

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1996

To amend title 18, United States Code, to protect citizens' rights under the Second Amendment to obtain firearms for legal use, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2002

Mr. SMITH of New Hampshire (for himself, Mr. ENZI, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to protect citizens' rights under the Second Amendment to obtain firearms for legal use, and for other purposes.

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 “Second Amendment  
5       Preservation Act of 2002”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) a number of State and local governments  
9       have commenced civil actions, or are considering

1 commencing civil actions, against manufacturers,  
2 importers, and dealers of firearms based on the un-  
3 lawful use of the firearms by a purchaser or other  
4 person;

5 (2) in at least some cases, the intent in bring-  
6 ing the action is to subject manufacturers, import-  
7 ers, and dealers to legal costs that are so onerous  
8 that the manufacturers, importers, and dealers may  
9 not be able to defend themselves, or indeed be able  
10 to remain in business;

11 (3) a majority of manufacturers, importers, and  
12 dealers of firearms are small, privately owned busi-  
13 nesses that cannot afford to bear the legal costs of  
14 defending themselves in a large number of judicial  
15 forums;

16 (4) compared to most manufacturers, import-  
17 ers, and dealers of firearms, States and local govern-  
18 ments are large and relatively wealthy entities that  
19 are able to spend large amounts of taxpayers' dollars  
20 on a war of attrition with small businesses;

21 (5) fairness requires that—

22 (A) a unit of government that undertakes  
23 an unsuccessful “fishing expedition” against a  
24 firearm manufacturer, importer, or dealer bear

1 the cost of defending against its frivolous and  
2 unwarranted civil action; and

3 (B) taxpayers not be required to pay mil-  
4 lions of dollars to wealthy attorneys, out of  
5 awards that are intended, at least in part, to  
6 benefit the victims of crime;

7 (6) the Second Amendment to the Constitution  
8 requires that Congress respond to actions that are  
9 intended to, and that would have the effect of, nul-  
10 lifying that provision of the Bill of Rights;

11 (7) Congress has power under the Second  
12 Amendment and under the Commerce Clause to take  
13 appropriate action to protect the right of citizens to  
14 obtain and own firearms; and

15 (8) one appropriate action that Congress may  
16 take is to provide protection from excessive and un-  
17 warranted legal fees.

18 **SEC. 3. RULES GOVERNING ACTIONS BROUGHT TO CUR-**  
19 **TAIL THE SALE OR AVAILABILITY OF FIRE-**  
20 **ARMS FOR LEGAL PURPOSES.**

21 (a) IN GENERAL.—Chapter 44 of title 18, United  
22 States Code, is amended by adding at the end the fol-  
23 lowing:

1 **“§ 926B. Rules governing actions brought to curtail**  
2 **the sale or availability of firearms for**  
3 **legal purposes**

4 “(a) DEFINITIONS.—In this section, the term ‘action  
5 brought to curtail the sale or availability of firearms for  
6 legal purposes’ means a civil action brought in Federal  
7 or State court that—

8 “(1) has as a defendant a firearms manufac-  
9 turer, importer, or dealer in firearms;

10 “(2) expressly or by implication requests actual  
11 damages, punitive damages, or any other form of  
12 damages in excess of the lesser of—

13 “(A) \$1,000,000; or

14 “(B) 50 percent of the net assets of any  
15 such defendant; and

16 “(3) seeks, in whole or in part, to hold a fire-  
17 arms manufacturer, importer, or dealer liable for  
18 damages caused by the unlawful or tortious use of  
19 a firearm by a person not employed by or affiliated  
20 with the manufacturer, dealer, or importer.

21 “(b) LIMITATION ON ATTORNEY’S FEES AWARDED  
22 TO PLAINTIFF.—In a civil action brought to curtail the  
23 sale or availability of firearms for legal purposes, notwith-  
24 standing any other provision of law or any agreement be-  
25 tween any persons to the contrary, amounts paid in plain-

1 tiff's attorney's fees in connection with the settlement or  
2 adjudication of the action shall not exceed the lesser of—

3           “(1) an amount equal to \$150 per hour for  
4           each hour spent productively, plus actual expenses  
5           incurred by the attorney in connection with the ac-  
6           tion; or

7           “(2) an amount equal to 10 percent of the  
8           amount that the plaintiff receives under the action.

9           “(c) ATTORNEY'S FEES FOR THE DEFENDANT.—In  
10 a civil action brought to curtail the sale or availability of  
11 firearms for legal purposes, if the court finds that the de-  
12 fendant is not wholly or primarily liable for the damages  
13 sought, the court shall require the plaintiff to reimburse  
14 the defendant for reasonable attorney's fees and court  
15 costs, as determined by the court, incurred in litigating  
16 the action, unless the court finds that special cir-  
17 cumstances make such a reimbursement unjust.

18           “(d) POWER OF CONGRESS.—If any court renders a  
19 decision in an action brought to curtail the sale or avail-  
20 ability of firearms for legal purposes or in any other pro-  
21 ceeding that the Constitution does not confer on Congress  
22 the power to enact this section, the decision shall be di-  
23 rectly appealable as of right to the Supreme Court.”.

1           (b) CONFORMING AMENDMENT.—The analysis for  
2 chapter 44 of title 18 is amended by inserting after the  
3 item relating to section 926A the following:

          “926B. Rules governing actions brought to curtail the sale or availability of fire-  
          arms for legal purposes.”.

4           (c) EFFECTIVE DATE.—The amendment made by  
5 subsection (a)—

6               (1) takes effect on the date of enactment of this  
7 Act; and

8               (2) applies to any action pending or on appeal  
9 on that date or brought after that date.

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