

missed by the court in which the action was brought or is currently pending.

(Pub. L. 109-92, §3, Oct. 26, 2005, 119 Stat. 2096.)

§ 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, 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), 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), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(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) 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) 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.

(Pub. L. 109-92, §4, Oct. 26, 2005, 119 Stat. 2097.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 109-92, Oct. 26, 2005, 119 Stat. 2095, known as the Protection of Lawful Commerce in Arms Act. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

CHAPTER 106—POOL AND SPA SAFETY

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§ 8001. Findings

Congress finds the following:

(1) Of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States.

(2) In 2004, 761 children aged 14 and under died as a result of unintentional drowning.

(3) Adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning.

(4) Research studies show that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings.

(Pub. L. 110-140, title XIV, §1402, Dec. 19, 2007, 121 Stat. 1794.)

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as a note under section 1824 of Title 2, The Congress.

SHORT TITLE

Pub. L. 110-140, title XIV, §1401, Dec. 19, 2007, 121 Stat. 1794, provided that: “This title [enacting this chapter] may be cited as the ‘Virginia Graeme Baker Pool and Spa Safety Act.’”

§ 8002. Definitions

In this chapter:

(1) ASME/ANSI

The term “ASME/ANSI” as applied to a safety standard means such a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) Barrier

The term “barrier” includes a natural or constructed topographical feature that prevents unpermitted access by children to a swimming pool, and, with respect to a hot tub, a lockable cover.

(3) Commission

The term “Commission” means the Consumer Product Safety Commission.

(4) Main drain

The term “main drain” means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a recirculating pump.

(5) Safety vacuum release system

The term “safety vacuum release system” means a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

(6) Swimming pool; spa

The term “swimming pool” or “spa” means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

(7) Unblockable drain

The term “unblockable drain” means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(8) State

The term “State” has the meaning given such term in section 2052(10)¹ of this title, and

¹ See References in Text note below.