An Act to Create a Civil Cause of Action for Persons Suffering Damages Arising from the Sale of Abnormally Dangerous Firearms

Reference to the Committee on Judiciary suggested and ordered printed.

Presented by Representative MILLETT of Cape Elizabeth.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA c. 763 is enacted to read:

CHAPTER 763

FIREARM INDUSTRY

§9001. Firearm industry member liability

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Firearm industry member" means a person, firm, corporation, company, partnership, society, joint stock company or any other entity or association engaged in the sale, manufacturing, distribution, importing or marketing of a firearm-related product and any officer, agent, employee or other person authorized to act on behalf of the person, firm, corporation, company, partnership, society, joint stock company or other entity or association or who acts in concert or participation with one or more such persons, firms, corporations, companies, partnerships, societies, joint stock companies or other entities or associations.

B. "Firearm-related product" means any firearm, ammunition, ammunition magazine, firearm component or part, including a firearm frame, firearm receiver or firearm accessory, that is or is intended to be sold, manufactured, distributed, imported or marketed in the State or that is possessed in the State and is reasonably foreseeable to be possessed or used in the State.

C. "Firearm trafficker" means a person who acquires, transfers or attempts to acquire or transfer a firearm for purposes of unlawful commerce.

D. "Reasonable controls" means reasonable procedures, acts or practices that are designed, implemented and enforced to:

(1) Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm the person or another person or of possessing or using a firearm-related product unlawfully;

(2) Prevent the loss or theft of a firearm-related product from the firearm industry member; or

(3) Ensure that the firearm industry member complies with all provisions of state and federal law and does not otherwise promote the unlawful manufacture, sale, possession, marketing or use of a firearm-related product.

E. "Straw purchaser" means a person who conceals or intends to conceal from a person that the purchase of a firearm-related product is being made on behalf of a 3rd party. "Straw purchaser" does not include a bona fide gift to a person who is not prohibited by law from possessing or receiving a firearm-related product. A gift to a person is not a bona fide gift if the person has offered or given the purchaser a service or thing of value to acquire the firearm-related product for the person.
2. Requirements for firearm industry members. A firearm industry member shall:

A. Establish, implement and enforce reasonable controls; and

B. Take reasonable precautions to ensure that the firearm industry member does not knowingly sell, distribute or provide a firearm-related product to a downstream distributor or retailer of firearm-related products that fails to establish, implement or enforce reasonable controls.

3. Prohibited conduct. A firearm industry member may not knowingly manufacture, market, import, offer for wholesale sale or offer for retail sale a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm under this subsection to public health and safety in the State. For the purposes of this subsection:

A. There is a rebuttable presumption that a firearm-related product is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety if:

(1) The firearm-related product's features render the product most suitable for assaulative purposes instead of lawful self-defense, hunting or other legitimate sport and recreational activities;

(2) The firearm-related product is designed, sold or marketed in a manner that foreseeably promotes conversion of legal firearm-related products into illegal firearm-related products; or

(3) The firearm-related product is designed, sold or marketed in a manner that is targeted at minors or other individuals who are legally prohibited from accessing firearms; and

B. A firearm-related product may not be considered abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety based on a firearm's inherent capacity to cause injury or lethal harm.

4. Violation and enforcement. A person who has suffered harm in the State proximately caused by a firearm industry member's intentional or knowing violation of the requirements in subsection 2 or 3 may bring an action for the recovery of damages or injunctive relief in the courts of the State or federal district court.

5. Unfair trade practice. A violation of subsection 2 or 3 is prima facie evidence of a violation of Title 5, chapter 10.

6. Prohibited defenses. Notwithstanding any provision of law to the contrary, the following are not defenses to an action brought under this chapter:

A. Nonmutual issue preclusion or nonmutual claim preclusion;

B. A defendant's ignorance or mistake of law; or

C. A defendant's belief that the requirements of this chapter are unconstitutional or were unconstitutional.

7. Attorney's fees and costs. Notwithstanding any provision of law to the contrary, including Title 5, section 213, subsection 2, a court may not award attorney's fees or costs to a defendant in an action brought under this chapter.

8. Exemptions. Under this chapter:
A. An action may not be brought by a person injured by a firearm-related product while that person was committing a crime;

B. The scope of any cause of action available to a person injured by a firearm-related product is not limited, other than as provided by this section; and

C. Recovery is not allowed for a self-inflicted injury that results from a reckless, wanton or willful discharge of a firearm-related product.

SUMMARY

This bill creates a cause of action against a firearm industry member's intentional or knowing manufacturing, marketing, importing, offering for wholesale sale or offering for retail sale a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety in the State. A firearm-related product is not considered abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety based on a firearm's inherent capacity to cause injury or lethal harm. A violation is prima facie evidence of an unfair trade practice, but attorney's fees and costs may not be awarded. Exempted from the action are actions brought by persons injured with a firearm while committing a crime or self-inflicted injury from a reckless, wanton or willful discharge of the firearm.