that the victim fell within

²⁷⁰ 15 U.S.C. § 7903(5)(A)(ii).

²⁷¹ Restatement (Third) of Torts, § 14 (2010).

²⁷² See 15 U.S.C. § 7903(5)(c) (“[N]o provision of this chapter shall be construed to create a public or private cause of action or remedy[.]”); *Woods v. Steadman’s Hardware, Inc.*, 2013 WL 709110, at *4 (D. Mont. Feb. 26, 2013) (“[A] state law claim for negligence based on a per se violation of state or federal law is still a state law negligence claim—and not a violation of the PLCAA.”); *Gilland v. Sportsmen’s Outpost, Inc.*, 2011 WL 2479693, at *14 (Conn Super. Ct. May 26, 2011) (applying state negligence per se standards to determine if PLCAA exception applies).

²⁷³ No. 16-2305, 2016 WL 3881341, at *1 (D. Kan. 2016).

²⁷⁴ *Id.*

²⁷⁵ *Id.*; see also 18 U.S.C. §§ 922(m), 924(a)(1)(A).

²⁷⁶ 2016 WL 3881341, at *1.

²⁷⁷ *Id.* at *4.

²⁷⁸ *Id.* at *4-5. The court did not engage in a choice of law analysis and did not explain why it evaluated both Kansas and Missouri law other than to note that the defendant had argued that the negligence per se claim failed under either state’s law. See *id.* at *4.

this class of persons.²⁷⁹ Under Kansas law, however, the court concluded that a negligence per se claim could not be based on a Gun Control Act violation because the Act created no private right of action, which Kansas requires as an element of a negligence per se claim.²⁸⁰ The court therefore allowed the negligence per se claim predicated on Missouri law to survive but granted the motion to dismiss to the extent plaintiff sought to plead a negligence per se claim under Kansas law.²⁸¹

As the *Corporan* case illustrates, for negligence per se claims some states require that the underlying statute have an independent cause of action, while others have no such requirement.²⁸² Additionally, while some states consider negligence per se to be its own cause of action, others view a violation of an underlying statute only as evidence of the defendant's negligence but not as a standalone claim.²⁸³ Additionally, the law differs from state to state as to whether violations of municipal codes may serve as the basis for negligence per se.²⁸⁴ In light of all of these state-specific variables, plaintiffs may have greater success invoking PLCAA's negligence per se exception in states with broad negligence per se laws and/or statutes specifically enacted to protect victims of gun violence.

A question that frequently arises in the context of PLCAA litigation is: what is the difference between a negligence per se claim and a claim brought under the predicate exceptions, since both involve violations of a statute? As noted above, the negligence per se claim applies only to sellers, as opposed to the predicate exception which applies to both sellers and manufacturers. However, the benefit of a negligence per se claim is that the plaintiff does not need to allege a "knowing" violation of a statute—unless, of course, that is a required element of the underlying statute. In addition, as noted above, most courts allow the entire action to proceed, including a negligence per se claim, if a plaintiff can satisfy the predicate exception.²⁸⁵

²⁷⁹ *Id.* at *4-5. A Missouri court later determined that § 922 of the Gun Control Act is not a statute on which a negligence per se claim can be premised because it contains its own enforcement provisions but creates no right of action. See *Elkins v. Academy I, LP*, 633 S.W.3d 529, 537-39 (Mo. Ct. App. 2021).

²⁸⁰ 2016 WL 3881341, at *5. The court noted that despite disallowing a negligence per se claim in this circumstance, Kansas would likely permit a claim of "simple negligence" that looked to federal law to define the standard of care. *Id.*

²⁸¹ *Id.* at *4-5.

²⁸² Compare *Brady v. Walmart Inc.*, No. 21-cv-1421, 2022 WL 2987078, at *12 (D. Md. 2022) (denying claim under the negligence per se exception and explaining that negligence per se requires that the violated statute create a cause of action under Maryland law); *T & M Jewelry, Inc. v. Hicks ex rel. Hicks*, 189 S.W.3d 526, 529 (Ky. 2006) (rejecting negligence per se claim based on violation of 18 U.S.C. 922(b)(1) because the statute "does not explicitly provide a civil remedy"), with *Minn. v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 847 (D. Minn. 2023) (denying a motion to dismiss negligence per se claim because in Minnesota, "negligence per se claims may arise for violations of penal statutes that otherwise do not provide for a civil action").

²⁸³ Compare *Elkins*, 633 S.W.3d at 537 ("Missouri courts recognize negligence per se as a cause of action."), with *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 529 n.6 (1st Cir. 2024) (noting with approval that the district court declined to apply the negligence per se exception because "Massachusetts does not recognize the negligence per se doctrine"), *rev'd on other grounds, Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025).

²⁸⁴ See *Timperio v. Bronx-Lenanon Hosp. Ctr.*, 384 F. Supp. 3d 425, 434-35 (S.D.N.Y. 2019) (rejecting a PLCAA claim in part because under New York law, violation of an administrative rule is not negligence as a matter of law because regulations lack the force and effect of a statute); *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1133-34 (D. Nev. 2019) (noting that Nevada has endorsed negligence per se actions for building and municipal code violations, but denying the applicability of the negligence per se exception because the statute at issue was not intended to protect against the asserted injuries).

²⁸⁵ See, e.g., *Stanisic v. Sturm, Ruger & Co., Inc.*, No. X10-UWY-CV-23-6072789 S, 2025 WL 3212692, at *24-25 (Conn. Super. Ct. Nov. 12, 2025) (allowing negligence per se claim to proceed against manufacturer because it was part of an "action in which" the plaintiffs had satisfied PLCAA's predicate exception); see also Section IV.E on "Piecemeal Analysis of Claims."

Further Reading on the Negligence Per Se Exception:

- ***Corporan v. Wal-Mart Stores E., LP***, No. 16-CV-2305, 2016 WL 3881341, at *2 (D. Kan. 2016) (granting in part and dismissing in part a motion to dismiss under PLCAA, and looking to underlying state law to evaluate viability of negligence per se claim predicated on alleged violation of Gun Control Act during gun sale to straw purchaser)
- ***Minn. v. Fleet Farm LLC***, 679 F. Supp. 3d 825, 846-47 (D. Minn. 2023) (rejecting arguments that negligence per se claim cannot be predicated on Gun Control Act and state analogue because these statutes protect the public generally rather than a narrower class of persons, and because these statutes do not provide a private right of action)
- ***Brady v. Walmart Inc.***, No. 21-cv-1421, 2022 WL 2987078, at *12-13 (D. Md. 2022) (negligence per se exception did not apply where state law treated statutory violation as mere evidence of negligence and not as negligence per se in the absence of express statutory language)
- ***Elkins v. Acad. I, LP***, 633 S.W.3d 529, 537-39 (Mo. Ct. App. 2021) (recognizing that Missouri law allows negligence per se claims, but declining to apply negligence per se exception where, under state law, businesses generally have no duty to protect against third party criminal conduct absent a special relationship with plaintiff or other “special facts and circumstances”)

VI. Negligent Entrustment Exception

This chapter covers PLCAA's negligent entrustment exception.

PLCAA's exceptions are the second step of a two-step analysis to determine if the statute bars your claims. **First**, you should determine whether your lawsuit is a “qualified civil liability action,” as described in Section III. If it is, this chapter will help you determine whether the **negligent entrustment exception** will allow any of your claims to proceed.

To proceed under PLCAA's negligent entrustment exception, you need:

- ✓ a viable state-law tort claim;
- ✓ against a seller of a qualified product;
- ✓ who knows or reasonably should know;
- ✓ that the recipient is likely to use the product in a manner involving an unreasonable risk of physical injury.

“[A]n action brought against a seller for negligent entrustment” can also unlock the courthouse door for a litigant who might otherwise be barred by PLCAA’s general definition of a Qualified Civil Liability Action (“QCLA”).²⁸⁶ Negligent entrustment is the tort of giving someone access to a potentially dangerous instrumentality, when the owner knows or reasonably should know that the recipient poses a danger to himself or others. Historically, the tort developed in the context of automobiles, but firearms are also a dangerous instrumentality, and gun dealers have been held liable for transferring them to someone who they had reason to believe was clearly unfit—like someone who is intoxicated, severely mentally ill, or who is straw purchasing a gun for a felon.²⁸⁷

The interplay between PLCAA and the underlying substantive state tort law can be a bit complex, because PLCAA contains its own definition of negligent entrustment:

[T]he term ‘negligent entrustment’ means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.²⁸⁸

Even though it defines negligent entrustment for purposes of PLCAA, the statute does not itself create a private right of action. As a result, state tort law must provide the underlying cause of action.²⁸⁹ Thus, a plaintiff must allege and ultimately prove a claim that satisfies both the elements of the state law cause of action and the definition of negligent entrustment found in PLCAA.²⁹⁰

Important: this exception is not available for claims against a manufacturer (unless the manufacturer is also a “seller,” under PLCAA).²⁹¹

A. State Law of Negligent Entrustment

The law of negligent entrustment varies from state to state, but many states have adopted Section 390 of the Restatement (Second) of Torts, which provides:

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.²⁹²

²⁸⁶ 15 U.S.C. § 7903(5)(A)(ii).

²⁸⁷ See, e.g., *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1208 (Fla. 1997) (intoxicated buyer); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 326 (Mo. 2016) (en banc) (mentally ill buyer); *Shirley ex rel. Graham v. Glass*, 308 P.3d 1, 9 (Kan. 2013) (straw purchaser buying firearm for convicted felon).

²⁸⁸ 15 U.S.C. § 7903(5)(B).

²⁸⁹ See 15 U.S.C. § 7903(5)(C); *Brady v. Walmart Inc.*, No. 21-CV-1412, 2022 WL 2987078, at *10 (D. Md. July 28, 2022) (“Accordingly, because the PLCAA does not ‘create a public or private cause of action or remedy,’ I must look to state law.” (citation omitted)); *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1132-33 (D. Nev. 2019) (“Because the PLCAA does not ‘create a public or private cause of action or remedy,’ courts look to state law.” (citation omitted)); *Phillips v. Lucky Gunner, LLC*, 84 F.Supp.3d 1216, 1225 (D. Colo. 2015) (“Although the PLCAA identifies negligent entrustment as an exception to immunity, it does not create a cause of action. Accordingly, the claim arises under state law.” (citation omitted)); *Bryant-Bush v. Shawnee Gun Shop, Inc.*, No. 09-CV-00397, 2011 WL 13177539, at *3 (W.D. Mo. Mar. 29, 2011) (“Because these exceptions are not to be construed ‘to create a public or private cause of action or remedy,’ the Court must look to state common law.” (citation omitted)).

²⁹⁰ See *Delana*, 486 S.W.3d at 324.

²⁹¹ See 15 U.S.C. § 7903(5)(B) (defining negligent entrustment for purposes of PLCAA as tortious conduct on the part of a “seller”); *Roberts v. Smith & Wesson Brands, Inc.*, No. 22 LA 00000487, 2025 WL 1295092, at *15 (Ill. Cir. Ct. Apr. 1, 2025) (dismissing plaintiffs’ claim against Smith & Wesson for negligent entrustment because plaintiffs failed to sufficiently allege that Smith & Wesson was “the firearm seller[] at the wholesale and retail level”).

This is consistent with the definition of “negligent entrustment” in PLCAA. A negligent entrustment state law cause of action that satisfies Section 390 will frequently satisfy the PLCAA negligent entrustment exception (and vice versa).

Practice Pointer:

As noted previously, the doctrine of negligent entrustment has most commonly been applied in the context of motor vehicles: person A permits person B to use their car, despite B’s youth or intoxication, and predictably, B injures person C with that car. In that instance, C could sue A for negligent entrustment. Depending on what state you are in, you may find that almost all of the negligent entrustment cases from appellate courts involve motor vehicles. But there is a long history of negligent entrustment cases involving guns entrusted to people who, by virtue of their age or other characteristic, are incompetent trustees.

Indeed, one of the foundational negligent entrustment cases at common law was based on an unintentional shooting.²⁹³ Courts in states across the country have upheld negligent entrustment cases against sellers and other suppliers of firearms.²⁹⁴ Importantly, some cases have emphasized the dangerous nature of guns as the basis for a heightened duty of care on the part of the entrustor, or to conclude that injury at the hands of an incompetent trustee was foreseeable.²⁹⁵

Under both Section 390 of the Restatement (Second) and PLCAA, it is essential to allege facts establishing that the defendant knew or had reason to know (or, as stated in some jurisdictions, should have known) that the person to whom they sold a gun was incompetent or likely to use the product in a manner “involving unreasonable risk of physical injury.” Courts have been skeptical of cases where there were no allegations about the interactions between the entrustor and trustee,²⁹⁶ or where allegations about the trustee’s incompetence were not tied to the particular trustee but instead relied on the nature of the product or the

²⁹² Restatement (Second) of Torts § 390 (Am. L. Inst. 1965); see, e.g., *Delana*, 486 S.W.3d at 324-26 & n.6 (holding that Missouri tort law follows the Restatement (Second) of Torts Section 390 with respect to negligent entrustment liability and listing cases from other jurisdictions that have adopted Section 390). *But see In re Acad., Ltd.*, 625 S.W.3d 19, 31 (Tex. 2021) (declining to adopt Section 390 of the Restatement (Second) for negligent entrustment liability).

²⁹³ *Dixon v. Bell* (1816) 105 Eng. Rep. 1023 (KB).

²⁹⁴ See, e.g., *Delana*, 486 S.W.3d at 324-26 (reversing entry of summary judgment and allowing plaintiff to proceed on negligent entrustment claim against gun seller); *Shirley ex rel. Graham v. Glass*, 308 P.3d 1, 9-10 (Kan. 2013) (allowing negligent entrustment action to proceed where the seller knowingly sold a firearm to a convicted felon); *Chiapperini v. Gander Mountain Co., Inc.*, 48 Misc.3d 865, 879-881 (N.Y. Sup. Ct. 2014) (denying motion to dismiss negligent entrustment claim where firearm seller sold gun to straw purchaser); *Bryant-Bush*, 2011 WL 13177539, at *3-4 (denying motion to dismiss negligent entrustment claim against seller); *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1206 (Fla. 1997) (confirming that retail vendor can be liable for negligent entrustment when selling firearm to intoxicated purchaser); *Foster v. Arthur*, 519 So.2d 1092, 1095 (Fla. Dist. Ct. App. 1988) (affirming judgment finding housemate liable for negligent entrustment); *Van Bogart v. Scheels All Sports, Inc.*, No. 27-CV-24-13319, 2025 WL 1277202, at *1, 8 (Minn. Dist. Ct. Apr. 9, 2025) (denying gun sellers’ motion to dismiss); *Mitchell v. River City Firearms Inc.*, No. 24-CI-01518, slip op. at 5-6 (Ky. Cir. Ct. May 19, 2025) (allowing negligent entrustment claim to proceed against store that allegedly sold mass shooter a “deadlier firearm than he needed, made even deadlier by the accessories they upsold him”), <https://everytownlaw.org/wp-content/uploads/sites/5/2024/01/Decision.pdf>.

²⁹⁵ See, e.g., *Shirley*, 308 P.3d at 9 (finding “highest standard of care” applicable in negligent entrustment claim involving firearm, based on previous cases holding that firearms are a dangerous instrumentality); *Kitchen*, 697 So. 2d at 1206 (imposing “highest degree of care” because a firearm is a “dangerous instrumentality” that “involves such a high degree of risk of serious injury or death”); see also *Howard Bros. of Phenix City, Inc. v. Penley*, 492 So. 2d 965, 968 (Miss. 1986) (“Two quite common facts of life should have been apparent to Howard Brothers: one, a loaded pistol is dangerous; and two, loaded pistols are especially dangerous in the hands of persons with serious personality disorders. . .”).

²⁹⁶ See, e.g., *Prescott*, 410 F. Supp. 3d at 1133 (concluding that plaintiffs had not pled “entrustment element” where “there is no allegation that Slide Fire sold, or otherwise entrusted the shooter with, a bump stock” and rejecting a theory of “indirect entrustment”).

class of people to whom it was sold.²⁹⁷

For example, in *Soto v. Bushmaster Firearms International, LLC*, the Connecticut Supreme Court considered whether the plaintiffs had properly alleged negligent entrustment against the manufacturers, distributors, and retailers involved in the sale of an AR-15 to the mother of the Sandy Hook shooter.²⁹⁸ The court held that the plaintiffs had not stated a claim under Connecticut law because they had not alleged “that any of the defendants possessed any knowledge or had any specific reason to believe either that [the shooter’s] mother would share the [Bushmaster] XM15-E2S with her son or that he was especially likely to operate it unsafely or illegally.”²⁹⁹ The court also emphasized, in reaching this conclusion, the unusually attenuated factual connection between the manufacturer and the shooter.³⁰⁰

By contrast, a Kentucky court allowed a negligent entrustment claim to go forward against a gun store defendant that “should have reasonably known through [a customer’s] demeanor, behavior, and statements at the store that he was likely to dangerously misuse the firearm.”³⁰¹ In that case, the customer’s manner was alleged to be “so suspicious that a patron in the store at the time was seriously concerned enough to consider calling the police.”³⁰² As asserted by plaintiffs, these mannerisms were “signs” that retailers are “trained to recognize and prevent,” and were a sufficient basis for a negligent entrustment claim to survive a motion to

dismiss under Kentucky law.³⁰³

Negligent entrustment does not always require the entrustor to affirmatively hand over the firearm to the trustee.³⁰⁴ But the forcible theft of a gun may foreclose a negligent entrustment claim under some circumstances. Courts diverge on this issue. On the one hand, the Missouri Court of Appeals held that a gun stolen at knifepoint could not give rise to a negligent entrustment claim.³⁰⁵ On the other hand, the Washington Supreme Court held that a negligent entrustment claim should go to a jury, even though the trustee stole the gun and threatened the store owner with it, where there were allegations of a lack of security measures and the trustee was visibly intoxicated.³⁰⁶

One final important note: Section 390 of the Restatement (Second) of Torts expressly contemplates that negligent entrustment be applied to *sellers* of chattel (in addition to *bailors*, or lenders, of chattel)—and this appears to be the rule in the majority of states that have considered the question.³⁰⁷ Comment (a) to Section 390 states:

The rule stated [in this section] applies to anyone who supplies a chattel for the use of another. It applies to sellers, lessors, donors or lenders, and to all kinds of bailors, irrespective of whether the bailment is gratuitous or for a consideration.³⁰⁸

²⁹⁷ See, e.g., *Timperio v. Bronx-Lebanon Hosp. Ctr.*, 384 F. Supp. 3d 425, 434 (S.D.N.Y. 2019) (concluding, where plaintiffs had not alleged knowledge of the trustee’s incompetence, but instead argued “that it would be negligent for [the gun store] to entrust an AR-15 to anyone, because of the increase of mass shootings with shooters using the AR-15,” that plaintiffs had not stated a claim for negligent entrustment).

²⁹⁸ 202 A.3d 262, 281-82 (Conn. 2019). *Soto* did not consider which of these defendants fell within the definition of “seller” for purposes of PLCAA, see 15 U.S.C. § 7903(5)(B), perhaps because the claim failed under state law.

²⁹⁹ *Id.*

³⁰⁰ *Id.* (“In any event, the plaintiffs have failed to cite to a single case, from any jurisdiction, that allowed an action for negligent entrustment to proceed when the nexus between a manufacturer of a product and the person who ultimately used that product in an unsafe manner was as attenuated as it is in the present case.”).

³⁰¹ *Mitchell*, slip op. at 6.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ See *Nearor v. Davis*, 694 N.E.2d 120, 124 (Ohio Ct. App. 1997) (“Negligent entrustment of a gun includes not only presenting the gun to a child, but also having a gun accessible to a child.”); *Foster v. Arthur*, 519 So. 2d 1092, 1094 (Fla. Dist. Ct. App. 1988) (“Consent to use a firearm need not be expressly given, however. It may be given indirectly through the conduct of the gun owner, such as when, under certain circumstances, he provides the opportunity for another person to use the gun.”).

Some states, like Texas, however, have expressly rejected Section 390 and have stuck to the older view, which is that negligent entrustment claims can only be brought against bailors and not against sellers.³⁰⁹ If that is the case in your state, you may not be able to bring a negligent entrustment claim against a gun or ammunition seller, only an individual who had lent a gun to someone whom they knew to be incompetent. That said, and as described further below, other state law causes of action that also fit within PLCAA's definition of negligent entrustment may still be viable.³¹⁰ Other states have not dealt with this precise issue, but plaintiffs should not be dissuaded from bringing a negligent entrustment claim in such jurisdictions, given that the weight of authority is in favor of recognizing such seller liability.

B. Interaction of Federal and State Law

For the most part, courts correctly conclude that the state law on negligent entrustment is substantially similar to PLCAA's definition of negligent entrustment and do not parse potential differences between the two.³¹¹ However, a handful of courts have delved deeper into this issue when there is an open question of whether state tort law recognizes negligent entrustment liability in the context of a sale. Among those handful of cases, there is split authority on whether state negligent entrustment law should inform the interpretation of PLCAA's negligent entrustment exception. The Texas Supreme Court has concluded that it should.³¹² The Missouri Supreme reached the opposite conclusion in *Delana*.³¹³

³⁰⁵ *Hendrick v. Acad. I, LP*, No. 705 S.W.3d 585, 5935 (Mo. Ct. App. 2024); see also *Est. of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 395-96 (Alaska 2013).

³⁰⁶ *Bernethy v. Walt Failor's, Inc.*, 653 P.2d 280, 282-83 (Wash. 1982).

³⁰⁷ See *Delana*, 486 S.W.3d at 324-26 (holding "defendant's status as a seller does not preclude liability" for negligent entrustment); *Coxe*, 295 P.3d at 394-95 (holding that state law permits negligent entrustment claim against a firearms seller); *Rains v. Bend of the River*, 124 S.W.3d 580, 596-97 (Tenn. Ct. App. 2003) ("Tennessee law can accommodate a claim for negligent entrustment of handgun ammunition. . . ."); *Ireland v. Jefferson Cnty. Sheriff's Dep't*, 193 F. Supp. 2d 1201, 1229 (D. Colo. 2002) (concluding that Colorado law permits a negligent entrustment action against the seller of a firearm because "the theory of negligent entrustment as set out in Restatement (Second) of Torts § 390 applies to anyone who supplies a chattel for the use of another, including sellers"); *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055, 1064 (N.Y. 2001) (holding that negligent entrustment is based on the supplier's knowledge and "[g]un sales have subjected suppliers to liability under this theory"); *Kitchen*, 697 So. 2d at 1202-08 ("We hold that an action for negligent entrustment as defined under section 390 of the Restatement is consistent with Florida public policy in protecting its citizens from the obvious danger of the placement of a firearm in the hands of an intoxicated person"); *Knight ex rel. Brown v. Wal-Mart Stores, Inc.*, 889 F.Supp. 1532, 1539 (S.D.Ga.1995) (holding that Georgia law follows the Restatement and authorizes negligent entrustment liability for selling a firearm to a mentally ill individual); *First Tr. Co. of N.D. v. Scheels Hardware & Sports Shop, Inc.*, 429 N.W.2d 5, 8 (N.D. 1988) (applying Restatement § 390 to hold that a gun dealer could be liable for negligent entrustment); *Bernethy*, 653 P.2d at 283 (same).

³⁰⁸ Restatement § 390 cmt. a.

³⁰⁹ See *In re Acad., Ltd.*, 625 S.W.3d at 31 (declining to adopt § 390 of the Restatement (Second) and noting that "[e]xtending a common-law negligent-entrustment claim to a sale of chattel, which results in the seller's relinquishing control over the very thing that is subsequently used in a manner that causes harm" would contradict earlier Texas cases that held that "the basis for imposing liability on the owner of the thing entrusted to another is that ownership of the thing gives the right of control over its use."); see also *Laurel Yamaha, Inc. v. Freeman*, 956 So. 2d 897, 904 (Miss. 2007) ("The doctrine of negligent entrustment 'ought not to be extended where the party sought to be charged had no control over the machine and the other party actually committing the injurious wrong was the owner, sui juris.'").

³¹⁰ See, e.g. Complaint at ¶¶ 103-09, 248-70, *Zamora v. Daniel Defense, LLC*, No. 2:23-cv-00017-AM (W.D. Tex. June 9, 2023), ECF No. 1, <https://everytownlaw.org/wp-content/uploads/sites/5/2023/02/2022.02.22-File-Stamped-Complaint.pdf>; Plaintiff's Opposition to Defendant Oasis Outback, LLC's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) at 7-9, *Zamora v. Daniel Defense, LLC*, No. 2:23-cv-00017-AM (W.D. Tex. June 9, 2023), ECF No. 101, <https://everytownlaw.org/wp-content/uploads/sites/5/2023/06/101-2023.06.09-Opposition-to-Oasis-Outback-MTD.pdf>.

³¹¹ See *Coxe*, 295 P.3d at 394 ("The PLCAA definition [of negligent entrustment] is substantially the same as the Restatement version Alaska follows."); *Elkins v. Acad. I, LP*, 633 S.W.3d 529, 534 (Mo. Ct. App. 2021) (noting that PLCAA's negligent entrustment definition is "similar[]" to Missouri's common law definition, "[t]hus a properly pleaded negligent entrustment claim against a seller of firearms . . . is recognized in Missouri common law and falls within the exceptions to PLCAA preemption").

³¹² See *In re Acad.*, 625 S.W.3d at 30 ("[C]ourts generally apply state law on negligent-entrustment claims in evaluating whether the exception applies.").

It is worth looking at the reasoning of each decision. In both cases the plaintiffs brought negligent entrustment claims, and the question before the court was whether state law permitted their claims. In *In re Academy*, the Texas Supreme Court concluded that the plaintiffs' negligent entrustment claim could not proceed because Texas law did not permit negligent entrustment claims against sellers (only lenders). The Texas Supreme Court then went on to analyze whether PLCAA's negligent entrustment exception would apply and concluded that, "[b]ecause the PLCAA expressly disclaims the creation of any cause of action, and negligent entrustment is a creature of state law, state law necessarily informs the application of PLCAA's negligent-entrustment exception."³¹⁴ But, as the concurrence more persuasively noted, this reasoning is at odds with PLCAA's plain text: "PLCAA does not leave room for this Court to supplement the Act's definition of 'negligent entrustment' with Texas common law."³¹⁵ Noting that "Courts must adhere to legislative definitions of terms when they are supplied," the *Academy* concurrence explained that "PLCAA's statement that it does not 'create' a cause of action does not somehow alter its definition or exception for 'negligent entrustment' claims."³¹⁶

The Missouri Supreme Court reached the opposite result in *Delana*, emphasizing that "[i]rrespective of what the claim is called, Missouri law authorizes claims that fit within the PLCAA's definition of a non-preempted claim for 'negligent entrustment.'"³¹⁷ It cited an earlier intermediate state appellate decision, *Noble v. Shawnee Gun Shop*,³¹⁸ in support. *Noble*'s reasoning is instructive:

The parties' dispute as to whether Appellants' claims must be denominated as

"negligent entrustment" claims under state law is something of a diversion. The Act creates an exception to its broad preemption of firearms-related tort suits for causes of action for "negligent entrustment." The Act specifically defines the "negligent entrustment" claims which may continue to be asserted.

While the Act uses the label "negligent entrustment" to denote this category of excepted claims, it could just as easily have used phrases like "exempt action" or "non-preempted claim" to denote the excepted claims, with the same legal effect. The label "negligent entrustment" is less important than the specific description Congress provided of the actions which survive. In other words, a state-law claim may continue to be asserted, even if it is not denominated as a "negligent entrustment" claim under state law, if it falls within the definition of a "negligent entrustment" claim provided in 15 U.S.C. § 7903(5)(B).³¹⁹

This reasoning is consistent with PLCAA's overall statutory scheme and would be the better argument to make in a state that has not yet ruled on the issue.

C. Negligent Entrustment in Straw Purchasing Cases

Negligent entrustment cases are frequently brought against gun stores that have facilitated sales to gun traffickers and straw purchasers, i.e. individuals illegally

³¹³ 486 S.W.3d at 324 ("[A] state-law claim may continue to be asserted, even if it is not denominated as a 'negligent entrustment' claim under state law, if it falls within the definition of a 'negligent entrustment' claim provided in the PLCAA." (cleaned up)).

³¹⁴ 625 S.W.3d at 30.

³¹⁵ *Id.* at 38 (Boyd, J., concurring).

³¹⁶ *Id.* at 40 (Boyd, J., concurring).

³¹⁷ 486 S.W.3d at 326.

³¹⁸ 409 S.W.3d 476, 480 (Mo. Ct. App. 2013).

³¹⁹ *Id.*, abrogated on other grounds by *Delana*, 486 S.W.3d at 326.

³²⁰ Eric Ortiz, *Badger Guns Found Liable for Negligence in Milwaukee Police Shooting*, NBC News (Oct. 13, 2015), <https://www.nbcnews.com/news/us-news/badger-guns-found-liable-negligence-milwaukee-police-shooting-n443951>. A detailed and helpful write-up of the case by the lead trial attorney can be found here: https://www.habush.com/wp-content/uploads/2022/11/TheVerdict_Fall.pdf. Patrick O. Dunphy, *Badger Guns Verdict Lessons Learned*, THE VERDICT, Fall 2016, at 8.

purchasing guns for someone else. In fact, the first case to go to trial against a gun store after the enactment of PLCAA involved an obvious straw sale, which resulted in the shooting of two Milwaukee police officers. In that case, the jury held that the gun store at issue was liable for negligent entrustment (among other claims) and awarded the officers \$5.7 million.³²⁰ Numerous other cases against gun stores involving negligent entrustment claims and sales to straw purchasers and gun traffickers have been allowed to proceed.³²¹

Sometimes, gun companies try to defend these cases by arguing that a sale to a straw purchaser does not fit into PLCAA's statutory definition of "negligent entrustment," because the definition requires transferring the gun to a person who is "likely to, and does, **use** the product in a manner involving unreasonable risk of physical injury to the person or others."³²² The argument goes that the straw purchaser's illegal transfer of the gun to a third person does not qualify as "use" under PLCAA. Twice, the District of Minnesota federal court has found this argument persuasive.³²³ That court appeared to accept the gun store's argument that the term "use" was ambiguous and that the legislative history of PLCAA indicated that "Congress contemplated negligent entrustment to include only direct entrustment to a shooter."³²⁴

There are numerous problems with this conclusion. First, case law is clear that in the context of firearms, the word "use" is much broader than "shoot" or "discharge."³²⁵ Second, contrary to the holding in *Fleet Farm*, the legislative history of PLCAA also makes clear that a plaintiff could "maintain a lawsuit [based on] . . . a straw purchase."³²⁶ Third, in interpreting the ambiguous term "use," the court should have applied the longstanding principle that preemption statutes such as PLCAA should be interpreted to have narrow preemptive effect.³²⁷ In light of that principle, the best reading of this provision is one in which "use" encompasses transferring guns to a person who is likely to injure another person or themselves, especially since Section 390 explicitly recognizes negligent entrustment liability against "[o]ne who supplies directly **or through a third person[.]**"³²⁸

Finally, it is worth remembering that if your case involves an illegal sale to a straw purchaser or gun trafficker, then it likely falls into PLCAA's Predicate Exception, in which case the statute's protections fall away and there is no need to engage in a claim-by-claim analysis of PLCAA's applicability. See Section IV(E). Thus, PLCAA's definition of "negligent entrustment" becomes irrelevant.³²⁹

³²¹ See, e.g., *City of Kansas City v. Jimenez Arms, Inc.*, Case No. 2016-CV00829, Summary Judgment Order at 6-7 (Jackson Cnty. Mo. Cir. Ct., entered Nov. 17, 2022), <https://everytownlaw.org/wp-content/uploads/sites/5/2022/11/2022.11.17-Summary-Judgment-Order-Granted-and-Denied-in-Part.pdf>; *Englund v. World Pawn Exch.*, No. 16CV00598, 2017 WL 7518923, at *6-7 (Multnomah Cnty., Or. June 30, 2017); *Corporan v. Wal-Mart Stores E., LP*, No. 16-CV-2305, 2016 WL 3881341, at *5-6 (D. Kan. July 18, 2016) (unreported); *Chiapperini v. Gander Mountain Co., Inc.*, 48 Misc. 3d 865, 874 (N.Y. Sup. Ct. 2014).

³²² 15 U.S.C. § 7903(5)(B) (emphasis added).

³²³ *Minnesota v. Fleet Farm LLC*, 673 F. Supp. 3d 825, 842 (D. Minn. 2023); see also *Wiley v. Fleet Farm LLC*, 799 F. Supp. 3d 860, 889-90 (D. Minn. 2025).

³²⁴ *Id.*

³²⁵ See, e.g., *Smith v. United States*, 508 U.S. 223, 236-37 (1993) (concluding, in the context of a federal statute that "use of a firearm during . . . drug trafficking offenses" includes bartering or exchanging a gun for drugs) (quotation marks omitted).

³²⁶ 151 Cong. Rec. S8917 (daily ed. July 26, 2005) (Statement of Sponsor Senator J. Sessions) (describing a viable claim for negligent entrustment).

³²⁷ See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

³²⁸ Restatement (Second) of Torts § 390 (Am. L. Inst. 1965).

³²⁹ *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 339-40 (App. Div. 2012) (holding that plaintiff's straw-purchasing case fell into the predicate exception and, therefore, that the court "need not address plaintiffs' further contention that this action falls within the PLCAA's negligent entrustment or negligence per se exception."); see also *Stanisic v. Sturm, Ruger & Co., Inc.*, Nos. X10-UWY-CV-23-6072789-S, X10-UWY-CV-23-6072791-S, 2025 WL 3212692, at *25 (Conn. Super. Ct. Nov. 12, 2025) (finding it unnecessary to parse negligence per se exception where claims satisfied predicate exception).

Practice Pointer:

The more you allege about what the defendant knew about the specific purchaser, the better. When straw purchasers are prosecuted federally, the prosecution documents (complaint and indictment, as well as attached affidavits) may include details that are useful to establish the defendant's knowledge that the entrustee was likely to use the firearm in a manner that created risk of physical harm. Indicia that someone is engaging in straw purchasing, further discussed below in Section IX – Basics of a Gun Sale, may include: bulk purchasing; repetitive buying of the same type of gun; bringing another person into the store who selects the gun but does not fill out the ATF forms; texting, making phone or video calls while selecting the gun; a lack of knowledge about/interest in the gun or guns being purchased; and paying large amounts of cash (especially when buying multiple guns).

Further Reading on the Negligent Entrustment Exception:

Key Cases

- ***Delana v. CED Sales, Inc.***, 486 S.W.3d 316 (Mo. 2016) (trial court erred in dismissing negligent entrustment claim against dealer that sold gun to a person it knew was severely mentally ill where the claim fit within PLCAA’s definition of negligent entrustment and where the claim was valid under Missouri law, which follows Restatement Section 390)
- ***Shirley ex rel. Graham v. Glass***, 308 P.3d 1, 9 (Kan. 2013) (affirming viability of negligent entrustment claim under Kansas law against pawn shop that sold firearm to felon in obvious straw purchase, and holding that gun dealers are subject to the “highest standard of care” to avoid selling firearms to persons at risk of harming others)
- ***In re Acad., Ltd.***, 625 S.W.3d 19, 31 (Tex. 2021) (dismissing negligent entrustment claim against seller of rifle and accessories used in mass shooting, on the grounds that Texas law recognizes the tort of negligent entrustment only based on the bailment—rather than sale—of property)
- ***Soto v. Bushmaster Firearms Int’l, LLC***, 202 A.3d 262 (Conn. 2019) (affirming dismissal of negligent entrustment claim against manufacturer, distributors, and dealers of rifle sold to mother of Sandy Hook mass shooter, where complaint failed to adequately allege that the defendants knew or had reason to know that the shooter’s mother was unqualified to use the firearm or that she would share the firearm with someone else who would misuse it)

Additional Cases

- ***Chiapperini v. Gander Mountain Co.***, 48 Misc. 3d 865 (N.Y. Sup. Ct. 2014) (denying motion to dismiss negligent entrustment claim involving straw-purchased rifle used in mass shooting, where claim fit within definition of negligent entrustment under PLCAA and state law, and where inferences about defendant’s knowledge of shooter’s criminal propensity were appropriate to draw in plaintiff’s favor at pleading stage)
- ***Corporan v. Wal-Mart Stores E., LP***, No. 16-CV-2305, 2016 WL 3881341 (D. Kan. July 18, 2016) (denying motion to dismiss negligent entrustment claim relating to straw-purchased firearm used in homicide, where defendant’s knowledge of entrustee’s incompetence was based solely on its knowledge that entrustee was a straw purchaser)

VII. Product Defect Exception

This chapter covers PLCAA's product defect exception.

PLCAA's exceptions are the second step of a two-step analysis to determine if the statute bars your claims. **First**, you should determine whether your lawsuit is a “qualified civil liability action,” as described in Section III. If it is, this chapter will help you determine whether the **product defect exception** will allow any of your claims to proceed.

PLCAA's product defect exception allows design-defect and manufacturing-defect claims to proceed in some circumstances, but bars claims where the gun's discharge was caused by a volitional act that constituted a criminal offense.

This chapter will help you determine:

- ✓ What counts as an act that “caused” the gun's discharge; and
- ✓ Whether that action—particularly if done by a minor—is both “volitional” and “constituted a criminal offense.”

The product defect exception allows claims against members of the gun industry to proceed where the “death, physical injuries or property damage result[ed] directly from a defect in design or manufacture of the product when used as intended or in a reasonably foreseeable manner.”³³⁰ This exception most commonly comes into play in cases where a gun is discharged unintentionally.

However, this rule has an exception of its own: product defect suits cannot proceed if “the discharge of the product was caused by a volitional act that constituted a criminal offense.”³³¹ Should this occur, the volitional act “shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.”³³² The phrase “a volitional act that constituted a criminal offense” is not defined by the statute, leading the Congressional Research Service to flag this as an ambiguity almost immediately after PLCAA’s passage.³³³

Altogether, the full text of this exception allows:

An action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.³³⁴

The bolded phrase has come to be known as “the exception to the exception,” as it significantly narrows the reach of the product defect exception. Reported

decisions on the product defect exception are relatively rare, and the courts behind them have reached contradictory conclusions about the key phrases of the exception, namely (1) what counts as a “volitional act that constituted a criminal offense,” and (2) what it means for that act to “cause[]” the “discharge of the product.”³³⁵ This section describes how courts have interpreted these terms and notes where litigators may distinguish unhelpful precedent.

Practice Pointer:

As a reminder, because PLCAA does not create a cause of action, a plaintiff will still need to show that the problematic characteristics of the firearm qualify as a defect under the relevant state law. And states use a variety of tests to determine whether a product is defective.

While this section focuses on cases where the application of these phrases is contested, it is equally important to remember that PLCAA poses no obstacle for a substantial cohort of product defect cases. Specifically, it is unlikely to bar product defect claims where the gun’s discharge was not criminal, unlawful, or voluntary. For example, an injury from a gun that fired when dropped, or when being holstered, is typically not a Qualified Civil Liability Action (QCLA) in the first place because this is not a criminal or unlawful misuse of the gun (assuming the gun was not in the possession of a prohibited individual).³³⁶ Nor is the discharge a “volitional” act where no one intentionally pulls the trigger, meaning that the product defect exception would allow these claims even if they somehow fell

³³⁰ 15 U.S.C. § 7903(5)(A)(v).

³³¹ *Id.*

³³² *Id.*

³³³ Henry Cohen, Cong. Rsch. Serv., RS22074, *Limiting Tort Liability of Gun Manufacturers and Gun Sellers: Legal Analysis of 109th Congress Legislation* 6 (2005).

³³⁴ 15 U.S.C. § 7903(5)(A)(v) (emphasis added).

³³⁵ *Id.*

³³⁶ For instance, there are numerous product defect cases involving discharges of Sig Sauer pistols without a trigger pull, which do not implicate the “exception to the exception.” See, e.g., *Armendariz v. Sig Sauer, Inc.*, No. 1:22-CV-00536-JL, 2023 WL 4204666, *1 (D.N.H. June 27, 2023) (outlining the consolidated product defect cases against Sig Sauer); *Glasscock v. Sig Sauer, Inc.*, No. 6:22-CV-03095-MDH, 2025 WL 2147385, at *16 (W.D. Mo. July 28, 2025) (granting a motion to certify a damages class against Sig Sauer).

within the general definition of a QCLA. Either way, PLCAA is unlikely to bar these product defect claims.

A. “Discharge of the Product Was Caused By”

Outside these relatively straightforward scenarios, the analysis can be substantially more complex. The first point of ambiguity is what causal relationship between the gun firing and the alleged criminal act suffices to trigger the product defect “exception-to-the-exception” and bar the claim. Intentional shootings are almost certainly barred: if a gun was intentionally fired as part of a homicide, even if some defect affected the discharge, this will likely be considered a criminal volitional act and the subsequent product defect claim will be unable to proceed.³³⁷

A more common and challenging fact pattern is an unintentional discharge while the gun is being handled by a child or someone who may not have had any intent to shoot anyone, and who did not fully understand how the gun worked. In this situation, the details of how the gun came to be fired are critical because the gun-industry defendant may assert multiple theories of intervening acts, each with different levels of attenuation to the gun’s discharge. For example, they may assert criminality in how the shooter handled the gun, particularly if there is evidence that the shooter deliberately pointed the gun at the victim or intentionally pulled the trigger. Or they may claim that the shooter’s mere possession of the gun was a crime, if the shooter was a minor or otherwise prohibited by law, or if the shooting took place in a location where guns are forbidden. They may also argue that the gun owner stored the gun in a criminally negligent manner

that allowed the shooter to access it.

Courts have handled these fact patterns differently, and at times reached contradictory conclusions. Because the exception’s text specifically hinges on the “discharge” of the firearm, the better reading of the causation requirement is one that rejects arguments premised on the shooter’s mere possession of the firearm, or on the conduct of someone who mistakenly allowed the shooter to access it. This subsection briefly explores the prevailing case law, contrasting the narrowest and broadest applications.

The cases of *Adames v. Sheahan*,³³⁸ *Travieso v. Glock Inc.*,³³⁹ and *Gustafson v. Springfield, Inc.*³⁴⁰ illustrate the most direct causal link between the handling of the firearm and the shooting—and all held that this was sufficient to trigger the exception-to-the-exception and bar the claims under PLCAA. All three cases featured juveniles who mistakenly believed that a semiautomatic handgun they had found was unloaded (an all too common occurrence)³⁴¹ and who then pointed the firearm at the victim and pulled the trigger, shooting them.³⁴² The courts concluded that the teenagers’ mishandling of the firearms violated various criminal statutes, finding that pointing a firearm at another person and pulling the trigger constituted criminal recklessness even if the teens did not intend to fire the gun.³⁴³ Because these actions indisputably caused each gun to discharge, the courts held that the product defect claims were barred by the exception-to-the-exception.³⁴⁴

*Chavez v. Glock, Inc.*³⁴⁵ and *Heikkila v. Kahr Firearms Group*³⁴⁶ stand in contrast to *Adames*, *Travieso*, and *Gustafson* and are examples of a more attenuated

³³⁷ See, e.g., *Jefferies v. D.C.*, 916 F. Supp. 2d 42, 46 (D.D.C. 2013) (dismissing, *sua sponte*, negligence claim against manufacturer of assault rifle used in fatal drive-by shooting, and holding that product defect exception to PLCAA would not apply where “[i]t is uncontroverted that a third party discharged the assault rifle, during the commission of a criminal act”).

³³⁸ 909 N.E.2d 742 (2009).

³³⁹ 526 F. Supp. 3d 533 (D. Ariz. 2021), *appeal dismissed*, No. 21-15539, 2021 WL 4295762 (9th Cir. July 6, 2021).

³⁴⁰ 333 A.3d 651 (Pa. 2025).

³⁴¹ In semiautomatic handguns, live rounds are stored in a magazine that typically fits inside the grip of the firearm. Pulling the slide backwards will chamber a round and make the firearm ready to fire (pending disengagement of any safety). Removing the magazine does not remove the chambered round, and the gun nonetheless remains ready to fire even when the magazine is removed. The teenage shooters in *Adames*, *Travieso*, and *Gustafson* appear to have mistakenly thought that removing the magazine was sufficient to completely unload the firearm.

³⁴² *Adames*, 909 N.E.2d at 746; *Travieso*, 526 F. Supp. 3d at 536; *Gustafson*, 333 A.3d at 659.

chain of causation leading to a ruling in plaintiffs' favor. In *Chavez*, a police officer brought a product defect suit after his service weapon discharged in the hands of his three-year-old son while he was sitting in the back seat of the plaintiff's vehicle. Because the child was too young to act criminally, the gun industry defendants argued that the father's actions constituted the volitional criminal act. Specifically, defendants argued that the father broke the law by failing to properly store the firearm and failing to secure his child in a car seat.³⁴⁷ The court partially reversed a grant of summary judgment for the defendants and rejected their attenuated theory of causation predicated on the antecedent acts or omissions of the father:

Unlike the definition of “a qualified civil liability action,” which broadly includes any civil action “resulting from the criminal or unlawful misuse” of a firearm, Congress much more narrowly defined the exclusion from excepted product defect suits to apply only if “the discharge of the product was caused by a volitional act that constituted a criminal offense....”

By specifically linking the actual act of discharge to the criminal offense, as it did, we do not believe Congress intended, as [defendants] argue, to allow any unlawful

act in the causal chain, however remote from the actual firing of the weapon, to defeat the exclusion.³⁴⁸

The court in *Heikkila v. Kahr Firearms Group* reached a similar conclusion, endorsing *Chavez's* understanding of causation and rejecting an argument that mere possession of the firearm—even if improper or against the rules—could be the cause of the discharge. In *Heikkila*, a man unintentionally discharged his pistol in a movie theater. Possession of the firearm was against theater rules, but it was not clear whether the concealed-carry violation, if proven, was sufficiently connected to the firearm going off to bar the action under the product defect exception.³⁴⁹

Rejecting the gun manufacturer's argument, the court stated that there was a “heightened causation requirement” because “the products liability exception hinges on whether or not the volitional criminal offense caused the actual ‘discharge of the product[.]’”³⁵⁰

One significant outlier that litigants will need to navigate is *Ryan v. Hughes-Ortiz*.³⁵¹ There, a man with a felony conviction was handling a handgun that he had stolen, when it accidentally discharged, fatally wounding him in the leg. There were no surviving witnesses, and the parties could only guess at how the gun was being handled at the time it went off.³⁵² The defendant gun

³⁴³ The *Adames* court concluded that the juvenile shooter's actions constituted involuntary manslaughter and reckless discharge of a firearm, though the shooter was adjudicated delinquent rather than criminally convicted. 909 N.E.2d at 739. The *Travieso* court found that the juvenile shooter's actions constituted reckless endangerment, aggravated assault by recklessly causing physical injury, and unlawful possession of a firearm, though no party was charged with delinquency or a criminal offense in that case. 526 F. Supp. 3d at 546-47. The *Gustafson* court noted that the juvenile shooter was adjudicated delinquent of involuntary manslaughter. *Gustafson*, 333 A.3d at 660; see also *infra* “Volitional Act that Constituted a Criminal Offense” for a discussion of how courts have treated this element of the exception in the absence of criminal charges or a delinquency proceeding.

³⁴⁴ *Adames*, 909 N.E.2d at 763 (“[T]he discharge of the Beretta in this case was caused by a volitional act that constituted a criminal offense....”); *Travieso*, 526 F. Supp. 3d at 548.

³⁴⁵ 144 Cal. Rptr. 3d 326 (2012).

³⁴⁶ No. 20-CV-02705, 2022 WL 17960555 (D. Colo. Dec. 27, 2022), *motion for relief from judgment denied*, No. 20-CV-02705, 2023 WL 2375082 (D. Colo. Mar. 6, 2023).

³⁴⁷ 144 Cal. Rptr. 3d at 337; see also *id.* at 355 (noting that children under 14 cannot incur criminal liability under state law).

³⁴⁸ *Id.* at 355.

³⁴⁹ *Heikkila*, 2022 WL 17960555 at *11.

³⁵⁰ *Id.* at *12 (quoting 15 U.S.C. § 7903(5)(A)(v)).

³⁵¹ 959 N.E.2d 1000 (2012).

³⁵² *Id.* at 1003 (“Police speculated that ‘[a]pparently the victim was attempting to put the gun back in the container when the round was fired, striking the victim in the upper left leg. . . .”).

manufacturer thus could not argue that the decedent had intentionally pointed the gun or pulled the trigger, like the teenage shooters in *Adames* and *Travieso*. Instead, Glock argued that—because he had been convicted of a felony—the decedent’s mere possession of the firearm constituted a volitional criminal act that caused his injury.³⁵³

The court agreed, holding that the estate’s product defect claim was barred: “Here, as we have discussed, the relevant volitional act that caused the gun’s discharge was [decedent’s] unlawful possession of the Glock pistol.”³⁵⁴ However, the decision is bereft of analysis and the court made no attempt to explain the causal relationship between the criminal act—possession of a stolen firearm by a felon—and the gun’s discharge. The only hint at its reasoning is its reference to a “discuss[ion]” earlier in the opinion, apparently referring to its analysis of whether the injuries were caused by a criminal or unlawful misuse of a firearm for purposes of identifying a qualified civil liability action.³⁵⁵ Thus, it appears that the *Ryan* court may have erroneously equated these two inquiries, since both refer to criminal conduct. It is possible that the problematic way that the decedent came into possession of the firearm—stealing it from a friend’s home, even though he was a felon and therefore prohibited from possessing a gun—played a role in the court’s determination.³⁵⁶

In dicta, the *Travieso* court seemed to endorse the reasoning from *Ryan*, suggesting that criminal possession alone could suffice as a volitional criminal act.³⁵⁷ Thus, the *Travieso* court indicated “that even if

the Shooter did not intentionally fire the gun,” her other alleged criminal acts—including “intentionally taking possession of the gun” despite being a minor—might have sufficed to bar the claim.³⁵⁸ However, the court did not meaningfully address causation or the different degree of attenuation between merely possessing the gun and recklessly pointing it and pulling the trigger. As a result, it is somewhat unclear what degree of attenuation the *Travieso* court would actually have endorsed.

There is a strong argument that the *Ryan* court’s analysis—and the *Travieso* court’s analysis to the extent it mirrors *Ryan*—is at odds with the plain language of PLCAA. This is because the product defect’s exception-to-the-exception applies only when a volitional criminal act causes “the discharge of the product.”³⁵⁹ Indeed, neither *Ryan* nor *Travieso* explained why the shooters’ respective statuses as a felon and a minor caused each firearm to discharge. And this plain-text argument is bolstered by PLCAA’s legislative history: during Congressional debates, PLCAA’s lead sponsor explained that “language was added to this section of the bill to make clear that even if the person who discharged a defective product was technically in violation of some law relating to possession of the product, that alone would not bar the lawsuit.”³⁶⁰

Ultimately, the more rigorous standard for causation articulated in *Chavez* and reaffirmed in *Heikkila* is the better understanding of the products liability exception-to-the-exception. A strategic litigator should attempt to distinguish their case from *Adames* and *Travieso* as much as possible. One may also downplay

³⁵³ See *id.* at 1008.

³⁵⁴ *Id.*

³⁵⁵ This is the first prong under a PLCAA analysis and involves a broader analysis, asking whether the action—not the gun firing—resulted from the criminal or unlawful misuse of a qualified product. See 15 U.S.C. § 7903 (5)(A). See *supra*, Section III (“Is Your Lawsuit a Qualified Civil Liability Action?”).

³⁵⁶ In a separate part of the opinion affirming summary judgment for the gun owner, the court held that the decedent’s affirmative act of theft (of the gun) was a complete bar to recovery notwithstanding Massachusetts’ comparative negligence rule. *Ryan*, 959 N.E.2d at 1004-05. While the court did not consider this issue as to Glock, it would appear to apply with equal force against recovery from any defendant—suggesting that the court’s interpretation of PLCAA may also have been largely dicta.

³⁵⁷ See *Travieso*, 526 F. Supp. 3d at 548.

³⁵⁸ See *id.* (citing, *inter alia*, Ariz. Rev. Stat. § 13-3111(A), prohibiting possession of a handgun by an unemancipated minor).

³⁵⁹ 15 U.S.C. § 7903 (5)(A)(v) (emphasis added).

³⁶⁰ 151 Cong. Rec. S9100 (daily ed. July 27, 2005) (statement of Sen. Craig).

the Ryan court’s holding by arguing that it is confined to the context of theft or felonious possession, or—given its nonbinding effect outside of Massachusetts—that the court erred in failing to follow the plain language of PLCAA’s product defect exception.

B. “Volitional Act That Constituted a Criminal Offense”

The other half of the exception-to-the-exception looks at whether the action that caused the gun’s discharge was both “volitional” and “constituted a criminal offense.” Because neither phrase is defined, there is some room for litigators to argue about the correct interpretation. That said, the cases have generally coalesced around a few basic principles.

The first is that to the extent courts have considered the term “volitional” separately from “constituted a criminal offense,” they have generally read the term to mean that the act of pulling the trigger was voluntary and intentional, likening it to the *actus reus* component of a criminal offense.³⁶¹ Thus, courts that have reached the issue have largely—though not uniformly—rejected the argument that “volitional” acts require specific intent or even awareness that the gun would fire.

To varying degrees, the courts in *Adames*, *Gustafson*, and *Travieso* all rejected the argument that a volitional act must involve the actor intending to discharge the firearm. In *Adames*, the Illinois Supreme Court declined to read volitional “to require a finding that [the shooter] . . . understood the ramifications of his conduct.”³⁶² Instead, the court cited dictionary definitions of “volition” that focused on the choice to engage in a

given course of conduct, rather than knowledge or intent about its outcome.³⁶³ Thus, even though the shooter “did not intend the consequences of his act,” he “did choose and determine to point the Beretta at [the victim] and did choose and determine to pull the trigger,” making his act a volitional one.³⁶⁴ The *Gustafson* court similarly concluded: “The volitional act at issue here, or the choice or determination the Juvenile made, was to pull the trigger.”³⁶⁵ So too, the *Travieso* court held that a volitional act does not require specific intent: “the mere fact the Shooter did not intentionally shoot the Plaintiff or fire the gun does not mean she did not act *volitionally*.”³⁶⁶

In another case, a court found that it need not determine the shooter’s state of mind or intent where the firearm’s discharge constituted a strict liability crime. In *Johnson v. Bass Pro Outdoor World, LLC*, the shooter pulled the trigger of a gun while disassembling it in a car, resulting in an unintentional discharge that struck and injured another passenger.³⁶⁷ The shooter claimed that he had not intended to discharge the firearm and had only pulled the trigger because he thought it was necessary to take the gun apart.³⁶⁸ But this did not matter: the Kansas Supreme Court held that the crime of discharging a firearm on a public roadway did not require a culpable state of mind of any kind, and therefore the undisputed fact that the firearm was discharged on a public road constituted a volitional criminal act and precluded the plaintiff from invoking PLCAA’s product defect exception.³⁶⁹ Notably (and similarly to *Travieso*), it did not matter that the shooter in *Johnson* was never actually charged with or convicted of a crime.³⁷⁰

³⁶¹ See, e.g., *Gustafson*, 333 A.3d at 672.

³⁶² *Adames v. Sheahan*, 909 N.E.2d 742, 763 (Ill. 2009).

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Gustafson*, 333 A.3d at 672.

³⁶⁶ 526 F. Supp. 3d. at 548. The court also equated volition to the concept of recklessness. See *id.* (“volitional act equivalent to recklessness”) (internal citation and emphasis omitted).

³⁶⁷ 567 P.3d 810, 814 (Kan. 2025).

³⁶⁸ *Id.*

³⁶⁹ *Id.* at 825.

³⁷⁰ *Id.* at 816.

In sum, while there are a plurality of cases defining “volitional” as something akin to “voluntary,” the law is not well-settled on this point, and in many jurisdictions there is room to argue for an understanding closer to the shooter having specific intent to discharge the weapon.

Assuming the act that caused the discharge is volitional, the final question is whether it “constituted a criminal offense.”³⁷¹ As with the other elements of the product defect exception, PLCAA does not define this phrase, and there are only a handful of cases applying it.

The *Adames*, *Travieso*, and *Gustafson* courts equated juvenile delinquency with criminal offenses for the purposes of this analysis. The plaintiff in *Travieso* argued that the fourteen-year-old’s accidental shooting would be handled by the (civil) juvenile justice system and would thus not be adjudicated as a criminal offense.³⁷² The court found this immaterial: “Here, even if a juvenile shooter would not face a criminal conviction, the finding of delinquency would be based on an admittedly criminal act.”³⁷³ It was the “criminal nature of the act,” not the process by which culpability was determined, that triggered the product defect exception.³⁷⁴ In *Adames*, the court looked to prior decisions interpreting the permissible use of juvenile adjudications. It cited the legislative history and text behind the state’s Juvenile Court Act, noting that “among the important purposes of the Act” is “[t]o protect citizens from *juvenile crime*.”³⁷⁵ The *Gustafson* court followed these other courts: “Even though the Juvenile was charged under the Juvenile Act rather than through the criminal division, that does not change the

fact that his actions constituted the crime of involuntary manslaughter as set forth in the Crimes Code.”³⁷⁶

Despite these precedents, there is an argument based on PLCAA’s legislative history that Congress intended to exclude non-criminal adjudications like juvenile delinquency from the exception-to-the-exception. Specifically, an earlier, rejected version of PLCAA defined the product defect exception’s carve-out to more broadly exclude “criminal or unlawful misuse, other than possessory offenses.”³⁷⁷ But the final version of the bill dropped the phrase “unlawful misuse” here, suggesting that Congress wanted to permit product defect claims predicated on actions that constitute violations of law but are not criminal in nature—like juvenile delinquency.

Practice Pointer:

The decisions in both *Adames* and *Travieso* on this issue hinged in significant part on issues of state law that may vary between jurisdictions. Thus, the *Travieso* court noted that the shooter, although a minor, could have been charged as an adult under Arizona law.³⁷⁸ (Contrast this with *Chavez*, which noted in the context of a 3-year-old shooter that under California law children under age 14 are largely incapable of forming criminal intent.)³⁷⁹ The *Adames* court found the purpose and policy articulated in Illinois’ Juvenile Court Act persuasive when equating the shooter’s juvenile delinquency conviction to a criminal offense.³⁸⁰

³⁷¹ 15 U.S.C. § 7903(5)(A)(iii).

³⁷² 526 F. Supp. 3d at 546.

³⁷³ *Id.* at 547.

³⁷⁴ *Id.*

³⁷⁵ 909 N.E.2d at 763 (internal citation omitted) (emphasis in original).

³⁷⁶ *Gustafson*, 333 A.3d at 671.

³⁷⁷ See 150 Cong. Rec. S1616 (daily ed. Feb. 26, 2004) (statements of Sens. Daschle and Craig) (introducing Amendment No. 2621 which inserted “or when used in a manner that is reasonably foreseeable, except that such reasonably foreseeable use shall not include any criminal or unlawful misuse of a qualified product, other than possessory offenses”); *id.* S1620 (daily ed. Feb. 26, 2004) (Senate agreeing to Amendment No. 2621 through a voice vote).

³⁷⁸ 526 F. Supp. 3d at 547.

³⁷⁹ *Chavez*, 144 Cal. Rptr. 3d at 355.

³⁸⁰ 909 N.E.2d at 763.

If you are litigating a product liability case involving a juvenile shooter, you should make sure to familiarize yourself with applicable state law concerning age limitations for criminal liability, as well as the text and history behind the statute(s) establishing your state's juvenile justice system. If the shooter in your case falls below the minimum age for criminal liability, or if your state's juvenile justice system focuses on rehabilitation rather than deterrence, punishment, and incapacitation, these may be bases to distinguish *Travieso* and/or *Adames*.

Second, regardless of whether the shooter is an adult or a minor, courts have consistently held that a conviction is not required for an act to “constitute[] a criminal offense.” Indeed, the court in *Travieso* suggested that charges need not even be brought, believing that “[t]o hinge the effect of the PLCAA on a state's discretionary choice would be contrary to Congress's purpose.”³⁸¹ The *Adames* court also noted a textual basis for this conclusion: elsewhere in PLCAA when Congress intended to require a criminal conviction, it did so by express terms.³⁸²

Finally, as may be inferred from the plain language of the exception, merely violating a private party's rules or policies is unlikely to “constitute a criminal offense.”

In *Heikkila*, for instance, the court found the fact that the shooter's possession of a firearm violated the theater's rules was insufficient on its own to trigger PLCAA, much less bar the action under the product defect exception.³⁸³

Practice Pointer:

Although PLCAA refers to criminality in both the general definition of a Qualified Civil Liability Action and in the product defect exception, it is critical not to conflate the two.³⁸⁴ In the definition of a QCLA, the plaintiff's injuries must have “result[ed] from” the “criminal or unlawful misuse” of the firearm,³⁸⁵ with “unlawful misuse” defined as “conduct that violates a statute, ordinance, or regulation as it relates to the use” of a firearm or ammunition.³⁸⁶

The product defect exception drops the term “unlawful misuse,” meaning that only actions that transgress criminal statutes are relevant.³⁸⁷ It further requires that the “discharge” of the firearm in particular—rather than the plaintiff's injuries more generally—be caused by the criminal act.³⁸⁸ Thus, non-criminal statutory or regulatory violations, or criminal acts that caused plaintiff's injury but did not directly cause the firearm's discharge, arguably fall within the definition of a QCLA but do not trigger the product defect exception-to-the-exception. Product defect claims predicated on injuries from these types of acts should therefore survive PLCAA.

³⁸¹ 526 F. Supp. 3d at 547 (noting prosecutors' discretion to decide whether to charge a minor with a criminal offense or juvenile delinquency); cf. *Johnson*, 567 P.3d at 816, 825 (discharge of firearm on public road constituted criminal act that foreclosed PLCAA's product defect exception, even though shooter was “never arrested or charged [] with a crime”).

³⁸² See 909 N.E.2d at 762 (contrasting the language of the product defect exception with 15 U.S.C. § 7903(5)(A)(i), which excepts from the definition of QCLA any action “against a transferor convicted under section 924(h) of Title 18” concerning the transfer of a firearm or ammunition with reasonable cause to believe that it will be used to commit a crime).

³⁸³ *Heikkila*, 2022 WL 17960555 at *11.

³⁸⁴ See, e.g., *Gustafson*, 282 A.3d. at 744 (Kunselman, J., concurring) (conflating the two definitions and concluding that this renders the product defect exception “toothless”).

³⁸⁵ 15 U.S.C. § 7903(5)(A).

³⁸⁶ *Id.* § 7903(9).

³⁸⁷ See *id.* § 7903(5)(A)(iii). But see *Travieso*, 526 F. Supp. 3d at 546-47 (rejecting similar argument based on canon of meaningful variation, based on difference in language between QCLA definition and product liability exception).

Absent a conviction, the determination of whether an act “constituted” a criminal offense may be a fact-specific inquiry as to what conduct occurred³⁸⁹ and may involve an examination of federal, state, and local laws to determine whether this conduct was criminal.³⁹⁰ To the extent there are questions of fact surrounding the shooter’s actions or state of mind, this may make the issue inappropriate to resolve in a defendant’s favor on the pleadings or even at summary judgment.³⁹¹ Notably, neither *Adames* or *Travieso* meaningfully addressed this issue, possibly because neither case involved a meaningful dispute of fact about the shooter’s conduct.³⁹²

³⁸⁸ See *id.* § 7903(5)(A)(v).

³⁸⁹ See *Chavez*, 144 Cal. Rptr. 3d at 355 (“Chavez has not conceded, nor is it a foregone conclusion, that he committed the offense of criminal storage of a firearm.”).

³⁹⁰ See *Travieso*, 526 F. Supp. 3d at 546 (finding the “actions of the Shooter violated multiple criminal statutes including the federal law against possession of a handgun by a juvenile” as well as state laws).

³⁹¹ See *Johnson*, 567 P.2d at 824-25 (noting in dicta that a factual dispute about whether shooter acted recklessly would have foreclosed summary judgment, had shooter’s actions not also constituted a strict liability crime independent of mental state).

³⁹² See *id.* at 547 (describing shooter’s conduct as “an *admittedly* criminal act” (emphasis added)); see also *Adames*, 909 N.E.2d at 244 (noting that shooter had been found delinquent “based on a finding that [he] committed involuntary manslaughter...and reckless discharge of a firearm” (internal citation omitted)). *Adames* was resolved at summary judgment.

Further Reading on the Product Defect Exception:

Key Cases

- ***Adames v. Sheahan***, 909 N.E.2d 742 (Ill. 2009) (defect claims arising from unintentional shooting by juvenile were not saved by PLCAA's product defect exception, where shooter's deliberate pointing of firearm and pulling of trigger constituted a volitional act as well as criminal recklessness for which juvenile was adjudicated delinquent)
- ***Travieso v. Glock Inc.***, 526 F. Supp. 3d 533 (D. Ariz. 2021) (dismissing product defect claims relating to unintentional shooting by minor in vehicle, and finding that juvenile shooter's conduct constituted criminal conduct including illegal possession of a handgun, despite lack of criminal charges)
- ***Chavez v. Glock, Inc.***, 144 Cal. Rptr. 3d 326 (Cal. Ct. App. 2012) (reversing trial court and allowing defect claims to proceed where toddler unintentionally shot father in his car, and finding that father's alleged failure to properly secure firearm or child in vehicle was too remote to have caused the discharge under the product defect exception)
- ***Gustafson v. Springfield, Inc.***, 333 A.3d 651 (Pa. 2025) (affirming the dismissal of plaintiff's action where a juvenile shooter's conduct constituted a crime)
- ***Johnson v. Bass Pro Outdoor World, LLC***, 567 P.3d 810 (Kan. 2025) (product defect exception did not apply where unintentional shooting constituted strict-liability crime of discharging firearm on public road, despite shooter's contested mental state and lack of conviction)
- ***Ryan v. Hughes-Ortiz***, 959 N.E.2d 1000 (Mass. App. Ct. 2012) (defect claim could not proceed under product defect exception where felon in possession of stolen firearm fatally and accidentally shot himself, and concluding that criminal possession of firearm was a volitional criminal act that caused the discharge)
- ***Heikkila v. Kahr Firearms Grp.***, No. 20-CV-02705, 2022 WL 17960555 (D. Colo. Dec. 27, 2022) (product defect claim could proceed where moviegoer unintentionally discharged firearm in violation of theater rules, because improper possession was too causally attenuated from discharge to trigger product defect exception-to-the-exception)
- ***Jefferies v. D.C.***, 916 F. Supp. 2d 42, 46 (D.D.C. 2013) (product defect exception did not save negligence claims against firearm manufacturer where firearm was criminally and intentionally discharged in drive-by shooting, where plaintiff's daughter was killed by stray bullet)

VIII. Other Exceptions

This chapter briefly summarizes three lesser-used exceptions to PLCAA:

- ✓ Actions against someone convicted under 18 U.S.C. § 924(h) for illegally transferring firearms or ammunition for use in crime or terrorism;
- ✓ Actions for breach of contract or breach of warranty;
- ✓ Certain enforcement actions by the U.S. Attorney General.

PLCAA contains three other exceptions, none of which have been the subject of significant litigation.

First, PLCAA exempts “an action brought against a transferor convicted under section 924(h) of Title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted.”³⁹³ The section referenced, 18 U.S.C. § 924(h), criminalizes knowingly receiving or transferring firearms or ammunition (or conspiring thereto), while “knowing or having reasonable cause to believe that such firearm or ammunition will be used to commit a felony, a Federal crime of terrorism, or a drug trafficking crime . . . , or a crime under the Arms Export Control Act . . . , the Export Control Reform Act of 2018 . . . , the International Emergency Economic Powers Act . . . , or the Foreign Narcotics Kingpin Designation Act. . . .” The key here is that for this exception to apply, the defendant must first have been convicted under 18 U.S.C. § 924(h). Since the government rarely prosecutes federal firearms licensees criminally, this exception will apply in a very small category of potential cases against members of the gun industry. And even in the rare cases that a prosecution of a gun company may have occurred, it is very likely that the civil statute of limitations will have run by that point.

³⁹³ 15 U.S.C. § 7903(5)(A)(i).

Second, PLCAA exempts “an action for breach of contract or warranty in connection with the purchase of the product.”³⁹⁴ This should permit certain types of lawsuits on behalf of consumers.³⁹⁵ In addition, plaintiffs *who are not themselves the purchaser* may, in some circumstances, invoke this exception. Thus, in *Doyle v. Combined Systems, Inc.*, a group of Dallas residents injured by police using rubber bullets for crowd control sued the manufacturers and sellers on a theory that the rubber bullets and launchers were unfit for the crowd control purpose for which defendants had marketed them, breaching Texas’ implied warranty of fitness.³⁹⁶ Although the court dismissed the claims without prejudice as inadequately pled, it concluded that the breach of implied warranty claims fell within this exception to PLCAA.³⁹⁷ It may be possible for practitioners to invoke this exception in other contexts, for example where a shooter uses an accessory to circumvent state or federal firearms restrictions, or uses an accessory in a way that enhances the lethality of the firearm.

Third and finally, PLCAA exempts “an action or proceeding commenced by the Attorney General to enforce” certain provisions of federal law.³⁹⁸ This ensures that the federal government can bring both civil and criminal enforcement measures against members of the gun industry.

³⁹⁴ 15 U.S.C. § 7903(5)(A)(iv).

³⁹⁵ See, e.g., *Doyle v. Combined Sys., Inc.*, No. 22-CV-01536, 2023 WL 5945857, at *8-9 (N.D. Tex. Sept. 11, 2023) (finding “[p]laintiffs’ implied warranty and warranty-based [Deceptive Trade Practices Act] claims within the PLCAA’s warranty exception”).

³⁹⁶ *Id.*

³⁹⁷ *Id.* at *9.

³⁹⁸ 15 U.S.C. 7903(5)(A)(vi).

Further Reading on Other PLCAA Exceptions:

Key Case

- ***Doyle v. Combined Sys., Inc.***, No. 22-CV-01536, 2023 WL 5945857 (N.D. Tex. Sept. 11, 2023) (warranty exception applied to state-law implied warranty claims against manufacturer of rubber bullets and launcher brought by protesters injured when law enforcement used these munitions to control crowd)

IX. Special Topic: Basics of a Gun Sale

This special topic covers the basic parameters of gun sales between licensed dealers and retail purchasers.

In this section you will learn:

- ✓ The steps involved in retail gun sales at licensed dealers (as required by Federal law);
- ✓ Common indicators of straw purchasing and other illicit behavior that dealers are trained to recognize;
- ✓ The records generated and maintained by firearms dealers that you may want to request during discovery, such as:
 - ATF Form 4473 – Firearms Transaction Record;
 - ATF Form 3310.4 – Multiple-Handgun Sale Report;
 - Firearm acquisition & disposition records;
 - Sales receipts & customer data; and
 - Surveillance footage

The legal requirements for a gun sale depend on a number of factors, including whether the buyer or seller holds a federal license, state and local laws where the transaction takes place, and whether the buyer lives in the same state as the seller. Under federal law, several key obligations—such as the requirements to conduct a background check on retail sales and to maintain certain transaction records—attach only to *federal licensees*, not to unlicensed sellers engaged in a private sale.³⁹⁹ Federal law also treats sales to a retail customer differently than sales between licensed dealers. Finally, state law may impose additional requirements beyond those found in federal law, for example by requiring dealers to complete state-specific forms or by extending background checks and other restrictions to sales between private (unlicensed) parties.

This section summarizes how gun sales by **licensed dealers to retail customers** work under federal law. Additional procedures, requirements, or paperwork imposed by state law are beyond the scope of this special topic. This section first describes sales to customers that live in the same state as the dealer, and then describes variations where a customer crosses state lines to buy a gun from a dealer in a different state. Next, it covers the indicators of illegal behavior that dealers are trained to recognize in order to detect and prevent straw purchasing. Finally, it describes the types of records created and retained by dealers in connection with gun sales, and the potential utility of these records to civil litigants.

A. Sales to In-State Residents

In a typical transaction with an in-state resident, the customer selects one or more firearms to purchase and then approaches the sales counter to begin the paperwork and background check process. The principal federal form used to record the sale is ATF Form 4473, the Firearms Transaction Record.⁴⁰⁰

The image shows the ATF Form 4473, titled "Firearms Transaction Record". It is a multi-page form with various sections and checkboxes. The top section is for the buyer's information, including name, address, date of birth, and citizenship. The second section is for the seller's information, including name, address, and date of birth. The third section is for the firearm information, including make, model, and serial number. The bottom section contains various checkboxes and questions related to the transaction, such as whether the buyer is a minor, if the firearm is being transferred, and if the buyer has any criminal record. The form is numbered "OMB No. 1140-0020" in the top right corner.

The customer and the dealer each complete portions of this form.⁴⁰¹ Section A identifies the firearm(s) being purchased and is completed by the dealer. The customer then fills out section B, which provides demographic information as well as a list of questions intended to identify whether the customer is disqualified by federal law from purchasing or possessing a firearm,

³⁹⁹ Dealers cannot simply sidestep federal regulatory requirements by declining to obtain a license: federal law prohibits the unlicensed dealing in firearms, defined as someone who is “engage[d] in the business of importing, manufacturing, or dealing in firearms.” See 18 U.S.C. §§ 922(a)(1), 923(a). A person is considered “engaged in the business” if they “devote[] time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms.” See 18 U.S.C. § 921(a)(21)(C). The ATF issued a rule in 2024 following the passage of the Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313 (2022), which attempts to clarify the meaning of “engaged in the business” and “predominantly earn a profit.” See 27 C.F.R. § 478.13 (2024). However, the ATF’s final rule has been the subject of litigation. In September 2025 a U.S. District Court in Alabama permanently enjoined its enforcement against the plaintiffs in that lawsuit as well as against members of the National Rifle Association. See *Butler v. Bondi*, --- F. Supp. 3d ---, 2025 WL 281007 (N.D. Ala. Sept. 30, 2025). Other lawsuits seek similar relief for different classes of plaintiffs.

⁴⁰⁰ See 27 C.F.R. § 478.124. ATF revises Form 4473 periodically. The current version of this form as of this writing can be viewed at <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>.

⁴⁰¹ Some states have their own form(s) that mirror Form 4473 to varying degrees, and which may be submitted to state authorities. See, e.g., 18 PA. CONS. STAT. § 6111(b)(1) (describing requirements for Penn. State Police Form SP 4-113).

such as whether the customer is under an indictment for a felony or an unlawful user of drugs.⁴⁰² Among other things, section B asks if the customer is the “actual transferee/buyer of all of the firearm(s) listed on this form” and cautions:

Warning: You are not the actual transferee/ buyer if you are acquiring any of the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer any of the firearm(s) to you.⁴⁰³

The customer then signs at the end of section B, certifying that their answers “are true, correct, and complete,” and acknowledging that it is a federal crime to make a false statement in connection with the transaction (including, specifically, by falsely claiming to be the actual transferee/buyer of the firearm), exhibit false identification when buying a gun, or deal in firearms without a license.⁴⁰⁴

At this point, the dealer reviews and records the customer’s identification on section C of the form and initiates a background check using the FBI’s National Instant Criminal Background Check System (“NICS”) or a state equivalent.⁴⁰⁵ For many customers, the results of the background check are immediate: either “proceed” or “denied.” For others, the background check is unable to provide an immediate response because, e.g., law enforcement personnel require additional time to determine whether potentially problematic information disqualifies the customer from purchasing a firearm. This type of response is called a “delay,” and the dealer must wait three business days before completing the transaction, unless NICS (or the state equivalent)

provides a response sooner.⁴⁰⁶

If the dealer receives an immediate “proceed” response on the background check, the dealer may complete section E and sign the Form 4473. If the dealer completes the transaction on a different day (because of a “delay” response from NICS, for example), then the dealer must reconfirm the customer’s identification and the customer must re-sign the form to reaffirm their previous responses in section B at the time the gun is transferred. In either case, when the dealer signs Form 4473, the dealer certifies that it is their “belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s)” to the person identified as the customer in section B.⁴⁰⁷ Form 4473 makes clear that the dealer must do more than simply run a background check. The notices and instructions on the form explain that “[t]he transferor/ seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction.”⁴⁰⁸ The instructions also explain that a gun dealer “must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possessing a firearm[.]”⁴⁰⁹

Once the background check requirement is satisfied and the Form 4473 is complete, the dealer can finish the transaction and transfer the firearm. Federal law requires the dealer to retain the Form 4473 as part of its permanent records, whether or not the sale is completed (more on dealer recordkeeping requirements below). Dealers must also log when firearms enter and leave their inventories in “acquisition and disposition” (A&D) records, as discussed below. They may also create a sales receipt and/or record information about the sale as part of their customer records, though there is no

⁴⁰² See ATF Form 4473, questions 9-21. The questions in section B mirror the prohibitions found at 18 U.S.C. § 922(d).

⁴⁰³ *Id.*, question 21(a).

⁴⁰⁴ *Id.*, question 22.

⁴⁰⁵ See *id.*, questions 24-29; see also 18 U.S.C. § 922(t)(1) (describing background check); 27 C.F.R. §§ 478.102 (same), 478.124(c)(1)(iv) (requiring dealer to document background check and response on Form 4473).

⁴⁰⁶ Under the Bipartisan Safer Communities Act, for putative customers under 21 years of age, NICS may inform the dealer of the need for an additional delay of up to 10 business days to research the existence of potentially disqualifying juvenile records. See 18 U.S.C. § 922(t)(1)(c)(iii).

⁴⁰⁷ See ATF Form 4473, at 3.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* at 6.

federal requirement that they do so. And many dealers now utilize software-based point of sale systems that track sales and help dealers stay in compliance with federal regulations.

If a customer buys more than one handgun from the same dealer within five consecutive business days, the dealer must fill out ATF Form 3310.4, known as a Multiple Sale Report form, by the close of business on the day on which the multiple sale occurs.⁴¹⁰ The dealer must send a copy of this form to the ATF, as well as to the state police or local law enforcement. Additionally, dealers located in Arizona, California, New Mexico, and Texas must also report when customers purchase certain semi-automatic rifles within five consecutive business days.⁴¹¹ Dealers are required to report multiple sales because of the close association between multiple sales and trafficking: as ATF explains on its website, “[i]f one or more firearms recovered from a crime are part of a multiple purchase, this could be an indicator of potential firearms trafficking.”⁴¹²

B. Sales to Out-of-State Residents

The rules are different when a dealer sells a firearm to a resident of a different state. For one, a dealer cannot sell or deliver a handgun directly to an out-of-state resident.⁴¹³ Instead, the dealer will typically take the customer’s payment and then ship the handgun across state lines to a dealer located in the customer’s home state. This process is called an “FFL transfer,” and the dealer in the customer’s home state usually charges a small fee to take delivery and complete the transaction.

The dealer in the customer’s home state is the one responsible for filling out and retaining a Form 4473 for the transaction and conducting the background check (along with any other requirement under applicable state law). The dealer that sent the gun across state lines does not complete a Form 4473, but must log the firearm as leaving its A&D inventory records and confirm that the receiving FFL holds a valid license.

In contrast to handgun sales, under federal law, a dealer *can* lawfully sell a rifle or shotgun over the counter to a resident of another state. This type of long-gun sale proceeds the same way that a sale to an in-state resident would in terms of completing a Form 4473 and conducting a background check—but with one important addition. Under 18 U.S.C. § 922(b)(3), the sale, delivery, and receipt of the rifle or shotgun to an out-of-state resident must “fully comply with the legal conditions of sale *in both such States*.”⁴¹⁴ These “legal conditions of sale” include both state laws and local ordinances where the customer lives and where the sale occurs.⁴¹⁵ For example, if a customer lives in a state that imposes a mandatory waiting period for firearm sales, the dealer must enforce this waiting period even if there is no such requirement in the dealer’s own state. Nor can a dealer sell a customer a firearm that is prohibited by state or local law where the customer lives, even if it would be legal where the dealer operates. Dealers are charged with knowing the state and local ordinances applicable where the customer lives before they complete transactions with residents of other states.⁴¹⁶

⁴¹⁰ See 18 U.S.C. § 923(g)(3); see also 27 C.F.R. § 478.126a. A blank version of the Multiple Sale Report form can be found at <https://www.atf.gov/firearms/docs/form/report-multiple-sale-or-other-disposition-pistols-and-revolvers-atf-form-33104/download>.

⁴¹¹ See ATF, *Fact Sheet – National Tracing Center (NTC)*, at 4 (Feb. 2015) (describing Demand Letter 3 program), <http://web.archive.org/web/20250109073708/https://www.atf.gov/file/11046/download>.

⁴¹² Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Reporting Multiple Firearm Sales*, ATF.GOV (April 16, 2021), <https://www.atf.gov/firearms/reporting-multiple-firearms-sales>.

⁴¹³ See 18 U.S.C. § 922(b)(3) (prohibiting FFLs from selling or delivering “any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in...the State in which the licensee’s place of business is located,” except for rifle and shotgun sales under certain conditions).

⁴¹⁴ *Id.* (emphasis added).

⁴¹⁵ See *id.* (referring separately to “State laws” and “published ordinances”). The ATF compiles and publishes a list of applicable state laws and ordinances. See Bureau of Alcohol, Tobacco, and Firearms, and Explosives, *State Laws and Published Ordinances – Firearms* (35th Ed.), ATF.GOV, (Nov. 30, 2023), <https://www.atf.gov/firearms/state-laws-and-published-ordinances-firearms-35th-edition>.

⁴¹⁶ See 18 U.S.C. § 922(b)(3).

C. Red Flags of Illegal Behavior

The background check requirement and other limitations on gun sales described above are intended to prevent the diversion of firearms to criminals, minors, and other persons that the law deems too dangerous to own a gun. Yet prohibited persons do regularly circumvent these restrictions through straw purchasing, by having someone else purchase a firearm illegally on their behalf.

Dealers are generally well-versed in the dangers of straw purchasing, a result of having been trained by ATF and industry groups to detect and prevent it.⁴¹⁷ There are a number of common indicators of straw purchasing that ATF trains dealers to recognize.⁴¹⁸ Roughly speaking, these red flags coalesce into three categories: (1) indicators of coordination between the straw purchaser and the actual buyer; (2) indicators that the straw purchaser is not a genuine customer buying a gun for themselves; and (3) patterns of suspicious buying activity that suggest gun trafficking or unlicensed dealing.⁴¹⁹

Indicators of Coordination

- “Scouting” of firearms by someone accompanying the purchaser;⁴²⁰

- Taking or sending cell phone photos of firearms, or talking on the telephone while looking at firearms;
- Attempting to conceal conversations from dealer employees;
- Money changing hands inside or outside the store;
- Reluctance of the apparent buyer to complete the Form 4473 or other paperwork; and
- Attempts by someone to purchase a firearm that someone else recently tried to buy but was denied.⁴²¹

Indicators that the Straw Buyer is Not a Genuine Customer

- Purchaser has little or no knowledge of firearms;
- No haggling or questions on price;
- Purchaser avoids engaging in conversation with the dealer or is evasive when asked questions;
- Purchaser attempts to buy a firearm that is inconsistent with their stated needs, e.g., buying a small-caliber (.22 LR) rifle for deer hunting, or a small-framed person buying a large pistol for self-defense that appears difficult for them to handle;
- Purchaser appears to be a drug abuser;

⁴¹⁷ See, e.g., Bureau of Alcohol, Tobacco, Firearms, and Explosives FFL Seminar, South Bend Police Department, Mar. 30, 2023, (“ATF FFL Seminar”), <https://everytownlaw.org/wp-content/uploads/sites/5/2024/09/March-2023-FFL-Seminar.pdf>; see also Nat’l Shooting Sports Found. (NSSF), *Don’t Lie for the Other Guy, a National Campaign to Prevent the Illegal “Straw Purchase” of Firearms*, <https://dontlie.org/> (accessed Feb. 11, 2026); NSSF, *Let’s Take a Look at Your Straw Purchase Avoidance Program (2023)*, <https://perma.cc/W2QF-DNKR>; NSSF, *Straw Purchases: Tactics to Help Avoid Them and What to Do If You Think You Made One*, <https://perma.cc/PW8Y-QHRX>.

⁴¹⁸ See, e.g., ATF FFL Seminar at 87-89, *supra* note 417.

⁴¹⁹ Several cases outline and validate red flags of straw purchasing. See, e.g., *Williams v. Beemiller, Inc.*, 952 N.Y.S.2d 333, 339 (App. Div. 2012) (denying motion to dismiss based on the plaintiff’s identified red flags, including coordination between straw purchaser and principal, high aggregate volume of purchases, multiple-handgun transactions, cash purchases, and selection of low-quality handguns with “no collector value or interest”); *Wiley v. Fleet Farm*, 799 F. Supp. 3d 860, 893 (D. Minn. Sept. 9, 2025); *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 833 (D. Minn. 2023).

⁴²⁰ Coordination between the straw purchaser and the actual buyer is the paradigmatic warning sign of an illegal transaction. In a straw purchase, the gun is not actually intended for the straw purchaser, and consequently he or she often needs guidance on what firearm(s), accessories, and ammunition to select, and what price the actual buyer is willing or able to pay. Even a single instance of this type of coordination between straw purchaser and actual buyer should suffice in most cases to put a reasonable dealer on notice that the sale is illegal.

⁴²¹ Dealers are required to retain Form 4473s for denied sales to assist them (and ATF) in identifying this type of straw purchase, where an associate of a denied customer comes in to buy the same gun. See 27 C.F.R. § 478.129(b).

⁴²² As a former ATF agent explains, straw purchasers often do not grasp that buying a gun for someone else is illegal until the dealer indicates that the store cannot proceed with the sale unless the customer changes his or her answer to indicate that the gun is for him/her. See Aff. of Joseph L. Bisbee, at ¶14, *Chicago v. Westforth Sports, Inc.*, Case No. 21 CH 01987 (Sept. 15, 2022), available at <https://everytownlaw.org/wp-content/uploads/sites/5/2022/09/2022.09.13-Brief-Ex.D-Bisbee-Notarized-Aff.pdf>.

- Purchaser marking that he or she is “not the actual transferee/buyer of the firearm listed” on the Form 4473;⁴²²
- Errors on the Form 4473 such as a mismatch between the address written on the form and the purchaser’s identification; and
- Purchases made with new identification.

Suspicious Buying Patterns

- Bulk purchases, either all at once or over a short period of time;
- Repetitive purchases of the same or similar firearms, especially “non-collectibles”;
- No previous purchases but now frequent buying;
- Paying with large amounts of cash;⁴²³
- Arriving in a car with an out-of-state license plate;
- Traveling an illogical distance to purchase a firearm; and
- Recovery of one or more of the customer’s firearms by law enforcement, particularly if recovery is within a short “time-to-crime” of 3 years or less.⁴²⁴

Straw purchasing can proceed in a variety of ways, and there is accordingly no single factor or combination of factors that always confirms to the seller that a sale is illegal. However, even a single red flag can in the right circumstances suffice to put a dealer on notice, and a combination of red flags even more so.

ATF instructs dealers that encounter one of these

suspicious circumstances to “Ask Questions, Ask More Questions, [and] Ask Even More Questions!!!” to determine whether or not the customer is a legitimate buyer or a straw purchaser.⁴²⁵ ATF also reminds dealers that they are empowered to decline the sale for any reason (including a suspicion that the transaction is not legitimate) and should also report any suspected straw purchasers to ATF.⁴²⁶ ATF concludes its training with the warning to dealers that “[i]f you have reasonable cause to believe it is not legitimate, you must decline the sale.”⁴²⁷

Practice pointer:

If you have any reason to suspect that a firearm used to harm your client was obtained through a straw purchase, this may be a significant basis for liability on the part of the dealer (and potentially others up the supply chain if there is a pattern of illegal diversion by the dealer). It may also be a basis for invoking PLCAA’s predicate exception. Consequently, it is well worth pursuing this potential lead to the extent possible, including through discovery of dealer records outlined in the next section.

D. Recordkeeping Requirements

The principal record created during a firearms transaction is the Form 4473. These forms contain information that ATF uses to trace crime guns and

⁴²³ As explained by a former ATF agent, straw purchasers are often handed cash by the actual recipient of the gun, and will rarely want to use his or her own credit or debit card to buy guns that are not intended for him or her. See *id.* ¶16.

⁴²⁴ Firearms recovered in connection with a crime are routinely “traced” by ATF; a process in which ATF contacts each federal licensee, beginning with the firearm’s manufacturer or importer, and asks for information about the firearm’s disposition (drawn from FFL records). If successful, the trace proceeds down the distribution chain from licensee to licensee to the dealer’s sale to an unlicensed person (the retail purchaser). Note that traces do not typically occur where the recovered gun was part of a multiple sale; in that case, assuming the Multiple Sales Report was filed at the time of sale, the ATF already should have the information needed to determine the original seller and purchaser. When ATF conducts a trace, it does not tell the dealer when, where, or in what circumstances the firearm was recovered. However, a dealer can easily deduce from its own records how much time has elapsed between the sale to the retail customer and ATF’s trace request. If this approximate “time-to-crime” is short—meaning less than three years, but particularly if it is a matter of mere weeks or months—this should put the dealer on notice that the customer was likely a straw purchaser. This should in turn prompt the dealer to deny or contact law enforcement about any subsequent purchase attempts by that same customer.

⁴²⁵ See ATF FFL Seminar at 90, *supra* note 417.

⁴²⁶ See *id.* at 92.

⁴²⁷ See *id.*

(separately) during regulatory inspections to assess dealer compliance with the Gun Control Act and other federal laws. Dealers must retain Form 4473s for both completed and incomplete transactions until the business is discontinued and transfer them to ATF's National Tracing Center if the dealer goes out of business or loses its license.⁴²⁸ Plaintiffs can seek discovery of Form 4473s from dealers during civil litigation, but if the forms have been transferred to ATF they will likely be inaccessible.

The Form 4473 can provide a wealth of information about the sale that is not found in other transaction records. This includes how the purchaser responded to questions about their ability to lawfully purchase the gun, whether they made any errors or misstatements on the form, how the background check proceeded, and which dealer employee was responsible for the sale. There is also space on the form for licensee remarks that on occasion document things like law enforcement contacts in connection with a sale.

As mentioned, another key transaction record is the dealer's acquisition and disposition book, often referred to as the "A&D book" or "bound book." Under federal law, dealers must record information about every firearm that passes through their inventory, including the make, model, firearm type, caliber, and serial number, as well as where they bought the firearm and who they sold it to.⁴²⁹ A&D records are typically kept in a bound book like the one seen in the image below, where the first page lists information about the acquisition of firearms, with one firearm on each row (however, more and more dealers are using electronic versions of A&D books). The facing page records information about the disposition of those same firearms on corresponding rows, and thus an A&D book like the one shown is intended to be read across pairs of facing pages. An A&D book can functionally serve as an index of a dealer's transactions, and it is the only required record that identifies the manufacturer, importer, distributor, or other source that supplied the firearm to the dealer.

ACQUISITION							DISPOSITION		
DESCRIPTION OF FIREARM							RECEIPT		
CODE	MANUFACTURER	MODEL	SERIAL NUMBER	TYPE	CALIBER OR GAUGE	DATE	FROM WHOM RECEIVED (Name and Address or Name and License Number)		
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									

DISPOSITION		
DATE	NAME	ADDRESS OR LICENSE NUMBER IF LICENSEE <small>Or Form 4473 Serial Number if Form 4473 Filed Numerically</small>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		

⁴²⁸ 27 C.F.R. § 478.129(b).

⁴²⁹ 27 C.F.R. § 478.125(e).

For transactions that qualify as multiple-handgun sales, the dealer must also create and retain a copy of the Form 3310.4, which is used to report the multiple sale to ATF and local authorities.⁴³⁰ For some transactions, this form may be the easiest way to identify that a handgun is part of a multiple sale transaction—particularly if the buyer bought handguns on different days and thus generated separate Form 4473s for each sale. The Form 3310.4 will also reveal whether the dealer timely reported the multiple sale to authorities.

The dealer may also create and maintain other records that are not mandated by federal law, but which nonetheless may be reached by civil discovery and provide valuable insight. For example, the dealer typically creates a sales receipt showing the purchase price, payment method, and any ammunition or accessories bought alongside the firearm—data points not recorded elsewhere. Some dealers (particularly larger, more technically sophisticated stores) may also utilize computerized customer records or point-of-sales systems that track individual purchasing behavior over time.

(1040) No. 1440-001 (12/11/2024)

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

**Report of Multiple Sale or Other
Disposition of Pistols and Revolvers**

Please complete all information.

1. Date of Report 2a. Federal Firearms License (FFL) Number

2b. Title or Corporate Name and Full Address (If you have complete information available on a rubber stamp, please place information here.)

2c. Are any of the firearms connected to another multiple sale? (If yes, specify date.) (See instruction 3.) Yes No. If "Yes"

2d. If you sold these firearms at a gun show or other qualifying event, identify the event and provide a complete address of the event.

3. Any combination of pistols and revolvers disposed of by the same individual person at one time or during any five consecutive business days. (See instruction 3.)

Manufacturer	Importer (if any)	Model	Serial Number	Type (pistol or revolver)	Caliber	Date Transferred

4. Transferee's Name (Last, First, Middle)

5. Full Residential Address (Number, Street, City, County, State, ZIP Code)

6. Sex Male Female 7a. Ethnicity

7b. Race (Check one or more boxes.) (See instruction 3.)

Hispanic or Latino American Indian or Alaska Native African American or Black White

Not Hispanic or Latino Asian Native Hawaiian or Other Pacific Islander

8. Identification Number 9. Type of Identification (ID)

DL ID State Date of Birth Place of Birth (City, State, Country)

13. If the buyer of the firearms listed in Item 4 is a person authorized to act on behalf of a corporation, company, association, partnership or other such business entity, you must complete the following, if applicable: (See instruction 6.)

Name and Full Address of Business Entity

14a. Identify the official designated by the State or local authorities whose name, the FFL, will be forwarding Copy 2.

Name of Agency Full Street Address, City, and State

14b. Date Copy 2 was forwarded to Agency

15. Additional Information Relating to the Transfer of the Firearms (if applicable)

16. Name of Employee Filing Out This Form 17. Date This Form Was Completed

Email form to multihandgunsales@atf.gov

ATF Form 3310.4
Revised December 2023

Stores often have surveillance cameras to capture activity both inside and outside the premises. These recordings can provide valuable information about customer behavior, particularly coordination with associates that can indicate an illegal straw purchase. These systems often record activity on a loop that automatically overwrites itself after a certain duration, making it difficult to obtain recordings directly from the store given the likely elapse between a purchase and a lawsuit. However, criminal charging documents lodged against straw purchasers regularly reference gun store surveillance footage, indicating that law enforcement obtains these recordings with some regularity while investigating crime guns. If you think law enforcement investigated the purchase for any reason, it may be worth contacting ATF or applicable state and local authorities to see whether you can obtain recordings from them.

⁴³⁰ 27 C.F.R. § 478.126a (“The licensee shall retain one copy of Form 3310.4 and attach it to the firearms transaction record, Form 4473, executed upon delivery of the pistols or revolvers.”).

X. Special Topic: Obtaining Data from ATF and Defendants in Discovery

This special topic covers one of the challenges to obtaining information from both ATF and defendants in discovery.

ATF maintains a veritable treasure trove of documents that may help identify malfeasance in the gun industry, but certain types of documents in ATF's possession can be difficult to obtain due to a provision of congressional appropriations legislation known as the Tiahrt (pronounced TEE-hart) Rider. Relatedly, gun industry defendants sometimes fight hard to shield their own transaction records (described in the previous section) from discovery under the Tiahrt Rider, despite strong evidence that the Rider may not be used that way.

This chapter will help you understand the Tiahrt Rider and the scope of its protections.

The Tiahrt Rider was first attached to congressional appropriations legislation in 2003.⁴³¹ Since then, the Rider has been reupped with some changes several times; today’s operative version was enacted in 2011.⁴³² This section covers two related issues: (1) obtaining documents from ATF and (2) obtaining documents from gun industry defendants.

For those seeking documents from ATF, the road is bumpy, to say the least. The Tiahrt Rider mandates that “no funds appropriated under this or any other Act may be used to disclose” the contents of ATF’s Firearms Trace System database or “any information required to be kept by licensees pursuant to [federal firearms licensing laws].”⁴³³

There are several nuances to this mandate. First, the Tiahrt Rider is a *budgetary* provision. Accordingly, it appears to prevent *using funds* to disclose data and documents.⁴³⁴ In theory, the Tiahrt Rider can be read to allow disclosure if the requestor can avoid any expense to ATF. But courts have split on this issue.⁴³⁵

Second, the Rider excepts disclosures to federal, state,

local, tribal, or foreign law enforcement, subject to certain limitations.⁴³⁶ That is, appropriated funds may be used to disclose ATF trace data or licensee records for the purposes of sharing with, for instance, a local police department to aid a criminal investigation. These law enforcement entities may share this data with each other but may not “knowingly and publicly disclose such data.”⁴³⁷

Third, the Rider allows the “disclosure” of “statistical information concerning total production, importation, and exportation by each licensed importer . . . and licensed manufacturer” and “publication” of annual statistical reports on products regulated by ATF or of “statistical aggregate data” on topics like firearms trafficking or misuse.⁴³⁸ Exactly what “publication” and “statistical aggregate data” mean is the subject of much debate.⁴³⁹ The Ninth Circuit has held that aggregate data may be produced to a requestor who will make the data generally known to the public, though courts are divided on this issue as well.⁴⁴⁰

Fourth, even if private litigants do obtain Tiahrt-protected data, the Tiahrt Rider restricts the “use[]”

⁴³¹ Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, § 644, 117 Stat. 11, 473-74 (2003).

⁴³² Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011).

⁴³³ *Id.* at 609.

⁴³⁴ See *City of New York v. Beretta U.S.A. Corp.*, 429 F. Supp. 2d 517, 526 (E.D.N.Y. 2006) (“The rider has no application to data that is not to be disclosed through the use of federally appropriated funds.”); *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc.*, No. 22-CV-0472, 2025 WL 346659, at *3-4 (D. Ariz. Jan. 30, 2025).

⁴³⁵ Compare *Ctr. for Investigative Reporting v. United States Dep’t of Just.*, 14 F.4th 916, 933 (9th Cir. 2021) (holding that certain records were not exempt from production under FOIA, and that the Tiahrt Rider merely barred ATF from using congressionally appropriated funds to produce them), with *Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 984 F.3d 30, 33 (2d Cir. 2020) (“Because the ATF operates only with appropriated funds, and because FOIA disclosure occurs subject to legal process, the [Tiahrt] rider exempts [trace] data from FOIA disclosure.”) and *Mayor & City Council of Baltimore v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 23-CV-3762, ---F.Supp.3d ---, 2026 WL 143346, at *11 (D.D.C. Jan. 20, 2026) (holding that Tiahrt Rider “doubly restricted” public disclosure of ATF’s firearms trace database by denying appropriated funds and by precluding courts from ordering disclosure pursuant to legal process).

⁴³⁶ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011).

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ Compare *Ctr. for Investigative Reporting*, 14 F.4th at 922 (holding that the Center for Investigative Reporting’s FOIA request for “[t]he total number of weapons traced back to former law enforcement ownership, annually from 2006 to the present,” fell into the “statistical aggregate data” exception of the Tiahrt Rider), with *Brady Ctr. to Prevent Gun Violence v. U.S. Dep’t of Just.*, 410 F. Supp. 3d 225, 242 (D.D.C. 2019) (“[T]he Court is unconvinced that the number of violations committed by a particular licensee constitutes ‘statistical aggregate data’ for purposes of the Tiahrt Amendment’s exception.”).

⁴⁴⁰ See *Mayor & City Council of Baltimore*, 2026 WL 143346 at *15 (rejecting Ninth Circuit’s interpretation and holding that the Tiahrt Rider permits ATF to publish aggregate data on its own initiative, but not to release such data to FOIA requestors for them to publish).

of such data in civil litigation.⁴⁴¹ In this way, the Tiahrt Rider complicates obtaining and using records from ATF or law enforcement agencies.

Practice Pointer:

The Tiahrt Rider does not shield from production by ATF *all* ATF records relating to federal firearms licensees; only information that licensees are required by federal law to keep such as the ATF Form 4473 (firearms transaction record) and ATF Form 3310.4 (report of multiple handgun sale).⁴⁴² Other types of records *can* generally be obtained from ATF with FOIA requests—records such as compliance inspections, revocation proceedings, and related correspondence. Although those documents typically contain some redactions, they can often be quite revealing and helpful, and it is a good practice to file a Freedom of Information Act (“FOIA”) request for them in your cases.

To be sure, the validity of the Tiahrt Rider and the scope of its protections have been fiercely litigated.⁴⁴³

In particular, courts continue to explore the interaction between the Tiahrt Rider and FOIA.⁴⁴⁴ Although litigation continues, the Tiahrt Rider remains a barrier to obtaining certain types of documents from ATF.

However, the Tiahrt Rider may not be properly used to shield gun industry defendants from producing *their own* documents. Both the text of the Rider and the case law instruct that document produced and maintained by the defendants themselves—things like Form 4473s, acquisition and disposition records, and sales receipts—are fair game in discovery from the federal firearms licensees. This does not stop some gun industry defendants from making this argument during discovery disputes, however. Defendants sometimes point to the Rider’s provision that “all such data . . . shall not be subject to subpoena or other discovery”⁴⁴⁵ The question is, of course, how to interpret the phrase “all such data.”⁴⁴⁶ Industry defendants argue that it includes any information required to be kept by federal firearms licensees pursuant to federal laws—whether or not federal funds were used to disclose it and whether or not ATF ever actually possessed the documents at issue. This is a massive, unsupported expansion of the Tiahrt Rider’s protections.

Courts have rejected this gun-industry argument. Most recently, the federal court for the District of Arizona found that the Tiahrt Rider does not shield a defendant’s business records from discovery. The court concluded, “The most natural reading of the term ‘such data’ as used in the Tiahrt Amendment is data within the three delineated categories that is in ATF’s possession and subject to disclosure by ATF using appropriated funds. . . . The Amendment does not

⁴⁴¹ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 610 (2011).

⁴⁴² A more comprehensive account of firearms transaction records created by retail gun stores can be found in Section IX. Special Topic: Basics of a Gun Sale.

⁴⁴³ See, e.g., *Brady Ctr. to Prevent Gun Violence*, 410 F. Supp. 3d at 243-44.

⁴⁴⁴ See, e.g., *Ctr. for Investigative Reporting*, 14 F.4th at 931-32 (“Given that the government has advanced no argument suggesting that the 2010 or 2012 Riders satisfy the OPEN FOIA Act or that they do not need to satisfy the OPEN FOIA Act, . . . the data requested by CIR is not exempted from disclosure under FOIA.”); *Everytown*, 984 F.3d at 33; *Brady Ctr. to Prevent Gun Violence*, 410 F. Supp. 3d at 240 n.3 (collecting cases that have found that the Tiahrt Rider qualifies as an Exemption 3 statute, despite its lack of specific citation to Exemption 3); *Mayor & City Council of Baltimore*, 2026 WL 143346 at *6-15 (concluding that Tiahrt Rider is a FOIA Exemption 3 statute); *Fowlkes v. Bureau of Alcohol, Tobacco, Firearms & Explosives* (“Fowlkes I”), 67 F. Supp. 3d 290, 301 (D.D.C. 2014) (finding that ATF failed to demonstrate that Exemption 3 under FOIA applies, because the 2012 Tiahrt Rider does not specifically cite FOIA); *Fowlkes v. Bureau of Alcohol, Tobacco, Firearms & Explosives* (“Fowlkes II”), 139 F. Supp. 3d 287, 292 (D.D.C. 2015) (finding that ATF’s supplemental declaration detailing “the history of Congressionally-imposed funding restrictions and conditions on [ATF’s] ability to disclose trace information” demonstrates that the Tiahrt Rider’s funding restrictions remain “active and enforceable” and “subject to [Exemption 3]”); *Abdeljabbar v. Bureau of Alcohol, Tobacco & Firearms*, 74 F. Supp. 3d 158, 176 (D.D.C. 2014) (similar).

⁴⁴⁵ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011).

⁴⁴⁶ See, e.g., *City of Chicago v. U.S. Dep’t of Treasury*, 423 F.3d 777, 780-81 (7th Cir. 2005) (holding that there is “no ambiguity” and that “such data” refers to ATF “tracing data and the data regarding multiple sales”).

restrict Defendants' disclosure of their private business records."⁴⁴⁷ Specifically, the court endorsed the position of the United States as amicus that the Tiahrt Rider "applies to information maintained by ATF and does not restrict the discovery of . . . the private business records of a federal firearms licensee."⁴⁴⁸ Accordingly, the court compelled discovery of documents relating to the "sale and purchase of firearms, ammunition, and firearm accessories, including forms that Defendants are required to maintain [under federal law]"—which would include transaction records like ATF Form 4473s, ATF Multiple Sale Reports, and licensees' acquisition and disposition log.⁴⁴⁹

In sum, while the Tiahrt Rider does make gun violence prevention litigation more complicated, it does not foreclose it. The recent decision in *Arizona* takes another step toward clarifying that the Tiahrt Rider's protections do not go beyond certain documents in ATF's possession.⁴⁵⁰

⁴⁴⁷ *Diamondback Shooting Sports*, 2025 WL 346659, at *3 (cleaned up).

⁴⁴⁸ *Id.* (cleaned up); see also *City of New York*, 429 F. Supp. 2d at 526 ("The rider has no application to data that is not to be disclosed through the use of federally appropriated funds."); *City of New York v. A-1 Jewelry & Pawn, Inc.*, No. 06-CV-2233, 2008 WL 346366, at *4 (E.D.N.Y. Feb. 6, 2008) ("[N]othing in either the 2006 Act prohibits disclosure, by defendants, of the 4473 Forms and Multiple Sales Forms"); *Williams v. Beemiller, Inc.*, 42 Misc. 3d 438, 443 (N.Y. Sup. Ct. Erie Cnty. Sup. Ct. 2013) ("[D]efendants may not assert the Tiahrt Amendment as a shield to insulate all private business records—including those mandated by 18 USC § 923—simply because ATF may have had access to them.").

⁴⁴⁹ *Diamondback Shooting Sports*, 2025 WL 346659, at *1, 4.

⁴⁵⁰ See *id.*; see also *A-1 Jewelry & Pawn*, 2008 WL 346366, at *4 ("As far as the objections of the Babcock defendants and Old Dominion relating to the 2006 Act are concerned, the Court finds that nothing in either the 2006 Act prohibits disclosure, by defendants, of the 4473 Forms and Multiple Sales Forms.").

XI. Special Topic: Removal to Federal Court

This special topic covers the arguments that gun industry defendants have made to remove litigation from state to federal court, and the strategies and arguments you may want to employ in favor of remand.

First, this chapter covers removal based on **federal question jurisdiction**, and what it means under the controlling *Grable* test for an embedded federal issue to be: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting federal-state comity.

Second, it covers removal based on **diversity jurisdiction**, and arguments centered on fraudulent joinder of non-diverse parties.

Third, it addresses efforts by the gun industry to assert **federal officer jurisdiction** as a basis for removal.

Fourth and finally, it covers procedural issues like **untimeliness of removal** and **lack of unanimity** among defendants, which can each be bases for remand. It also briefly covers the possibility of recovering **sanctions for improvident removal**.

As plaintiff’s counsel, one early decision you will need to make is where to file suit, including whether to file in state or federal court. The strategic considerations that go into this choice are numerous and varied. If you determine that state court is your preferred forum, you may face a defendant that prefers federal court and removes your case at the outset of litigation. This special topic is for plaintiffs that prefer to litigate in state court and covers some of the bases for removal and arguments you may want to make on a motion to remand your case.

Typically, a defendant can remove a civil action to federal court only if the action could have been filed originally in federal court.⁴⁵¹ The party seeking removal bears the burden of demonstrating that removal was proper, so all doubts about federal jurisdiction must be resolved in favor of remand.⁴⁵² That means that a defendant must argue that there is jurisdiction under the federal question statute, 28 U.S.C. § 1331, the diversity statute, 28 U.S.C. § 1332, or one of the lesser-utilized grounds for removal, such as federal officer jurisdiction under 28 U.S.C. § 1442. It is well-settled that a federal defense (like PLCAA) is not a proper ground for removal.⁴⁵³

While the arguments a plaintiff must address in a motion to remand differ with the basis asserted for federal jurisdiction, as a guiding principle, if you want to get back to state court you should emphasize that your case is a personal injury sounding in tort—the type of case that has traditionally belonged in state courts.

A. Removal Based on Federal Question Jurisdiction

“[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”⁴⁵⁴ The corollary to the well-pleaded complaint rule is “the ‘artful pleading’ rule—pursuant to which [a] plaintiff cannot avoid removal by declining to plead ‘necessary federal questions.’”⁴⁵⁵ In light of these pleading rules, if your aim is to litigate in state court then you will want to plead only claims that arise under state law, and avoid pleading federal claims that furnish a basis for federal question jurisdiction.

Even in the absence of federal claims, however, a defendant may still try to remove by arguing that your state law claims contain an embedded question of federal law. This might happen, for example, if your state law claims are predicated on conduct that violated a federal statute, or if they hinge on a term defined by federal law. An attempt to remove on this basis is an assertion of the “substantial federal question doctrine,” which recognizes that in a narrow class of cases “federal-question jurisdiction will lie over state-law claims that implicate significant federal issues.”⁴⁵⁶ This doctrine, articulated in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, “captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal

⁴⁵¹ See 28 U.S.C. § 1441(a).

⁴⁵² *Soto v. Bushmaster Firearms Int’l, LLC*, 139 F. Supp. 3d 560, 562 (D. Conn. 2015) (granting motion to remand); see also *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-CV-6169, 2023 WL 6213654, at *4 (N.D. Ill. Sept. 25, 2023) (same), aff’d, 98 F.4th 810 (7th Cir. 2024); *Getz v. Sturm, Ruger & Co., Inc.*, No. 23-CV-1338, 2024 WL 1793670, at *4 (D. Conn. Apr. 25, 2024) (same); *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 835 (D. Minn. 2023) (denying motion to remand).

⁴⁵³ *Soto*, 139 F. Supp. 3d at 565; *New York v. Arm or Ally, LLC*, 644 F. Supp. 3d 70, 78 (S.D.N.Y. 2022); *Woods v. Steadman’s Hardware, Inc.*, No. CV 12-33-H-CCL, 2013 WL 709110, at *2-3 (D. Mont. Feb. 26, 2013) (granting motion to remand, noting that “PLCAA does not provide subject matter jurisdiction for any cause of action whatsoever,” and awarding fees and costs); *Delaware ex rel. Jennings v. Cabela’s Inc.*, No. 23-CV-790, 2024 WL 263296, at *4 (D. Del. Jan. 24, 2024) (remanding, holding that assertion of PLCAA defense does not provide a basis for removal, and awarding fees and costs); see also *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (holding that a federal defense to a state-law cause of action does not support federal-question jurisdiction).

⁴⁵⁴ *Caterpillar Inc.*, 482 U.S. at 392.

⁴⁵⁵ *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998); see also *Chiapperini v. Gander Mountain Co.*, 870, 13 N.Y.S.3d 777, 783 (N.Y. Sup. Ct. 2014) (noting that federal court remanded the case and rejected the artful pleading argument).

⁴⁵⁶ *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312, (2005); see also *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (interpreting *Grable*).

law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.”⁴⁵⁷

Grable permits federal jurisdiction for only a “special and small category” of cases.⁴⁵⁸ The “‘mere presence’ of a federal issue in a state cause of action” or the mere assertion of a federal interest is not enough to trigger federal court jurisdiction.⁴⁵⁹ “Nor does the presence of a federal defense suffice—even if the parties concede that the defense is the only disputed issue in the case and, in that sense, necessary to the resolution of the state law claim.”⁴⁶⁰ Because a federal defense does not provide a basis to assert federal-question jurisdiction, a defendant’s invocation of PLCAA does not provide a basis for removal.⁴⁶¹ Nevertheless, *Grable* arguments feature during removal and remand in a wide variety of litigation against the firearms industry.

Under *Grable* and its progeny, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.”⁴⁶² “Where all four of these requirements are met . . . , jurisdiction is proper because there is a ‘serious federal interest in claiming the advantages thought to be inherent in a federal forum,’ which can be vindicated without disrupting Congress’s intended division of labor between state and federal courts.”⁴⁶³ All four factors must be satisfied. Typically, most of the analysis happens under the first and third factors.

1. Necessarily raised

The first factor for a federal court to take jurisdiction under *Grable* is that “[i]t must be ‘impossible to decide’ the state-law claim without deciding an issue of federal law.”⁴⁶⁴ “If the plaintiff can support her state-law claim with theories unrelated to the federal statute, then the state-law claim does not arise under federal law.”⁴⁶⁵ While the cases applying these principles are not always entirely consistent with one another, they indicate that a plaintiff seeking to litigate in state court should ensure that each claim is supported by at least one theory of liability that does not implicate federal law. This is because even a single theory that does not implicate federal law should preclude a finding in the defendant’s favor on the first *Grable* factor. A survey of a few recent cases illustrates this point.

In *Roberts v. Smith & Wesson Brands*, a district court found that issues of federal law were not necessarily raised in a lawsuit where plaintiffs pled several state law claims based primarily on theories of liability grounded in state law, but also included a theory of liability based on federal law. That case was brought by victims and survivors of the July 4, 2022, mass shooting in Highland Park, Illinois, against the manufacturer of the assault rifle used (Smith & Wesson), two gun stores involved in the sale of the rifle, and the shooter and his father.⁴⁶⁶

Plaintiffs’ primary allegations were that Smith & Wesson was negligent, and violated the Illinois Consumer Fraud and Deceptive Business Practices Act and the Illinois

⁴⁵⁷ *Grable*, 545 U.S. at 312.

⁴⁵⁸ *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699 (2006).

⁴⁵⁹ *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 813-17 (1986); see also *New York v. Arm or Ally, LLC*, 644 F. Supp. 3d 70, 77 (S.D.N.Y. 2022) (denying motion to remand).

⁴⁶⁰ *Arm or Ally*, 644 F. Supp. 3d at 78 (internal citations and quotations omitted); see also *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (holding that a federal defense to a state-law cause of action does not support federal-question jurisdiction).

⁴⁶¹ See *supra* note 454.

⁴⁶² *Gunn v. Minton*, 568 U.S. 251, 258, (2013) (discussing *Grable*).

⁴⁶³ *Id.* (quoting *Grable*, 545 U.S. at 313).

⁴⁶⁴ *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-CV-6169, 2023 WL 6213654, at *13 (N.D. Ill. Sept. 25, 2023) (citation omitted), *aff’d*, 98 F.4th 810 (7th Cir. 2024); see also *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457, 468-69 (E.D. Pa. 2016); *Corporan v. Wal-Mart Stores E., LP*, 194 F. Supp. 3d 1128, 1132 (D. Kan. 2016); *Daniel v. Armslist, LLC*, No. 15-C-1387, 2016 WL 660894, at *3; (E.D. Wis. Feb. 17, 2016).

⁴⁶⁵ *Roberts*, 2023 WL 6213654, at *15 (quoting *Praschak v. Kmart Corp.*, 922 F. Supp. 2d 710, 713 (N.D. Ill. 2013)).

⁴⁶⁶ *Roberts*, 2023 WL 6213654, at *2-3.

Uniform Deceptive Trade Practices Act by, among other things, marketing its assault rifles to young men by intentionally and unfairly targeting their propensity for risk-taking, impulsive behavior. However, the complaint also included “scattered references to federal law[,]” specifically violation of the National Firearms Act (“NFA”).⁴⁶⁷

Despite the fact that the complaint referenced the NFA, the court held that this federal issue was not necessarily raised because plaintiffs had also pled alternative theories of misconduct that were not grounded in violations of federal law.⁴⁶⁸ Thus, the court held that while “[a] violation of federal regulations is a *possible* basis for violating the state statutes, [] it is not a *necessary* basis for violating the state statutes.”⁴⁶⁹ The court found the same for the negligence claim, which also referenced the NFA but for similar reasons did not depend on a violation of the NFA to succeed.⁴⁷⁰ The remaining claims did not reference federal law or contain embedded federal questions, either.⁴⁷¹ Courts evaluating firearms cases in other jurisdictions have come to similar conclusions.⁴⁷²

You may need to distinguish two gun industry cases that—in contrast to *Roberts*—analyzed the *Grable*

factors but denied the motions to remand. The first is *Minnesota v. Fleet Farm LLC*, which involved allegations that federally licensed firearms retailers (“FFLs”) sold firearms to straw purchasers (someone who purchases a firearm for someone else in circumstances other than a bona fide gift).⁴⁷³ Despite the complaint pleading only state law causes of action, the court found that the negligence claims were premised on federal regulations and guidance, raising a “question [that] will invariably entail an exploration of the duties and responsibilities of FFLs at the federal level.”⁴⁷⁴ The court rejected the state’s argument that it could rely exclusively on state law to establish a duty that defendants’ conduct had violated, finding instead that “the Minnesota statutes cited by the Complaint cannot settle the core dispute” over the scope of gun dealers’ obligations. As a result, the court found a substantial federal issue was necessarily raised because “[t]he resolution of this case is likely to have a substantial impact on how future firearm retailers—in and out of Minnesota—act in similar circumstances.”⁴⁷⁵ This result is broadly at odds with the numerous examples of state-law claims predicated on violations of federal gun laws being litigated in state courts.⁴⁷⁶ It is also contrary to the great weight of authority evaluating *Grable* removals, including decisions from the Supreme

⁴⁶⁷ *Id.* at *16-17.

⁴⁶⁸ *Id.* at *17.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.* at *20-21 (“That theory of liability based on Smith & Wesson’s use of military imagery targeted at young adults stands apart from Plaintiffs’ allegations about the NFA. Once again, Plaintiffs could prevail without establishing that Smith & Wesson violated the NFA’s manufacturing and labeling requirements.”).

⁴⁷¹ *Id.* at *22-23. Smith & Wesson appealed the remand decision, and the Seventh Circuit affirmed without having to reach the *Grable* issue. *Roberts v. Smith & Wesson Brands, Inc.*, 98 F.4th 810, 816 (7th Cir. 2024).

⁴⁷² See, e.g., *Daniel v. Armslist, LLC*, No. 15-C-1387, 2016 WL 660894, at *3-4 (E.D. Wis. Feb. 17, 2016) (finding no federal jurisdiction over state-law claim against online firearms marketplace because, among other things, plaintiffs’ claims did not rely exclusively on violation of federal law); *Corporan v. Wal-Mart Stores E., LP*, 194 F. Supp. 3d 1128, 1131-32 (D. Kan. 2016) (finding no federal jurisdiction over state claims against firearms retailer because plaintiffs’ state-law claim was “supported by alternative and independent theories, one of which [did] not implicate federal law”) (citations omitted).

⁴⁷³ 679 F. Supp. 3d 825, 832-33 (D. Minn. June 27, 2023).

⁴⁷⁴ *Id.* at 837. But see *Corporan*, 194 F. Supp. 3d at 1133. (“In *Grable*, the Court upheld the continuing validity of *Merrell Dow*, explaining that the exercise of federal jurisdiction over state-law tort claims based on violations of federal standards, in the absence of a federal right of action, would be enormously disruptive of the proper division of labor as between federal and state courts[.]”).

⁴⁷⁵ *Fleet Farm*, 679 F. Supp. 3d at 839.

⁴⁷⁶ See, e.g., *Williams ex rel. Raymond v. Wal-Mart Stores E., L.P.*, 99 So. 3d 112, 116 (Miss. 2012); *Franco v. Bunyard*, 261 Ark. 144, 145-47 (Ark. 1977) (en banc); *Martin v. Schroeder*, 209 Ariz. 531, 537 (Ariz. Ct. App. 2005); *Peek v. Oshman’s Sporting Goods, Inc.*, 768 S.W.2d 841, 844 (Tex. Ct. App. 1989); *West v. Mache of Cochran, Inc.*, 187 Ga. App. 365, 368 (Ga. Ct. App. 1988); *K-Mart Enters. Of Fla., Inc. v. Keller*, 439 So. 2d 283, 285 (Fla. Dist. Ct. App. 1983).

Court of the United States, which make clear that state tort claims predicated on violations of federal regulations do not entitle a defendant to remove a case to federal court.⁴⁷⁷

A second example of a court denying remand is *New York v. Arm or Ally, LLC*, a wide-ranging litigation brought by the state of New York against 10 different manufacturers and sellers of unfinished firearm frames and receivers used to build so-called “ghost guns.”⁴⁷⁸ The case was premised on a 2021 New York state law specifically passed to hold gun industry members civilly liable for failing to implement reasonable controls to prevent their products from being used unlawfully and for contributing to public nuisances.⁴⁷⁹ Critically (for the question of removal), this statute incorporated the definition of a “qualified product” from federal law—namely, from PLCAA itself.⁴⁸⁰

To establish that the defendants’ products were “qualified products,” the state therefore had to demonstrate that they were “firearms” or “component parts” as defined by federal law.⁴⁸¹ The court found that this necessarily raised a federal question, namely the interpretation of the terms “firearm” and “component,” and that the issue was actually disputed, since the question of whether the products sold by defendants qualified as firearms went to the heart of the case.⁴⁸² The court also found the federal question substantial because the definitions of

these terms “are central to the federal scheme embodied in the Gun Control Act,” and it noted that the United States government had filed a statement of interest in a parallel case.⁴⁸³ Depending on the facts of your case, you may be able to distinguish *Arm or Ally* on the basis that the federal-law definition of a term is not in dispute or that the decision in your case will not have sweeping consequences for the federal government’s powers to regulate weapons in other contexts.

2. Substantial

The other key factor in a *Grable* analysis is whether the federal question is “substantial.” Courts evaluate this from several different angles, any one of which can decide the issue. Often, the strongest argument against finding a substantial federal issue is the requirement that the federal issue be “a nearly pure issue of law, one that could be settled once and for all and thereafter would govern numerous [similar] cases,” rather than one that is “fact-bound and situation-specific.”⁴⁸⁴ The court in *Corporan v. Wal-Mart* cited this reason to remand the case back to state court, identifying “a fact-bound, private dispute between parties with no direct interest by the United States.”⁴⁸⁵ The facts of *Corporan* involved a straw purchase that the plaintiffs—relatives and heirs of a doctor killed using the straw-purchased gun—asserted was negligence, negligent entrustment, and negligence per se on the part of the gun store.⁴⁸⁶

⁴⁷⁷ See, e.g., *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 318 (2005) (explaining that allowing cases into federal court which allege violations of federal regulations as part of a state tort claim, but where there is no federal cause of action, would result in “a horde of original filings and removal cases[.]”); *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 812 (1986) (rejecting removal where state tort claims were predicated on federal violations of law); *Bennett v. Southwest Airlines Co.*, 484 F.3d 907, 909-12 (7th Cir. 2007) (“No court of appeals has held either before or after *Grable* that the national regulation of many aspects of air travel means that a tort claim in the wake of a crash ‘arises under’ federal law.”).

⁴⁷⁸ 644 F. Supp. 3d 70, 73 (S.D.N.Y. 2022).

⁴⁷⁹ *Id.* at 78-79 (citing N.Y. Gen. Bus. Law § 898-b). See the end of Section IV – Predicate Exception, for a discussion of state industry accountability laws.

⁴⁸⁰ N.Y. Gen. Bus. Law § 898-a(6) (McKinney 2023) (defining “qualified product” to “have the same meaning as defined in 15 U.S.C. section 7903(4)”). The definition at issue has since been amended to remove the specific reference to 15 U.S.C section 7903(4), but still maintains cross-references to federal law.

⁴⁸¹ See 15 U.S.C. § 7903(4) (cross-referencing definition of firearm in 18 U.S.C. § 921(a)(3)).

⁴⁸² *Arm or Ally*, 644 F. Supp. 3d at 78-82.

⁴⁸³ *Id.* at 78-80.

⁴⁸⁴ *Empire Healthchoice Assurance v. McVeigh*, 547 U.S. 677, 700-01 (2006) (citation omitted).

⁴⁸⁵ *Corporan v. Wal-Mart Stores E., LP*, 194 F. Supp. 3d 1128, 1133 (D. Kan. 2016); see also *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457, 470 (E.D. Pa. 2016) (remanding for lack of a substantial federal question).

⁴⁸⁶ *Corporan*, 194 F. Supp. 3d at 1129-30.

Plaintiffs alleged that the sale violated various duties on the part of dealers under state law and the federal Gun Control Act (“GCA”), prompting the defendant to remove the case. The court found it unnecessary to define the dealer’s duties under federal law in light of independent alternative theories grounded solely in state law.⁴⁸⁷ It also found the question of duty inextricably wrapped up in factual questions about the defendant’s conduct, presenting a fact-bound dispute without broader implications and thus without a substantial federal question.⁴⁸⁸

Another approach is that “the ‘substantiality inquiry . . . looks [] to the importance of the issue to the federal system as a whole.’”⁴⁸⁹ “Garden-variety tort claims” where a claim created by state law “lean[s] on violations of a federal statute to create a presumption of negligence” generally do not contain a sufficiently substantial federal issue to sustain jurisdiction.⁴⁹⁰ The *Tisdale v. Pagourtzis* case, which stemmed from a 2018 school shooting in Texas that involved the negligent sale of ammunition to a minor in violation of a federal statute, was remanded back to state court on this basis.⁴⁹¹ In that case, the plaintiffs had brought negligence claims against the defendant ammunition company, arguing that the company had violated federal law on the sale of ammunition to minors. But, in remanding the case, the court held that the state tort claims were “simply unimportant to the federal system as a whole.”⁴⁹²

Finally, the lack of a private right of action under an

embedded federal statute can also provide an important argument to remand a case back to state court.⁴⁹³ Under this rubric, a federal issue that constitutes an “element of a state cause of action” but for which “Congress has determined that there should be no private, federal cause of action for the violation” is not a substantial federal issue.⁴⁹⁴ Notably, neither the Gun Control Act nor the National Firearms Act has a private right of action.

This was an additional basis for remand in *Corporan*, where the lawsuit was a “state-law negligence action in which a violation of a federal statute is asserted merely as an element of a negligence per se theory” and could not have been the basis for its own standalone claim.⁴⁹⁵ Thus, the lawsuit was “unmistakably of the kind that, absent federal subject matter jurisdiction in diversity, belongs in state court so as not to ‘materially affect, or threaten to affect, the normal currents of litigation.’”⁴⁹⁶ Similarly, in *Ramos v. Wal-Mart Stores*, a tortious ammunition sale that violated federal age restrictions was found not to present a substantial federal question because, among other things, the embedded federal statute did not create a private right of action.⁴⁹⁷

The remand decision in *Getz v. Sturm, Ruger & Co., Inc.* synthesizes these various approaches in a lengthy, thoughtful analysis.⁴⁹⁸ *Getz* involved a mass shooting in which the shooter used what was sold as an AR-15 “pistol” with a stabilizing arm brace.⁴⁹⁹ Plaintiffs sued the manufacturer (Ruger) for state-law wrongful death

⁴⁸⁷ *Id.* at 1132.

⁴⁸⁸ *Id.* at 1132-34.

⁴⁸⁹ *Fracasse v. People’s United Bank*, 747 F.3d 141, 144 (2d Cir. 2014) (quoting *Gunn*, 568 U.S. at 260).

⁴⁹⁰ *Tisdale v. Pagourtzis*, No. 20-CV-140, 2020 WL 7170491, at *1, *6 (S.D. Tex. Dec. 7, 2020).

⁴⁹¹ *Id.* at *5-6.

⁴⁹² *Id.* at *6.

⁴⁹³ *Grable*, 545 U.S. at 318 (“The [*Merrell Dow*] Court saw the missing cause of action not as a missing federal door key, always required, but as a missing welcome mat.”).

⁴⁹⁴ See *Corporan*, 194 F. Supp. 3d at 1133 (quoting *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 817 (1986), and noting that this holding was affirmed in *Grable*, 545 U.S. at 318-19).

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Ramos*, 202 F. Supp. 3d at 469-70.

⁴⁹⁸ No. 23-CV-1338, 2024 WL 1793670 (D. Conn. Apr. 25, 2024).

⁴⁹⁹ *Id.* at *3-4.

and unfair trade practices claims predicated on the wrongful marketing of the firearm as a pistol when it was in fact a short-barreled rifle subject to extensive restrictions on sale and possession under federal law.⁵⁰⁰ Ruger removed, and the plaintiffs conceded that the federal issue—whether the firearm was a short-barreled rifle under federal law—was necessarily raised and actually disputed.⁵⁰¹ But the court remanded, holding that the federal issue was nonetheless insubstantial.⁵⁰²

In doing so, the court walked through each of the approaches to evaluating substantiality described above. First, it identified that the relevant provisions of federal law neither contained a private right of action nor preempted the plaintiffs' state law claims.⁵⁰³ Next, the court determined that the disputed issue of whether the subject weapon was designed and intended to be fired from the shoulder was "primarily an issue of historical fact" rather than a pure question of law.⁵⁰⁴ The court also noted that the federal issue was not outcome-dispositive on its own, as a jury would still need to make findings on issues defined by state law (namely, causation and whether defendants' conduct violated the state unfair trade practices law).⁵⁰⁵ Finally, the court rejected Ruger's argument that a finding of liability would have a significant impact on the federal regulatory scheme for firearms though it acknowledged that this question was "a matter of degree."⁵⁰⁶

In sum, the federal issue:

does not fundamentally change the state-law nature of the case; it is fact-bound and situation-specific to a degree that

is characteristic of private enforcement actions commonly adjudicated in state courts; the issue is not outcome determinative; and the federal interest in the parties' dispute does not 'justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.'⁵⁰⁷

B. Removal Based on Diversity of Citizenship Jurisdiction

For a defendant to remove a case to federal court on the basis of diversity, "there must be complete diversity between the plaintiffs and the defendants, in other words, no plaintiff can be a citizen of the same state as any of the defendants."⁵⁰⁸ In some cases, plaintiffs may share citizenship with certain defendants—like the shooter, or a local dealer—while other defendants in the supply chain hail from other states. In a scenario like this, defendants seeking to remove notwithstanding the lack of complete diversity will likely contend that the non-diverse defendants are fraudulently joined. But this carries a demanding standard of proof: "[t]o establish fraudulent joinder, the defendants 'must demonstrate, by clear and convincing evidence, either that there has been outright fraud committed in the plaintiff's pleadings, or that there is no possibility, based on the pleadings, that [the] plaintiff[s] can state a cause of action against the non-diverse defendant in state court.'"⁵⁰⁹ As in all removals, the defendants bear the burden of establishing that federal jurisdiction exists.⁵¹⁰

⁵⁰⁰ *Id.* at *1.

⁵⁰¹ *Id.* at *5.

⁵⁰² *Id.*

⁵⁰³ *Id.* at *7.

⁵⁰⁴ *Id.* at *8.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.* at *9.

⁵⁰⁷ *Id.* at *10 (quoting *Grable*, 545 U.S. at 312).

⁵⁰⁸ *Soto v. Bushmaster Firearms Int'l, LLC*, 139 F. Supp. 3d 560, 561 (D. Conn. 2015); see also 28 U.S.C. § 1332(a)(1).

⁵⁰⁹ *Soto*, 139 F. Supp. 3d at 561 (citation omitted).

⁵¹⁰ *Id.*

In *Soto*, out-of-state defendants argued that plaintiffs fraudulently joined the Connecticut business alleged to have sold the rifle used in the Sandy Hook shooting.⁵¹¹ Specifically, they argued that PLCAA foreclosed any possibility of a claim against the local gun store.⁵¹² In response, the *Soto* plaintiffs invoked two exceptions to PLCAA: that the store negligently entrusted the rifle to the shooter’s mother and that it had marketed the rifle in violation of Connecticut’s Unfair Trade Practices Act (“CUTPA”).⁵¹³ The ultimate viability of the claims against the store hinged on two issues of first impression: whether the word “use” in PLCAA’s negligent entrustment exception means something broader than the “discharge” of the firearm, and whether CUTPA was a valid predicate statute.⁵¹⁴

The court rejected the argument that the gun store was fraudulently joined and declined to resolve these underlying merits questions on a motion to remand. In doing so, the court clarified the “no possibility” standard for fraudulent joinder, holding that it must be “objectively reasonable to infer that the plaintiff has engaged in a form of litigation abuse.”⁵¹⁵ The court compared this to the Rule 11 standard for sanctions: “[t]he analysis under both Rule 11 and fraudulent joinder therefore turns not on how likely a claim is to succeed, but rather on whether the claim is objectively frivolous.”⁵¹⁶ This high standard was not met based on the contested issues of first impression, even though the court recognized the possibility that PLCAA might ultimately require dismissal. Instead, it found that defendants could not establish fraudulent joinder where “neither the statute itself nor any controlling case conclusively establishes that the plaintiffs cannot state a cause of action against [the gun store].”⁵¹⁷ It then

remanded the case to state court.

Different courts of appeal articulate the “no possibility” standard slightly differently, but the takeaway is the same: a claim against a defendant must basically be frivolous to support finding fraudulent joinder. In *Ramos v. Wal-Mart*, the court stated the standard as such:

The fact that a plaintiff may not be able to prevail against a particular defendant does not necessarily mean that the decision to file suit against that defendant was fraudulent—more must be shown before it is safe to conclude that the defendant was joined in bad faith. The question is not whether the claims against the non-diverse defendant lack merit, but rather whether those claims are ‘wholly insubstantial and frivolous,’ such that ‘they should have never been brought at the outset.’ This standard places a ‘heavy burden of persuasion’ on the removing party.⁵¹⁸

In *Ramos*, plaintiffs sued Wal-Mart as well as two of the store’s employees over the sale of ammunition used in a series of murders.⁵¹⁹ While the store was a chain retailer headquartered in another state, the two defendant employees were residents of the same state as plaintiffs, precluding diversity jurisdiction.⁵²⁰ Wal-Mart contended that they were fraudulently joined, submitting affidavits from the employees stating that they were not involved in the sale.⁵²¹ The court rejected this invitation to resolve a disputed issue of fact on a motion to remand, holding that it must accept the well-pled allegations as true and that it would be improper to

⁵¹¹ *Id.* at 562.

⁵¹² *Id.*

⁵¹³ *Id.* at 564.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.* at 562.

⁵¹⁶ *Id.* at 563.

⁵¹⁷ *Id.* at 565.

⁵¹⁸ *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457, 462 (E.D. Pa. 2016).

⁵¹⁹ *Id.* at 460-62.

⁵²⁰ *Id.* at 460.

⁵²¹ *Id.* at 462.

consider the affidavits for the purpose of adjudicating the merits of those allegations.⁵²² The court held that “[t]he fact that there is some difference of opinion about whether such a claim would be viable means that the claim is not ‘wholly insubstantial and frivolous’” and ultimately remanded the case.⁵²³

C. Removal Based on Federal Officer Jurisdiction

Recently, one gun company unsuccessfully attempted to remove a case based on 28 U.S.C. § 1442, which allows federal officers or agencies, or persons acting under them, to remove a case to federal court. The private gun manufacturer Smith & Wesson tried this tactic in a case stemming from the July 4, 2022, Highland Park shooting by claiming that their relationship with ATF made Smith & Wesson itself a federal officer. The district court rejected this assertion, holding that binding U.S. Supreme Court precedent “snuffs out any possibility that Smith & Wesson acted as a federal officer.”⁵²⁴ The Seventh Circuit affirmed, likewise citing binding precedent “hold[ing] that being subject to federal regulation differs from acting under a federal agent for the purpose of 28 U.S.C § 1442(a)(1).”⁵²⁵ In its order, the circuit court instructed the trial court to consider a fee award to “reimburse the plaintiffs’ costs and fees occasioned by the unjustified removal and appeal.”⁵²⁶ On remand, the district court awarded plaintiffs almost half a million dollars in attorneys’ fees for litigating the removal issue.⁵²⁷

The sound rejection of the federal officer argument in *Roberts*, combined with the potential fee award for this baseless removal attempt, may dampen defendants’ appetite for far-fetched assertions of federal-officer status. However, the allure of this argument for defendants is undeniable: removing a case to federal court under the “federal officer” provision gives the defendant the right to appeal the district court’s remand order. Typically, a remand order is not appealable,⁵²⁸ but the federal officer statute is an exception to that rule and can further delay a case’s return to state court.

D. Other Procedural Considerations

Timely Removal: A few other procedural considerations are worth highlighting, as they can have an outsized impact on removal and remand. As a threshold matter, check whether defendants’ notice of removal was timely filed. Pursuant to 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” If the case stated in the initial pleading is not removable, a defendant may file a notice of removal within thirty days after receipt of an amended pleading, motion, order, or other paper indicating, for the first time, that the case has become removable.⁵²⁹ The 30-day window for removal contained in Section 1446(b) is “mandatory” and “rigorously enforced” by courts, absent a finding of waiver or estoppel.⁵³⁰

⁵²² *Id.*

⁵²³ *Id.* at 466.

⁵²⁴ *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-CV-6169, 2023 WL 6213654, at *9 (N.D. Ill. Sept. 25, 2023).

⁵²⁵ *Roberts v. Smith & Wesson Brands, Inc.*, 98 F.4th 810, 813 (7th Cir. 2024).

⁵²⁶ *Id.* at 816.

⁵²⁷ *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-cv-6169, Order at 4 (N.D. Ill. Mar. 21, 2025), <https://everytownlaw.org/documents/2025/03/march-21-2025-order-granting-plaintiffs-motion-for-attorneys-fees-and-costs-incurred-as-a-result-of-removal.pdf/>.

⁵²⁸ 28 U.S.C. § 1447(d) (“An order remanding a case to the state court from which it was removed is not reviewable on appeal. . .”).

⁵²⁹ 28 U.S.C. § 1446(b)(3).

⁵³⁰ *Spencer v. Duncaster, Inc.*, 54 F. Supp. 3d 171, 174 (D. Conn. 2014) (“[T]he removal statute, like other jurisdictional statutes, is to be strictly construed.”); see also *Phx. Glob. Ventures, LLC v. Phx. Hotel Assocs., Ltd.*, 422 F.3d 72, 75 (2d Cir. 2005); *Apolinar v. Polymer80, Inc.*, No. CV 21-8401 PA (PVCX), 2021 WL 5798051, at *5 (C.D. Cal. Dec. 7, 2021) (remanding case on the basis of untimely filed removal notice).

Unanimity Requirement: Generally speaking, when the only basis for removal is federal question jurisdiction under 28 U.S.C. § 1441(a), all properly served defendants must unanimously agree to remove.⁵³¹ However, some gun industry defendants have invoked 28 U.S.C. § 1441(c) in their notices of removal to get around the unanimity requirement of Section 1441(a). For example, this has happened when the gun industry defendants have not gotten the consent of the shooter or another individual defendant was named in the case.⁵³² It is important to note that section 1441(c) is only available for cases that contain both federal and state law claims, and the state claims are so unrelated to the federal claims that a federal court cannot exercise supplemental jurisdiction over them. In such cases, the unrelated state law claims must be severed and remanded to state court, and the defendants named in those claims do not have to consent to the original removal.⁵³³

Plaintiffs should not assume that an asserted removal under 1441(c) is proper, since supplemental jurisdiction exists when the state-law claims share a “common nucleus of operative fact” with the purported federal-question claims.⁵³⁴ This standard is not particularly demanding as a “loose factual connection between the claims is generally sufficient.”⁵³⁵ Thus, it is a rare case where all of the asserted claims in the complaint do not arise out of a common nucleus of operative fact and for this reason removal under §1441(c) has come to be known as “[p]erhaps the most unusual basis for removal.”⁵³⁶

Sanctions: Pursuant to 28 U.S.C. § 1447(c), plaintiffs may seek costs and attorney’s fees for a case that is improperly removed.⁵³⁷ The Supreme Court has held that a court may award attorney’s fees under Section 1447(c) where “the removing party lacked an objectively reasonable basis for seeking removal.”⁵³⁸

⁵³¹ 28 U.S.C. §§ 1441(a), 1446(b)(2)(A); see also *Roberts*, 98 F.4th at 814 (“Normally federal-question removal, including the embedded-federal-issue variety discussed in *Grable*, proceeds under § 1441(a), which allows the removal of all suits over which federal courts have original jurisdiction. Claims arising under federal law support jurisdiction [] so § 1441(a) permits their removal—if all defendants consent.”); *Tisdale v. Pagourtzis*, No. 20-CV-140, 2020 WL 7170491, at *3 (S.D. Tex. Dec. 7, 2020) (noting that “[t]here are three exceptions to this unanimity requirement: (1) where the defendant was not yet served with process at the time the removal petition was filed; (2) where a defendant is merely a nominal, unnecessary or formal party-defendant; and (3) where the removed claim is a separate and independent claim under 28 U.S.C. § 1441(c).” (quotation marks omitted)).

⁵³² *Roberts*, 98 F.4th at 812-13; *Tisdale*, 2020 WL 7170491, at *6.

⁵³³ 28 U.S.C. § 1441(c).

⁵³⁴ See *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966).

⁵³⁵ *McCoy v. Iberdrola Renewables, Inc.*, 760 F.3d 674, 683 (7th Cir, 2014).

⁵³⁶ 14C Charles Alan Wright et al., *Federal Practice & Procedure* § 3722.3 (Rev. 4th ed. 2020).

⁵³⁷ *Roberts*, 98 F.4th at 815-16.

⁵³⁸ *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

Further Reading on Removal:

Key Cases

- ***Roberts v. Smith & Wesson Brands, Inc.***, No. 22-CV-6169, 2023 WL 6213654 (N.D. Ill. Sept. 25, 2023), *aff'd*, 98 F.4th 810 (7th Cir. 2024) (remanding case because Smith & Wesson was not entitled to either federal officer or federal question jurisdiction)
- ***Getz v. Sturm, Ruger & Co., Inc.***, No. 23-CV-1338, 2024 WL 1793670 (D. Conn. Apr. 25, 2024) (remanding case and finding that federal question was not substantial where embedded federal law did not provide for private right of action or preemption, where federal question was fact-bound and situation-specific, and did not alter the fundamentally state-law nature of plaintiffs' personal injury action)
- ***New York v. Arm or Ally, LLC***, 644 F. Supp. 3d 70 (S.D.N.Y. 2022) (denying remand and concluding that state law claims raised a necessary and substantial federal issue where state law incorporated federal definition of firearm, requiring this definition to be interpreted and applied to defendants' products)
- ***Soto v. Bushmaster Firearms Int'l, LLC***, 139 F. Supp. 3d 560 (D. Conn. 2015) (remanding case for lack of complete diversity and finding that non-diverse defendant gun store was not fraudulently joined despite the possibility that PLCAA might preclude liability)
- ***Corporan v. Wal-Mart Stores E., LP***, 194 F. Supp. 3d 1128 (D. Kan. 2016) (remanding claim against gun dealer for engaging in straw purchases in violation of state and federal law, because violation of federal statute was one of several theories and thus not essential to resolving state law tort claims, and did not raise a substantial federal question in any event)
- ***Ramos v. Wal-Mart Stores, Inc.***, 202 F. Supp. 3d 457 (E.D. Pa. 2016) (remanding claim against gun dealer and its employees, finding that non-diverse employees were not fraudulently joined, and that embedded federal issue was not actually disputed or substantial)
- ***Tisdale v. Pagourtzis***, No. 20-CV-140, 2020 WL 7170491 (S.D. Tex. Dec. 7, 2020) (remanding and finding that although plaintiffs' claims satisfied two Grable factors, the federal issue was not substantial and adjudicating it would disturb the balance of federal and state judicial responsibilities)
- ***Minnesota v. Fleet Farm LLC***, 679 F. Supp. 3d 825 (D. Minn. 2023) (denying remand and finding that plaintiff's complaint necessarily raised a substantial federal issue where it alleged that defendants engaged in straw sales in contravention of federal law and federal regulatory guidance, and where court rejected possibility of liability predicated solely on state common-law or statutory theories)

XII. Special Topic: State Industry Protection Laws

This special topic covers special state-law protections that the gun industry enjoys in many jurisdictions.

These protections operate independently from—and parallel to—PLCAA, and in many cases deviate substantially from the protection afforded under federal law.

This chapter will help you understand some of the **common features** and limitations found in many of these statutes and provides a **table of relevant state laws** to help you determine whether your lawsuit may be impacted.

While PLCAA provides the firearm industry one layer of defense against civil lawsuits, many states have enacted their own form of firearm industry protection laws. As of early 2026, thirty-two states provide some form of immunity to the gun industry. These statutes are listed at the end of this chapter. If you are anticipating bringing a lawsuit in one of these states, you will thus have to contend with both PLCAA and the state industry protection law—which may be broader or narrower than the federal protections.

For example, many states that provide the firearm industry with special protections do so by limiting the ability of political subdivisions—cities, municipalities, counties, etc.—to bring suit against an industry actor. Kansas law, for instance, provides that the authority of “the state or any political subdivision” to bring a civil suit against any firearms or ammunition manufacturer or licensed dealer “arising from or relating to the lawful design, manufacture, marketing or sale of firearms or ammunition to the public *shall be reserved exclusively to the state.*”⁵³⁹ These laws normally, however, would not prevent these government entities from bringing suits against industry actors for breaches of contract or warranty caused by defects in the purchased firearm or ammunition.⁵⁴⁰ Other states include provisions that apply directly to private litigants.⁵⁴¹

Some states disincentivize lawsuits against the gun industry with a type of loser-pay rule. In those states, defendants are entitled to attorneys’ fees and costs if the suit is dismissed pursuant to the state’s firearm immunity law and other conditions are met. While some states award such court costs only against government entities,⁵⁴² other states award these costs against any party that brings such a suit, even individual wrongful death plaintiffs.⁵⁴³

For example, in Indiana, the law provides:

“If a court finds that a party has brought an action under a theory of recovery described [in the State’s firearm immunity provisions], the finding constitutes conclusive evidence that the action is groundless. If a court makes a finding under this section, the court *shall* dismiss the claims and award to the defendant any reasonable attorney’s fee and costs incurred in defending the claims or action.”⁵⁴⁴

At least one gun industry defendant has used these punitive measures against the parents of a person killed in a mass shooting. In 2015, the parents of Jessica Ghawi—a twenty-four-year-old woman killed in the 2012 Aurora movie theater shooting—were ordered to pay the legal fees of the defendants totaling over \$258,000 (later reduced to \$203,000).⁵⁴⁵

⁵³⁹ Kan. Stat. Ann. § 60-4501(a) (emphasis added).

⁵⁴⁰ See, e.g., *id.* § 60-4501(b); Ala. Stat. Ann. § 11-80-11; Alaska Stat. Ann. § 09.65.155; Ga. Code Ann. § 16-11-173(b)(2); Ky. Rev. Stat. Ann. § 65.045(2); La. Rev. Stat. Ann. § 40:1799; Nev. Rev. Stat. Ann. § 12.107(2); N.C. Gen. Stat. Ann. § 14-409.40.

⁵⁴¹ See, e.g., Ohio Rev. Code Ann. § 2305.401; Ind. Code §§ 34-12-3-3.

⁵⁴² See, e.g., Mo. Stat. Ann. § 67.138, Fla. Stat. Ann. § 790.331.

⁵⁴³ See, e.g., Ark. Code Ann. § 16-116-302; Iowa Code § 683.2.

⁵⁴⁴ Ind. Code Ann. § 34-12-3-4(a) (emphasis added). *But see* *KS&E Sports v. Runnels*, 72 N.E.3d 892, 899-904 (Ind. 2017) (holding that, while individual plaintiffs’ claims for damages must be dismissed pursuant to § 34-12-3-3(2), the plaintiff could maintain his public nuisance claim, which sought injunctive relief); *City of Gary v. Smith & Wesson Corp.*, 126 N.E.3d 813, 832 (Ind. Ct. App. 2019) (holding that gun industry defendants were not entitled to attorney’s fees and costs under § 34-12-3-4(a) because the municipal plaintiff could maintain some of its claims for damages and injunctive relief).

⁵⁴⁵ See *Phillips v. LuckyGunner LLC*, No. 14-CV-02822, 2015 WL 3799574, *8 (D. Colo. June 17, 2015). Colorado, however, has since reversed course regarding the State’s broad firearm industry protections in the name of Ghawi. In 2023, the Colorado General Assembly repealed its immunity law after enacting the “Jessi Redfield Ghawi’s Act for Gun Violence Victims’ Access to Justice and Firearms Industry Accountability.” This law opens up the justice system to individuals who have been harmed by the negligence or other unlawful conduct of firearm industry members. See Colo. Rev. Stat. §§ 6-27-102(f), 6-27-105 (effective Oct. 1, 2023). The law further provides standards of responsible conduct for firearm industry actors. See Colo. Rev. Stat. § 16-27-104 (effective Oct. 1, 2023).

State Industry Protection Laws

Alabama

Ala. Code § 11-80-11

Alaska

Alaska Stat. § 09.65.155

Arizona

Ariz. Rev. Stat. § 12-714

Arkansas

Ark. Code § 16-116-302(a)

Florida

Fla. Stat. § 790.331

Georgia

Ga. Code Ann. § 16-11-173

Idaho

Idaho Code §§ 5-247, 6-1410

Indiana

Ind. Code §§ 34-12-3-3, 34-12-3-4

Iowa

Iowa Code §§ 683.1–683.3

Kansas

Kan. Stat. Ann. § 60-4501

Kentucky

Ky. Rev. Stat. Ann. §§ 411.155, 65.045

Louisiana

La. Stat. Ann. §§ 9:2800.60, 40:1799

Maine

Me. Stat. tit. 30-A, § 2005

Michigan

Mich. Comp. Laws § 28.435

Mississippi

Miss. Code Ann. § 11-1-67

Missouri

Mo. Rev. Stat. § 21.750

Montana

Mont. Code Ann. §§ 27-1-720, 30-20-205

Nebraska

Neb. Rev. Stat. § 69-2417

Nevada

Nev. Rev. Stat. §§ 12.107, 41.131

New Hampshire

N.H. Rev. Stat. Ann. § 508:21

North Carolina

N.C. Gen. Stat. § 14-409.40

North Dakota

N.D. Cent. Code, § 32-03-54

Ohio

Ohio Rev. Code Ann. § 2305.401

Oklahoma

Okla. Stat. tit. 21, § 1289.24a

Pennsylvania

18 Pa. Cons. Stat. § 6120(a.1)

South Carolina

S.C. Code Ann. § 15-73-40

South Dakota

S.D. Codified Laws §§ 21-58-1, 21-58-2

Tennessee

Tenn. Code Ann. § 39-17-1314

Texas

Tex. Civ. Prac. & Rem. Code Ann. § 128.001

Utah

Utah Code §§ 78B-4-511, 53-5d-102, 53-5d-103

West Virginia

W. Va. Code §§ 55-18-1, 55-18-2

Wyoming

Wyo. Stat. Ann. § 1-1-142

XIII. Special Topic: Legislative History

According to PLCAA’s text, one of the statute’s purposes is to “**prohibit causes of action**” against the gun industry “**for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.**”⁵⁴⁶

While gun industry defendants often cherry pick similar language from PLCAA’s legislative history to suggest that the statute should be read expansively, the reality is far more nuanced. PLCAA’s legislative history, while complex, makes plain that Congress was particularly focused on certain lawsuits that it deemed frivolous because—at least according to the legislation’s sponsors—they allegedly were not tied to specific allegations of wrongdoing by a specific member of the gun industry. This special topic explores aspects of PLCAA’s legislative history that you can cite to rebut distortions that you may encounter during litigation about Congress’s intent.

⁵⁴⁶ See 15 U.S.C.A. § 7901(b)(1).

Practice Pointer:

There are a couple of important things to bear in mind before exploring legislative history or using it in a brief. First, where the text of PLCAA is unambiguous on a particular issue in dispute, there is no need “to resort to legislative history.”⁵⁴⁷ In addition, courts have recognized that PLCAA’s preamble does not override the statute’s operative text.⁵⁴⁸ However, where the language of PLCAA contains ambiguities relevant to a dispute, a court may “look beyond the text for other indicia of congressional intent”—including to its legislative history.⁵⁴⁹

A. The Gun Industry was Facing Increased Accountability in the Courts

PLCAA was, first and foremost, a reactive piece of legislation. Cosponsors and supporters of PLCAA pointed to specific lawsuits they deemed “predatory” as inspiration for the legislation.⁵⁵⁰ They expressed concerns that these (in their words) “frivolous” lawsuits

had the potential to bankrupt the gun industry.⁵⁵¹ Despite this supposed concern, at the time of PLCAA’s enactment there was no evidence of any gun company filing for bankruptcy in response to then-pending litigation.⁵⁵² Supporters also emphasized the role that guns played in the U.S. economy.⁵⁵³ And PLCAA’s sponsors expressed fears that these lawsuits were stretching “civil liability” within tort law “in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States.”⁵⁵⁴

PLCAA’s opponents argued the opposite: that the proposed new law was a fundamental change of tort law that overhauled “years of legal negligence standards.”⁵⁵⁵ One opponent, citing a letter from law professors, asserted that “the bill would in fact represent a dramatic narrowing of traditional tort principles by providing one industry with a literally unprecedented immunity from liability for the foreseeable consequences of negligent conduct.”⁵⁵⁶ The balance between federal and state authority was also implicated, in opponents’ view, as PLCAA sought “to impose a Federal tort regime that would significantly restrict the ability of State courts to hear and decide cases involving grossly negligent or

⁵⁴⁷ *U.S. v. Gonzalez*, 521 U.S. 1, 6 (1997).

⁵⁴⁸ *See, e.g., Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 322 (Mo. 2016).

⁵⁴⁹ *United States v. Villanueva-Sotelo*, 515 F.3d 1234, 1237 (D.C. Cir. 2008).

⁵⁵⁰ *See* 15 U.S.C.A. § 7901(a)(3) (West) (“Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.”).

⁵⁵¹ 151 Cong. Rec. E2164-02 (daily ed. Oct. 25, 2005) (statement of Rep. John Sullivan) (“By passing this similar Senate bill, we will prevent state courts from bankrupting the national firearms industry and undermining all citizens’ constitutional right to bear arms.”); 151 Cong. Rec. H8990 (daily ed. Oct. 18, 2005) (statement of Rep. Jim Sensenbrenner).

⁵⁵² *See* 151 Cong. Rec. S9380 (daily ed. Jul. 29, 2005) (statement of Sen. Ted Kennedy) (contesting the allegation that the gun industry was at risk of bankruptcy). It is also worth noting that the gun industry continues to claim that “sweeping liability [] will force [gun companies] to shutter their businesses,” but as the Third Circuit recently held, “[this] bold assertion is backed by no evidence.” *Nat’l Shooting Sports Found. v. Attorney Gen. of New Jersey*, 80 F.4th 215, 220 (3d Cir. 2023).

⁵⁵³ *See* 151 Cong. Rec. H8882 (daily ed. Oct. 18, 2005) (statement of Rep. Melissa Hart) (“In addition, the gun industry plays a large role in my State of Pennsylvania in our economy. Pennsylvania is home to 277 gun manufacturers, and the impact of sportsmen-related activity to our economy brings more than \$900 million to our State. It also brings generations of family tradition. That is also good for our economy.”)

⁵⁵⁴ 15 U.S.C.A. § 7901(a)(8) (“The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law.”).

⁵⁵⁵ 51 Cong. Rec. H9009 (daily ed. Oct. 20, 2005).

⁵⁵⁶ 151 Cong. Rec. H9004 (daily ed. Oct. 20, 2005) (statement of Rep. Chris Van Hollen).

reckless conduct by gun dealers and manufacturers, even where existing State law would permit such cases.”⁵⁵⁷

B. PLCAA Was Intended to Preempt a Narrow Category of Lawsuits

Opponents of PLCAA contended that lawsuits cited by the bill’s supporters were not frivolous and served as incentives for gun companies to act responsibly.⁵⁵⁸ These statements reflected a concern about the narrowness of PLCAA’s exceptions—and in particular about the future of suits against gun dealers for straw purchases⁵⁵⁹ and suits where “someone’s own reckless or gross misconduct is a cause, a proximate cause, or contributes to damages which others have.”⁵⁶⁰

In response, supporters of PLCAA emphasized that the law was not an immunity bill, and the important lawsuits that opponents hypothesized would be able to proceed through PLCAA’s exceptions. Supporters repeatedly stated that the law “allows lawsuits to proceed against the bad actors” and only provided immunity against manufacturers who “have not done anything wrong, even though their products may be used in a criminal

nature.”⁵⁶¹ As a result, they contended, the legislation was not intended to “bar legitimate lawsuits” or “lawsuits if a gun malfunctions.”⁵⁶² That is, “if there really [was] a problem, that is to say, the conduct [of a manufacturer] is so bad that it is a violation of law, no lawsuit is precluded under [the] bill in any way.”⁵⁶³ Supporters viewed PLCAA as only stopping “one extremely narrow category of lawsuits, lawsuits that attempt to force the gun industry to pay for the crimes of third parties over whom they have no control. . . . This bill does not protect any member of the gun industry from lawsuits for harm resulting from any illegal actions they have committed.”⁵⁶⁴ In other words, it was “not a gun industry immunity bill.”⁵⁶⁵ Indeed, the title of PLCAA itself demonstrates that it was intended to shield only lawful industry conduct.⁵⁶⁶

⁵⁵⁷ 151 Cong. Rec. S9391 (daily ed. Jul. 29, 2005) (statement of Sen. Carl Levin).

⁵⁵⁸ 151 Cong. Rec. S9388 (daily ed. Jul. 29, 2005) (statement of Sen. Jack Reed) (“If this legislation passes, what incentive will there be for a gun dealer or gun manufacturer to act reasonably?”); 151 Cong. Rec. S9390 (daily ed. Jul. 29, 2005) (statement of Sen. Barbara Boxer) (“So court cases like *Dix v. Beretta* are the only way we can ensure gunmakers do the right thing.”).

⁵⁵⁹ See 151 Cong. Rec. S9387 (daily ed. Jul. 29, 2005) (statement of Sen. Jack Reed) (explaining that sellers are totally immunized from liability over straw purchases).

⁵⁶⁰ 151 Cong. Rec. S9109 (daily ed. Jul. 27, 2005) (statement of Sen. Carl Levin).

⁵⁶¹ 151 Cong. Rec. H8993 (daily ed. Oct. 20, 2005) (statement of Rep. Jim Sensenbrenner) (explaining that “[i]t is important to stress at the outset what this legislation does not do” and then discussing the law’s exceptions at length); see also 151 Cong. Rec. S9387 (daily ed. Jul. 29, 2005) (statement of Sen. Kay Hutchison) (“What we are trying to do is stop gun manufacturers from having to answer lawsuit after lawsuit after lawsuit for the criminal misuse of that product.”).

⁵⁶² 151 Cong. Rec. S9387 (daily ed. Jul. 29, 2005) (statement of Sen. Kay Hutchison); 151 Cong. Rec. S9226 (daily ed. Jul. 28, 2005) (statement of Sen. Lindsey Graham) (“This bill does not allow someone to sell a gun without following the procedures that we have set out to sell a gun. It doesn’t allow someone to make a gun that is unsafe.”).

⁵⁶³ 151 Cong. Rec. S9226 (daily ed. Jul. 28, 2005) (statement of Sen. Jon Kyl).

⁵⁶⁴ 151 Cong. Rec. S9088 (daily ed. Jul. 27, 2005) (statement of Sen. Larry Craig).

⁵⁶⁵ *Id.*

⁵⁶⁶ It is a long-standing principle that courts may draw from a statute’s title to resolve ambiguities in its text. See *I.N.S. v. Nat’l Ctr. for Immigrants’ Rts., Inc.*, 502 U.S. 183, 189 (1991) (“[T]he title of a statute or section can aid in resolving an ambiguity in the legislation’s text.”); *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805) (“Where the mind labors to discover the design of the legislature, it seizes every thing from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration.”).

XIV. Appendix: Annotated Text of PLCAA

15 U.S.C. § 7901. Findings; purposes

a. Findings

Congress finds the following:

1. The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.
2. The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.
3. Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.
4. The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.
5. Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.
6. The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.
7. The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

8. The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

b. Purposes

The purposes of this chapter are as follows:

1. To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.
2. To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.
3. To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.
4. To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.
5. To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.
6. To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.
7. To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

15 U.S.C. § 7902. Prohibition on bringing of qualified civil liability actions in Federal or State court

a. In general

A qualified civil liability action may not be brought in any Federal or State court.

b. Dismissal of pending actions

A qualified civil liability action that is pending on October 26, 2005, shall be immediately dismissed by the court in which the action was brought or is currently pending.

15 U.S.C. § 7903. Definitions

In this chapter:

1. Engaged in the business

The term “engaged in the business” has the meaning given that term in section 921(a)(21) of Title 18,^[567] and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

2. Manufacturer

The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of Title 18.

3. Person

The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

4. Qualified product

The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of Title 18),^[568] including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title),^[569] or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

⁵⁶⁷ 18 U.S.C. 921(a)(21) defines “engaged in the business” differently depending on whether the party is a dealer as opposed to a manufacturer or importer. These definitions are, in relevant part, as follows:

- “(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;
- “(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured[.]”
- “(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A) [relating to persons who sell firearms at retail or wholesale], a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms....
- “(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and
- (F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

⁵⁶⁸ A firearm is defined, in relevant part, as “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive,” or “(B) the frame or receiver of any such weapon.” 18 U.S.C. 921(a)(3). The definition also encompasses silencers and destructive devices, and excludes antique firearms.

⁵⁶⁹ Ammunition is defined as “ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.” 18 U.S.C. 921(a)(17).

5. Qualified civil liability action

A. In general

The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include--

- i. an action brought against a transferor convicted under section 924(h) of Title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;
- ii. an action brought against a seller for negligent entrustment or negligence per se;
- iii. an 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, including--
 - I. any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
 - II. any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18;
- iv. an action for breach of contract or warranty in connection with the purchase of the product;
- v. an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or
- vi. an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18 or chapter 53 of Title 26.

B. Negligent entrustment

As used in subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

C. Rule of construction

The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this chapter shall be construed to create a public or private cause of action or remedy.

D. Minor child exception

Nothing in this chapter shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

6. Seller

The term “seller” means, with respect to a qualified product--

- A.** an importer (as defined in section 921(a)(9) of Title 18)^[570] who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of Title 18;
- B.** a dealer (as defined in section 921(a)(11) of Title 18)^[571] who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of Title 18; or
- C.** a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of Title 18) in interstate or foreign commerce at the wholesale or retail level.

7. State

The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

8. Trade association

The term “trade association” means--

- A.** any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- B.** that is an organization described in section 501(c)(6) of Title 26 and exempt from tax under section 501(a) of such title; and
- C.** 2 or more members of which are manufacturers or sellers of a qualified product.

9. Unlawful misuse

The term “unlawful misuse” means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

⁵⁷⁰ 18 U.S.C. § 921(a)(9) defines “importer,” in relevant part, as “any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution....”

⁵⁷¹ 18 U.S.C. 921(a)(11) defines “dealer,” in relevant part, as “any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker....”