

Union Calendar No. 37

108TH CONGRESS
1ST SESSION

H. R. 1036

[Report No. 108–59]

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

Mr. STEARNS (for himself, Mr. JOHN, Ms. HART, Mr. BOUCHER, Mr. PEARCE, Mr. JOHNSON of Illinois, Mr. SIMMONS, Mr. LEWIS of Kentucky, Mr. KNOLLENBERG, Mr. PUTNAM, Mr. BISHOP of Georgia, Mrs. CAPITO, Mr. BOEHLERT, Mr. FORBES, Mr. GOODE, Mr. ROGERS of Alabama, Mr. BISHOP of Utah, Mr. PICKERING, Mr. COSTELLO, Mr. BROWN of South Carolina, Mr. HILL, Mr. MICA, Mr. HOSTETTLER, Mr. BURGESS, Mr. LAMPSON, Mr. MILLER of Florida, Mr. TURNER of Ohio, Mr. MURPHY, Mr. HALL, Mrs. NORTHUP, Mr. GARY G. MILLER of California, Mr. BRADY of Texas, Mr. RYAN of Ohio, Mr. MICHAUD, Mr. GERLACH, Mr. BALLENGER, Mr. GINGREY, Mr. RADANOVICH, Mr. PITTS, Mr. MCINNIS, Mr. AKIN, Mr. MARSHALL, Mr. RYAN of Wisconsin, Mr. FOLEY, Mr. EVERETT, Mr. KENNEDY of Minnesota, Mr. MURTHA, Mr. NETHERCUTT, Mr. LARSEN of Washington, Mr. NEY, Mr. WILSON of South Carolina, Ms. PRYCE of Ohio, Mr. REHBERG, Mr. VITTER, Mr. CANNON, Mr. KOLBE, Mr. STRICKLAND, Mr. HAYWORTH, Mr. SCHROCK, Mr. ROSS, Mr. YOUNG of Alaska, Mr. FLAKE, Mr. PETERSON of Minnesota, Mr. CRANE, Mr. HERGER, Mr. PENCE, Mr. DOOLITTLE, Mr. CHOCOLA, Mr. BOYD, Mr. HOLDEN, Mr. TOOMEY, Mr. CARSON of Oklahoma, Mr. MCINTYRE, Mr. KINGSTON, Mr. KELLER, Mr. SIMPSON, Mr. CUNNINGHAM, Mr. GREEN of Texas, Mr. TERRY, Mr. TANCREDO, Mr. CALVERT, Mr. WICKER, Mr. ORTIZ, Mr. BUYER, Mr. BEAUPREZ, Mr. DINGELL, Mr. ROGERS of Kentucky, Mrs. MILLER of Michigan, Mr. MATHESON, Ms. GINNY BROWN-WAITE of Florida, Mr. DAVIS of Tennessee, Mr. LUCAS of Kentucky, Mr. LATHAM, Mr. BACA, Mr. WALDEN of Oregon, Mr. GIBBONS, Mr. SHUSTER, Mr. BACHUS, Mr. ISSA, Mr. DEMINT, Mr. MORAN of Kansas, Mr. RAHALL, Mr. SMITH of Michigan, Mr. WELLER, Mr. RENZI, Mr. UPTON, Mr. BARTON of Texas, Mr.

COBLE, Mr. ROGERS of Michigan, Mr. BASS, Mr. SHADEGG, Mr. SOUDER, Mr. BURR, Mr. BURTON of Indiana, Mr. CANTOR, Mrs. MYRICK, Mr. BERRY, Mr. JANKLOW, Mr. TIBERI, Mrs. JO ANN DAVIS of Virginia, Mr. FRANKS of Arizona, Mr. HUNTER, Mr. TAYLOR of Mississippi, Mr. JENKINS, Mr. POMBO, Mr. KANJORSKI, Mr. CARTER, Mr. NORWOOD, Mr. ADERHOLT, Mr. ISAKSON, Mr. GOODLATTE, Mr. LUCAS of Oklahoma, Mr. HEFLEY, Mr. THOMPSON of California, Mr. KING of Iowa, Mr. WELDON of Florida, Mr. BOSWELL, Mr. NUNES, Mr. COX, Mr. OTTER, Mrs. CUBIN, Mr. DELAY, Mr. KLINE, Mr. BARTLETT of Maryland, Mr. GRAVES, Mr. REYNOLDS, Mr. BRADLEY of New Hampshire, Mr. MARIO DIAZ-BALART of Florida, Mr. LINDER, Mr. STENHOLM, Mr. CRAMER, Mr. BOEHNER, Mr. WHITFIELD, Mr. HAYES, Mr. GORDON, Mr. CRENSHAW, Mr. FLETCHER, Mr. COLE, Mr. SULLIVAN, Mr. CARDOZA, Mr. WAMP, Mr. THORNBERRY, Mr. TAYLOR of North Carolina, Mr. CULBERSON, Mr. BLUNT, Mr. STUPAK, Mr. EHLERS, Mr. MCHUGH, Mr. OXLEY, Mr. GUTKNECHT, Mr. ISTOOK, Mr. GREEN of Wisconsin, Mr. LAHOOD, Mr. GREENWOOD, Mr. HULSHOF, Mr. NUSSLE, Mr. BARRETT of South Carolina, Mr. MCCOTTER, Mr. BONNER, Mr. HASTINGS of Washington, Mr. SWEENEY, Mr. REYES, Mr. WOLF, Mr. DAVIS of Alabama, Mr. GOSS, Mr. SKELTON, Mr. TOM DAVIS of Virginia, Mr. LOBIONDO, Mr. HOEKSTRA, Mr. HYDE, Mr. SMITH of Texas, Mrs. EMERSON, Mr. SANDLIN, Mrs. BLACKBURN, Mr. MANZULLO, Mr. REGULA, Mr. MCKEON, Mr. ALEXANDER, Mr. BAKER, Mr. DUNCAN, Mr. TANNER, Mr. HENSARLING, Mr. BONILLA, Mr. SESSIONS, Ms. HARRIS, Mr. BOOZMAN, Mr. MCCRERY, Mr. COLLINS, Mr. DREIER, Mr. FEENEY, Mrs. BONO, Mr. TAUZIN, Mr. LEWIS of California, Mr. ENGLISH, Mr. PLATTS, Mr. SHIMKUS, Mr. CAMP, Mr. GARRETT of New Jersey, Mr. TURNER of Texas, Mr. OSE, Mr. OSBORNE, Mr. PORTMAN, Mr. WELDON of Pennsylvania, Mr. HOBSON, Mr. PETERSON of Pennsylvania, Mr. MOLLOHAN, Mrs. MUSGRAVE, Mr. COMBEST, Mr. CHABOT, Ms. GRANGER, Mr. SHERWOOD, Mrs. BIGGERT, Mr. SAM JOHNSON of Texas, Mrs. KELLY, Mr. BURNS, Mr. ROYCE, Mr. LATOURETTE, Mr. SAXTON, Mr. GILLMOR, Mr. JONES of North Carolina, Mr. PORTER, Mr. THOMAS, Mr. TIAHRT, and Mr. RYUN of Kansas) introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 7, 2003

Additional sponsors: Mr. ROHRBACHER, Mr. QUINN, Mr. COOPER, Mr. GILCHREST, Mr. DEAL of Georgia, Mrs. WILSON of New Mexico, Mr. BILIRAKIS, and Mr. GALLEGLY

APRIL 7, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 27, 2003]

A BILL

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 ***SECTION 1. SHORT TITLE.***

4 *This Act may be cited as the “Protection of Lawful*
 5 *Commerce in Arms Act”.*

6 ***SEC. 2. FINDINGS; PURPOSES.***

7 *(a) FINDINGS.—The Congress finds the following:*

8 *(1) Citizens have a right, protected by the Sec-*
 9 *ond Amendment to the United States Constitution, to*
 10 *keep and bear arms.*

11 *(2) Lawsuits have been commenced against man-*
 12 *ufacturers, distributors, dealers, and importers of fire-*
 13 *arms that operate as designed and intended, which*
 14 *seek money damages and other relief for the harm*
 15 *caused by the misuse of firearms by third parties, in-*
 16 *cluding criminals.*

17 *(3) The manufacture, importation, possession,*
 18 *sale, and use of firearms and ammunition in the*

1 *United States are heavily regulated by Federal, State,*
2 *and local laws. Such Federal laws include the Gun*
3 *Control Act of 1968, the National Firearms Act, and*
4 *the Arms Export Control Act.*

5 *(4) Businesses in the United States that are en-*
6 *gaged in interstate and foreign commerce through the*
7 *lawful design, manufacture, marketing, distribution,*
8 *importation, or sale to the public of firearms or am-*
9 *munition that has been shipped or transported in*
10 *interstate or foreign commerce are not, and should*
11 *not, be liable for the harm caused by those who crimi-*
12 *nally or unlawfully misuse firearm products or am-*
13 *munition products that function as designed and in-*
14 *tended.*

15 *(5) The possibility of imposing liability on an*
16 *entire industry for harm that is solely caused by oth-*
17 *ers is an abuse of the legal system, erodes public con-*
18 *fidence in our Nation's laws, threatens the diminution*
19 *of a basic constitutional right and civil liberty,*
20 *invites the disassembly and destabilization of other*
21 *industries and economic sectors lawfully competing in*
22 *the free enterprise system of the United States, and*
23 *constitutes an unreasonable burden on interstate and*
24 *foreign commerce of the United States.*

1 (6) *The liability actions commenced or con-*
2 *templated by the Federal Government, States, munici-*
3 *palities, and private interest groups are based on*
4 *theories without foundation in hundreds of years of*
5 *the common law and jurisprudence of the United*
6 *States and do not represent a bona fide expansion of*
7 *the common law. The possible sustaining of these ac-*
8 *tions by a maverick judicial officer or petit jury*
9 *would expand civil liability in a manner never con-*
10 *templated by the Framers of the Constitution, by the*
11 *Congress, or by the legislatures of the several states.*
12 *Such an expansion of liability would constitute a*
13 *deprivation of the rights, privileges, and immunities*
14 *guaranteed to a citizen of the United States under the*
15 *Fourteenth Amendment to the United States Constitu-*
16 *tion.*

17 (b) *PURPOSES.—The purposes of this Act are as fol-*
18 *lows:*

19 (1) *To prohibit causes of action against manu-*
20 *facturers, distributors, dealers, and importers of fire-*
21 *arms or ammunition products for the harm caused by*
22 *the criminal or unlawful misuse of firearm products*
23 *or ammunition products by others when the product*
24 *functioned as designed and intended.*

1 (2) *To preserve a citizen's access to a supply of*
 2 *firearms and ammunition for all lawful purposes, in-*
 3 *cluding hunting, self-defense, collecting, and competi-*
 4 *tive or recreational shooting.*

5 (3) *To guarantee a citizen's rights, privileges,*
 6 *and immunities, as applied to the States, under the*
 7 *Fourteenth Amendment to the United States Constitu-*
 8 *tion, pursuant to section 5 of that Amendment.*

9 (4) *To prevent the use of such lawsuits to impose*
 10 *unreasonable burdens on interstate and foreign com-*
 11 *merce.*

12 (5) *To protect the right, under the First Amend-*
 13 *ment to the Constitution, of manufacturers, distribu-*
 14 *tors, dealers, and importers of firearms or ammuni-*
 15 *tion products, and trade associations, to speak freely,*
 16 *to assemble peaceably, and to petition the Government*
 17 *for a redress of their grievances.*

18 **SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LI-**
 19 **ABILITY ACTIONS IN FEDERAL OR STATE**
 20 **COURT.**

21 (a) *IN GENERAL.*—*A qualified civil liability action*
 22 *may not be brought in any Federal or State court.*

23 (b) *DISMISSAL OF PENDING ACTIONS.*—*A qualified*
 24 *civil liability action that is pending on the date of the en-*
 25 *actment of this Act shall be dismissed immediately by the*

1 court in which the action was brought or is currently pend-
2 ing.

3 **SEC. 4. DEFINITIONS.**

4 *In this Act:*

5 (1) *ENGAGED IN THE BUSINESS.*—The term “en-
6 gaged in the business” has the meaning given that
7 term in section 921(a)(21) of title 18, United States
8 Code, and, as applied to a seller of ammunition,
9 means a person who devotes, time, attention, and
10 labor to the sale of ammunition as a regular course
11 of trade or business with the principal objective of
12 livelihood and profit through the sale or distribution
13 of ammunition.

14 (2) *MANUFACTURER.*—The term “manufacturer”
15 means, with respect to a qualified product, a person
16 who is engaged in the business of manufacturing the
17 product in interstate or foreign commerce and who is
18 licensed to engage in business as such a manufacturer
19 under chapter 44 of title 18, United States Code.

20 (3) *PERSON.*—The term “person” means any in-
21 dividual, corporation, company, association, firm,
22 partnership, society, joint stock company, or any
23 other entity, including any governmental entity.

24 (4) *QUALIFIED PRODUCT.*—The term “qualified
25 product” means a firearm (as defined in subpara-

1 *graph (A) or (B) of section 921(a)(3) of title 18,*
2 *United States Code, including any antique firearm*
3 *(as defined in section 921(a)(16) of such title)), or*
4 *ammunition (as defined in section 921(a)(17) of such*
5 *title), or a component part of a firearm or ammuni-*
6 *tion, that has been shipped or transported in inter-*
7 *state or foreign commerce.*

8 (5) *QUALIFIED CIVIL LIABILITY ACTION.—*

9 (A) *IN GENERAL.—The term “qualified civil*
10 *liability action” means a civil action brought by*
11 *any person against a manufacturer or seller of*
12 *a qualified product, or a trade association, for*
13 *damages or injunctive relief resulting from the*
14 *criminal or unlawful misuse of a qualified prod-*
15 *uct by the person or a third party, but shall not*
16 *include—*

17 (i) *an action brought against a trans-*
18 *feror convicted under section 924(h) of title*
19 *18, United States Code, or a comparable or*
20 *identical State felony law, by a party di-*
21 *rectly harmed by the conduct of which the*
22 *transferee is so convicted;*

23 (ii) *an action brought against a seller*
24 *for negligent entrustment or negligence per*
25 *se;*

1 (iii) an action in which a manufac-
2 turer or seller of a qualified product know-
3 ingly and willfully violated a State or Fed-
4 eral statute applicable to the sale or mar-
5 keting of the product, and the violation was
6 a proximate cause of the harm for which re-
7 lief is sought;

8 (iv) an action for breach of contract or
9 warranty in connection with the purchase
10 of the product; or

11 (v) an action for physical injuries or
12 property damage resulting directly from a
13 defect in design or manufacture of the prod-
14 uct, when used as intended.

15 (B) *NEGLIGENT ENTRUSTMENT.*—In sub-
16 paragraph (A)(ii), the term “negligent entrust-
17 ment” means the supplying of a qualified prod-
18 uct by a seller for use by another person when
19 the seller knows or should know the person to
20 whom the product is supplied is likely to use the
21 product, and in fact does use the product, in a
22 manner involving unreasonable risk of physical
23 injury to the person and others.

24 (6) *SELLER.*—The term “seller” means, with re-
25 spect to a qualified product—

1 (A) an importer (as defined in section
2 921(a)(9) of title 18, United States Code) who is
3 engaged in the business as such an importer in
4 interstate or foreign commerce and who is li-
5 censed to engage in business as such an importer
6 under chapter 44 of title 18, United States Code;

7 (B) a dealer (as defined in section
8 921(a)(11) of title 18, United States Code) who
9 is engaged in the business as such a dealer in
10 interstate or foreign commerce and who is li-
11 censed to engage in business as such a dealer
12 under chapter 44 of title 18, United States Code;

13 or

14 (C) a person engaged in the business of sell-
15 ing ammunition (as defined in section
16 921(a)(17) of title 18, United States Code) in
17 interstate or foreign commerce at the wholesale
18 or retail level, consistent with Federal, State,
19 and local law.

20 (7) *STATE*.—The term “State” includes each of
21 the several States of the United States, the District of
22 Columbia, the Commonwealth of Puerto Rico, the Vir-
23 gin Islands, Guam, American Samoa, and the Com-
24 monwealth of the Northern Mariana Islands, and any

1 *other territory or possession of the United States, and*
2 *any political subdivision of any such place.*

3 (8) *TRADE ASSOCIATION.*—*The term “trade asso-*
4 *ciation” means any association or business organiza-*
5 *tion (whether or not incorporated under Federal or*
6 *State law) that is not operated for profit, and 2 or*
7 *more members of which are manufacturers or sellers*
8 *of a qualified product.*

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