



Am. H.B. 192

124th General Assembly
(As Passed by the General Assembly)

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Sens. Jacobson, Wachtmann, Jordan, Blessing, Hottinger, DiDonato, Nein, Carnes, Harris, Shoemaker, Mumper

Effective date: October 8, 2001

ACT SUMMARY

- Grants a qualified immunity from civil liability in damages and injunctive relief to members of the firearms industry for harm allegedly sustained by any person as a result of the operation or discharge of a firearm.
- Specifies the circumstances in which a member of the firearms industry forfeits the immunity from civil liability and injunctive relief.
- Provides that the grant of qualified immunity does not limit the availability against members of the firearms industry of a product liability claim or a civil action for breach of contract or express warranty pertaining to firearms or their components or ammunition.
- Specifies that the grant of qualified immunity will be both prospective and retroactive in its application and declares the intent of the General Assembly that the severability provision of the Revised Code be applied if the Supreme Court declares the retroactive application unconstitutional.

CONTENT AND OPERATION

Immunity from liability in damages or injunctive relief

General immunity

The act provides that, generally, a "member of the firearms industry" is not liable in damages in, and is not subject to a grant of injunctive relief in, a "tort" or other civil action for "harm" allegedly sustained by any "person" as a result of the operation or discharge of a "firearm." (See "Definitions," below, for the definitions of the quoted terms.) Generally, a person who allegedly sustains harm as a result of the operation or discharge of a firearm or that person's personal representative does not have a claim for relief against, and may not recover damages or injunctive relief in a tort or other civil action against, a member of the firearms industry based upon that harm. (R.C. 2305.401(B)(1).)

Exceptions

Under the act, a member of the firearms industry forfeits the above-described immunity from civil liability and injunctive relief under any of the following circumstances (R.C. 2305.401(B)(2) and (3)):

(1) If the member of the firearms industry operates or discharges the firearm that results in the harm that is the basis of the claim for relief in the tort or other civil action in a manner that constitutes negligence, willful or wanton misconduct, or intentionally tortious conduct or that constitutes a criminal violation of law;

(2) If the member of the firearms industry sells, lends, gives, or furnishes to any person, in violation of the statutory offense of unlawful transactions in weapons or improperly furnishing firearms to a minor or in violation of any other section of the Revised Code or of federal law, the firearm that results in the harm that is the basis of the claim for relief in the tort or other civil action.

Qualifications

The act specifies the following qualifications for the above-described immunity from civil liability and injunctive relief granted to members of the firearms industry (R.C. 2305.401(C)(1), (2), and (3)):

(1) The grant of qualified immunity does not create a new cause of action or substantive legal right against a member of the firearms industry.

(2) The grant of qualified immunity does not limit the availability against a member of the firearms industry of a civil action that seeks damages for "harm" and that is based on a "product liability claim" authorized by the Product Liability Law.

(3) The grant of qualified immunity does not limit the availability against a member of the firearms industry of a civil action for a breach of an express provision of a contract or of another agreement between persons, or a civil action for a breach of an express warranty, pertaining to firearms, firearms components, or firearms "ammunition" (see "Definitions," below).

Applicability of the act

The act specifies that the qualified immunity enacted by the act applies to tort or other civil actions commenced on or after the effective date of the act, or commenced prior to and pending on the effective date of the act, for damages or injunctive relief based upon harm allegedly sustained by any person as a result of the operation or discharge of a firearm prior to, on, or after the effective date of the act (R.C. 2305.401(D)).

The act also declares that it is the intent of the General Assembly in enacting the retroactive application provisions of the act to provide for both the prospective and retroactive application of the qualified immunity from civil liability and injunctive relief provisions as enacted by the act as a general law. If, however, the Ohio Supreme Court determines, in any litigation that may be commenced to contest the constitutionality of the qualified immunity from civil liability and injunctive relief provisions that the retroactive application of those provisions would be violative of either the United States Constitution or the Ohio Constitution, it is the intent of the General Assembly that the severability provision of R.C. 1.50 be applied, that the qualified immunity from civil liability and injunctive relief provisions of the act (see "Immunity from liability in damages or injunctive relief," above) be severed from the unconstitutional provisions of the act, and that the qualified immunity from civil liability and injunctive relief provisions of the act be given prospective application consistent with R.C. 1.48. (Section 2.)

Definitions

For purposes of its provisions, the act enacts the following definitions of terms (R.C. 2305.401(A)):

(1) "Ammunition" means any projectile capable of being expelled or propelled from a firearm by the action of an explosive or combustible propellant.

(2) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm. (R.C. 2923.11(B)--not in the act but referred to in the act.)

(3) "Harm" means injury, death, or loss to person or property, except as described above in paragraph (2) in "Qualifications" in "Immunity from liability in damages or injunctive relief."

(4) "Member of the firearms industry" means any manufacturer, dealer, or importer of firearms, firearms components, or firearms ammunition or any trade association the members of which, in whole or in part, are manufacturers, dealers, or importers of firearms, firearms components, or firearms ammunition.

(5) "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association (R.C. 1.59(C)--not in the act but referred to in the act) and additionally includes all governmental entities.

(6) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-28-01	p. 279
Reported, H. Civil and Commercial Law	05-15-01	p. 424
Passed House (71-25)	05-16-01	pp. 428-431
Reported, S. Judiciary on Civil Justice	06-14-01	p. 662
Passed Senate (24-9)	06-14-01	pp. 666-667
Refused concurrence with Senate amendments (7-90)	06-20-01	pp. 684-686
Senate receded from amendments (19-10)	06-20-01	p. 683
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