

105TH CONGRESS
1ST SESSION

H. R. 1542

To provide certain immunities from civil liability for trade and professional associations.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1997

Mr. BONO (for himself and Mr. GOODE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide certain immunities from civil liability for trade and professional associations.

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 “Trade and Professional
5 Association Free Flow of Information Act of 1997”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act—

8 (1) the term “trade and professional associa-
9 tions” means those organizations described in sec-
10 tion 501(c) of the Internal Revenue Code of 1986

1 that are exempt from tax under section 501(a) of
2 such Code; and

3 (2) the term “State” includes the District of
4 Columbia and any commonwealth, territory, or pos-
5 session of the United States.

6 **SEC. 3. QUALIFIED IMMUNITY FROM CIVIL LIABILITY.**

7 Acts done for the purpose of transmitting informa-
8 tion between and among trade and professional associa-
9 tions and their members regarding product defects, qual-
10 ity, or performance shall be immune from liability in any
11 civil action, except to the extent such acts are proven by
12 clear and convincing evidence to involve factual statements
13 that are fraudulent, knowingly false, or made with a reck-
14 less indifference to their truth or falsity.

15 **SEC. 4. SPECIAL MOTION TO STRIKE.**

16 A trade or professional association may file a special
17 motion to strike any claim in any judicial proceeding on
18 the ground that the claim is based on or relates to an
19 act that is immune from liability under section 3. A party
20 filing such a motion shall have the right to remove the
21 case to Federal court pursuant to section 1331 of title
22 28, United States Code.

23 **SEC. 5. REQUIRED PROCEDURES REGARDING SPECIAL MO-**
24 **TION TO STRIKE.**

25 On the filing of any motion under section 4—

1 (1) the motion shall be treated as one for sum-
2 mary judgment under Rule 56 of the Federal Rules
3 of Civil Procedure or its equivalent under the proce-
4 dures of applicable State law;

5 (2) the trial court shall hear the motion within
6 a time period appropriate for preferred or expedited
7 motions;

8 (3) the moving party shall have a right to an
9 interlocutory, expedited appeal from a trial court
10 order denying such a motion or from a trial court's
11 failure to rule on such a motion in expedited fashion;

12 (4) discovery shall be suspended, pending deci-
13 sion on the motion and appeal;

14 (5) the responding party shall have the burden
15 of proof of going forward with the evidence and the
16 burden of persuasion on the motion;

17 (6) the court shall make its determination
18 based upon the facts contained in the pleadings and
19 affidavits filed;

20 (7) the court shall grant the motion and dis-
21 miss the claim, unless the responding party proves,
22 by clear and convincing evidence, that the acts of the
23 moving party are not immunized from liability under
24 section 3; and

1 (8) the court shall award to a prevailing moving
2 party its costs of litigation, including reasonable at-
3 torney and expert witness fees, incurred in connec-
4 tion with the motion.

5 **SEC. 6. QUALIFIED IMMUNITY FROM THIRD-PARTY DISCOV-**
6 **ERY.**

7 Trade and professional associations shall not be re-
8 quired to comply with subpoenas served by a party to a
9 civil action regarding product defects, quality, or perform-
10 ance, to which the association is not a party, unless the
11 party serving the subpoena has established by clear and
12 convincing evidence that—

13 (1) the materials or information sought by the
14 subpoena are directly relevant to the civil action; and

15 (2) the party serving the subpoena has a com-
16 pelling need for the materials or information because
17 they are not otherwise available.

18 **SEC. 7. SPECIAL MOTION TO QUASH.**

19 A trade or professional association may file a special
20 motion to quash a subpoena in order to enforce the provi-
21 sions of section 6. A party filing such a motion shall have
22 the right to remove the case to Federal court pursuant
23 to section 1331 of title 28, United States Code.

1 **SEC. 8. REQUIRED PROCEDURES REGARDING SPECIAL MO-**
2 **TION TO QUASH.**

3 On the filing of any motion under section 7—

4 (1) the trial court shall hear the motion within
5 a time period appropriate for preferred or expedited
6 motions;

7 (2) the moving party shall have a right to an
8 interlocutory, expedited appeal from a trial court
9 order denying such a motion or from the trial
10 court's failure to rule on such a motion in expedited
11 fashion;

12 (3) compliance with the subpoena shall be sus-
13 pended, pending decision on the motion and appeal;

14 (4) the responding party shall have the burden
15 of proof of going forward with the evidence and the
16 burden of persuasion on the motion;

17 (5) the court shall make its determination
18 based upon the facts contained in the pleadings and
19 affidavits filed;

20 (6) the court shall grant the motion and quash
21 the subpoena, unless the responding party proves, by
22 clear and convincing evidence, that the materials and
23 information of the moving party are not immunized
24 from third-party discovery under section 6; and

25 (7) the court shall award to a prevailing moving
26 party its costs of litigation, including reasonable at-

1 torney and expert witness fees, incurred in connec-
2 tion with the motion.

3 **SEC. 9. QUALIFIED ASSOCIATION-MEMBER PRIVILEGE.**

4 A member of a trade or professional association shall
5 not be required to disclose materials or information re-
6 ceived from the association that—

7 (1) relate to actual or anticipated litigation in-
8 volving product defects, quality, or performance,

9 (2) are treated as confidential by the associa-
10 tion and its member, and

11 (3) are communicated by the association to the
12 member with the reasonable expectation that the
13 materials or information will be used in connection
14 with actual or anticipated litigation and will be
15 maintained in confidence,

16 unless the party seeking the information has established
17 to the court, by clear and convincing evidence, that the
18 materials or information sought are directly relevant to
19 the litigation, and that the party has a compelling need
20 for the materials or information because they are not oth-
21 erwise available.

1 **SEC. 10. PREEMPTION.**

2 This Act supersedes the laws of any State to the ex-
3 tent such State laws apply to matters to which this Act
4 applies.

