

108TH CONGRESS  
1ST SESSION

# H. R. 1036

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IN THE SENATE OF THE UNITED STATES

APRIL 10, 2003

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Protection of Lawful  
3 Commerce in Arms Act”.

4 **SEC. 2. FINDINGS; PURPOSES.**

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

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

9           (2) Lawsuits have been commenced against  
10       manufacturers, distributors, dealers, and importers  
11       of firearms that operate as designed and intended,  
12       which seek money damages and other relief for the  
13       harm caused by the misuse of firearms by third par-  
14       ties, including criminals.

15          (3) The manufacture, importation, possession,  
16       sale, and use of firearms and ammunition in the  
17       United States are heavily regulated by Federal,  
18       State, and local laws. Such Federal laws include the  
19       Gun Control Act of 1968, the National Firearms  
20       Act, and the Arms Export Control Act.

21          (4) Businesses in the United States that are en-  
22       gaged in interstate and foreign commerce through  
23       the lawful design, manufacture, marketing, distribu-  
24       tion, importation, or sale to the public of firearms or  
25       ammunition that has been shipped or transported in  
26       interstate or foreign commerce are not, and should

1 not, be liable for the harm caused by those who  
2 criminally or unlawfully misuse firearm products or  
3 ammunition products that function as designed and  
4 intended.

5 (5) The possibility of imposing liability on an  
6 entire industry for harm that is solely caused by oth-  
7 ers is an abuse of the legal system, erodes public  
8 confidence in our Nation's laws, threatens the dimi-  
9 nution of a basic constitutional right and civil lib-  
10 erty, invites the disassembly and destabilization of  
11 other industries and economic sectors lawfully com-  
12 peting in the free enterprise system of the United  
13 States, and constitutes an unreasonable burden on  
14 interstate and foreign commerce of the United  
15 States.

16 (6) The liability actions commenced or con-  
17 templated by the Federal Government, States, mu-  
18 nicipalities, and private interest groups are based on  
19 theories without foundation in hundreds of years of  
20 the common law and jurisprudence of the United  
21 States and do not represent a bona fide expansion  
22 of the common law. The possible sustaining of these  
23 actions by a maverick judicial officer or petit jury  
24 would expand civil liability in a manner never con-  
25 templated by the Framers of the Constitution, by

1 the Congress, or by the legislatures of the several  
2 states. Such an expansion of liability would con-  
3 stitute a deprivation of the rights, privileges, and  
4 immunities guaranteed to a citizen of the United  
5 States under the Fourteenth Amendment to the  
6 United States Constitution.

7 (b) PURPOSES.—The purposes of this Act are as fol-  
8 lows:

9 (1) To prohibit causes of action against manu-  
10 facturers, distributors, dealers, and importers of  
11 firearms or ammunition products for the harm  
12 caused by the criminal or unlawful misuse of firearm  
13 products or ammunition products by others when  
14 the product functioned as designed and intended.

15 (2) To preserve a citizen's access to a supply of  
16 firearms and ammunition for all lawful purposes, in-  
17 cluding hunting, self-defense, collecting, and com-  
18 petitive or recreational shooting.

19 (3) To guarantee a citizen's rights, privileges,  
20 and immunities, as applied to the States, under the  
21 Fourteenth Amendment to the United States Con-  
22 stitution, pursuant to section 5 of that Amendment.

23 (4) To prevent the use of such lawsuits to im-  
24 pose unreasonable burdens on interstate and foreign  
25 commerce.

1           (5) To protect the right, under the First  
2       Amendment to the Constitution, of manufacturers,  
3       distributors, dealers, and importers of firearms or  
4       ammunition products, and trade associations, to  
5       speak freely, to assemble peaceably, and to petition  
6       the Government for a redress of their grievances.

7   **SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL**  
8                   **LIABILITY ACTIONS IN FEDERAL OR STATE**  
9                   **COURT.**

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

12       (b) DISMISSAL OF PENDING ACTIONS.—A qualified  
13   civil liability action that is pending on the date of the en-  
14   actment of this Act shall be dismissed immediately by the  
15   court in which the action was brought or is currently pend-  
16   ing.

17   **SEC. 4. DEFINITIONS.**

18       In this Act:

19           (1) ENGAGED IN THE BUSINESS.—The term  
20       “engaged in the business” has the meaning given  
21       that term in section 921(a)(21) of title 18, United  
22       States Code, and, as applied to a seller of ammuni-  
23       tion, means a person who devotes, time, attention,  
24       and labor to the sale of ammunition as a regular  
25       course of trade or business with the principal objec-

1       tive of livelihood and profit through the sale or dis-  
2       tribution of ammunition.

3           (2) MANUFACTURER.—The term “manufac-  
4       turer” means, with respect to a qualified product, a  
5       person who is engaged in the business of manufac-  
6       turing the product in interstate or foreign commerce  
7       and who is licensed to engage in business as such a  
8       manufacturer under chapter 44 of title 18, United  
9       States Code.

10          (3) PERSON.—The term “person” means any  
11       individual, corporation, company, association, firm,  
12       partnership, society, joint stock company, or any  
13       other entity, including any governmental entity.

14          (4) QUALIFIED PRODUCT.—The term “qualified  
15       product” means a firearm (as defined in subpara-  
16       graph (A) or (B) of section 921(a)(3) of title 18,  
17       United States Code, including any antique firearm  
18       (as defined in section 921(a)(16) of such title)), or  
19       ammunition (as defined in section 921(a)(17) of  
20       such title), or a component part of a firearm or am-  
21       munition, that has been shipped or transported in  
22       interstate or foreign commerce.

23          (5) QUALIFIED CIVIL LIABILITY ACTION.—

24            (A) IN GENERAL.—The term “qualified  
25       civil liability action” means a civil action

1 brought by any person against a manufacturer  
2 or seller of a qualified product, or a trade asso-  
3 ciation, for damages or injunctive relief result-  
4 ing from the criminal or unlawful misuse of a  
5 qualified product by the person or a third  
6 party, but shall not include—

7 (i) an action brought against a trans-  
8 feror convicted under section 924(h) of  
9 title 18, United States Code, or a com-  
10 parable or identical State felony law, by a  
11 party directly harmed by the conduct of  
12 which the transferee is so convicted;

13 (ii) an action brought against a seller  
14 for negligent entrustment or negligence per  
15 se;

16 (iii) an action in which a manufac-  
17 turer or seller of a qualified product know-  
18 ingly and willfully violated a State or Fed-  
19 eral statute applicable to the sale or mar-  
20 keting of the product, and the violation  
21 was a proximate cause of the harm for  
22 which relief is sought;

23 (iv) an action for breach of contract  
24 or warranty in connection with the pur-  
25 chase of the product; or

1                   (v) an action for physical injuries or  
2                   property damage resulting directly from a  
3                   defect in design or manufacture of the  
4                   product, when used as intended.

5                   (B) NEGLIGENT ENTRUSTMENT.—In sub-  
6                   paragraph (A)(ii), the term “negligent entrust-  
7                   ment” means the supplying of a qualified prod-  
8                   uct by a seller for use by another person when  
9                   the seller knows or should know the person to  
10                  whom the product is supplied is likely to use  
11                  the product, and in fact does use the product,  
12                  in a manner involving unreasonable risk of  
13                  physical injury to the person and others.

14                  (6) SELLER.—The term “seller” means, with  
15                  respect to a qualified product—

16                       (A) an importer (as defined in section  
17                       921(a)(9) of title 18, United States Code) who  
18                       is engaged in the business as such an importer  
19                       in interstate or foreign commerce and who is li-  
20                       censed to engage in business as such an im-  
21                       porter under chapter 44 of title 18, United  
22                       States Code;

23                       (B) a dealer (as defined in section  
24                       921(a)(11) of title 18, United States Code) who  
25                       is engaged in the business as such a dealer in



1 interstate or foreign commerce and who is li-  
2 censed to engage in business as such a dealer  
3 under chapter 44 of title 18, United States  
4 Code; or

5 (C) a person engaged in the business of  
6 selling ammunition (as defined in section  
7 921(a)(17) of title 18, United States Code) in  
8 interstate or foreign commerce at the wholesale  
9 or retail level, consistent with Federal, State,  
10 and local law.

11 (7) STATE.—The term “State” includes each of  
12 the several States of the United States, the District  
13 of Columbia, the Commonwealth of Puerto Rico, the  
14 Virgin Islands, Guam, American Samoa, and the  
15 Commonwealth of the Northern Mariana Islands,  
16 and any other territory or possession of the United  
17 States, and any political subdivision of any such  
18 place.

19 (8) TRADE ASSOCIATION.—The term “trade as-  
20 sociation” means any association or business organi-  
21 zation (whether or not incorporated under Federal  
22 or State law) that is not operated for profit, and 2

Attest: **JEFF TRANDAH**,  
*Clerk.*