

1 HOUSE BILL NO. 801
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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO FIREARMS; PROVIDING FOR
6 THE MONTANA FIREARMS LIABILITY CLARIFICATION ACT; PROVIDING LEGISLATIVE INTENT;
7 PROVIDING DEFINITIONS; PROVIDING LIMITATIONS ON NEGLIGENT MARKETING CLAIMS; CREATING
8 A PREDICATE EXCEPTION LIMITATION; PROVIDING PENALTIES; AND CREATING A PRIVATE RIGHT OF
9 ACTION."

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11 WHEREAS, the Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. 7901, et seq.,
12 provides essential protections to firearms manufacturers and sellers against certain lawsuits arising from the
13 criminal or unlawful misuse of their products; and

14 WHEREAS, the predicate exception within the PLCAA allows for certain lawsuits to proceed if the
15 defendant knowingly violated a state or federal statute applicable to the sale or marketing of firearms and the
16 violation was a proximate cause of the harm; and

17 WHEREAS, recent litigation in the United States has demonstrated attempts to circumvent the
18 protections of the PLCAA through broad interpretations of the predicate exception; and

19 WHEREAS, a broad interpretation of the predicate exception could undermine the purpose of the
20 PLCAA, effectively swallowing the rule by allowing general statutes to circumvent the PLCAA's protections; and

21 WHEREAS, this legislation aims to prevent judicial activism or jury verdicts based on emotion or
22 political leanings, ensuring that manufacturers are not unfairly punished because their products were illegally
23 used by criminals.

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25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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27 NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana
28 Firearms Liability Clarification Act".

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2 NEW SECTION. Section 2. Legislative intent. It is the intent of the legislature to:

3 (1) ensure that firearms manufacturers and sellers are not unfairly held liable for the criminal
4 misuse of their products;

5 (2) clarify and tighten the scope of the predicate exception to prevent its misuse and maintain the
6 intended protections in the Protection of Lawful Commerce in Arms Act, 15 U.S.C. 7901, et seq.; and

7 (3) define the circumstances under which negligent marketing claims can be pursued in this state,
8 ensuring the claims are based on clear and concrete statutory violations specific to firearm sales and
9 marketing.

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11 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 7], unless the context clearly
12 indicates otherwise, the following definitions apply:

13 (1) "Firearm" means a weapon that will, is designed to, or may readily be converted to expel a
14 projectile by the action of an explosive, as defined in 18 U.S.C. 921(a)(3).

15 (2) "Manufacturer" means a person engaged in the business of manufacturing firearms or
16 ammunition for sale or distribution.

17 (3) "Negligent marketing" means any advertising, promotion, or marketing practice by a
18 manufacturer or seller that directly poses a foreseeable and substantial risk of harm to the purchaser or specific
19 identifiable individuals.

20 (4) "Seller" means a person engaged in the business of selling firearms or ammunition at
21 wholesale or retail.

22

23 NEW SECTION. Section 4. Limitations on negligent marketing claims. It is unlawful for a person
24 to bring a negligent marketing claim against a manufacturer or seller of firearms or ammunition unless all of the
25 following conditions are met:

26 (1) the marketing practice directly targeted individuals who are legally prohibited from owning
27 firearms;

28 (2) the marketing practice encouraged or facilitated the unlawful use of firearms;

1 (3) there is a direct and substantial causal link between the marketing practice and the harm
2 suffered by the plaintiff; and

3 (4) the marketing practice violated a state or federal statute explicitly regulating the sale or
4 marketing of firearms or ammunition in a manner that constitutes a willful and knowing violation of the law.

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6 **NEW SECTION. Section 5. Predicate exception limitation.** (1) The predicate exception under the
7 Protection of Lawful Commerce in Arms Act, 15 U.S.C. 7901, et seq., may not be interpreted broadly. A claim
8 may only proceed if the specific statute cited as being violated:

9 (a) explicitly regulates firearms or ammunition; and

10 (b) provides clear, concrete requirements that the manufacturer or seller failed to meet, which
11 directly caused the harm in question.

12 (2) General state consumer protection laws or public nuisance laws may not be considered as
13 statutes applicable to the sale or marketing of firearms or ammunition for the purposes of the predicate
14 exception.

15 (3) A broad interpretation of the predicate exception, which could effectively replace the law by
16 allowing general statutes to circumvent the Protection of Lawful Commerce in Arms Act, 15 U.S.C. 7901, et
17 seq., must be explicitly rejected.

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19 **NEW SECTION. Section 6. Enforcement and penalties.** (1) The attorney general is authorized to
20 enforce the provisions of [sections 1 through 7].

21 (2) A person who brings a negligent marketing claim in violation of [section 4] is subject to:

22 (a) dismissal of the claim; and

23 (b) payment of reasonable attorney fees and costs incurred by a party defending the claim.

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25 **NEW SECTION. Section 7. Private right of action.** (1) A manufacturer or seller harmed by a
26 negligent marketing claim brought in violation of [section 4] may bring a civil action for damages and injunctive
27 relief.

28 (2) A plaintiff who prevails in an action brought pursuant to this section is entitled to recover

1 reasonable attorney fees and costs.

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3 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 7] are intended to be
4 codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply
5 to [sections 1 through 7].

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7 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
9 the part remains in effect in all valid applications that are severable from the invalid applications.

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