

119TH CONGRESS
2D SESSION

S. _____

To amend the Protection of Lawful Commerce in Arms Act to clarify liability protections for firearms and associated manufacturers and retailers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Protection of Lawful Commerce in Arms Act to clarify liability protections for firearms and associated manufacturers and retailers, 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 “Stopping Harmful and
5 Outrageous Torts Act”.

1 **SEC. 2. CLARIFYING THE BROAD SCOPE OF IMMUNITY**
2 **AGAINST QUALIFIED CIVIL ACTIONS.**

3 Section 3 of the Protection of Lawful Commerce in
4 Arms Act (15 U.S.C. 7902) is amended by striking sub-
5 section (b) and inserting the following:

6 “(b) DISMISSAL OF PENDING ACTIONS.—A qualified
7 civil liability action, including any claims asserted therein,
8 that is pending on the date of enactment of the Stopping
9 Harmful and Outrageous Torts Act, shall be immediately
10 dismissed by the court in which the action was brought
11 or is currently pending.”.

12 **SEC. 3. UPDATING DEFINITIONS TO HALT THE SPREAD OF**
13 **FRIVOLOUS LAWSUITS.**

14 Section 4 of the Protection of Lawful Commerce in
15 Arms Act (15 U.S.C. 7903) is amended—

16 (1) by striking paragraph (1) and inserting the
17 following:

18 “(1) ENGAGED IN THE BUSINESS.—The term
19 ‘engaged in the business’ means devoting time, at-
20 tention, and labor to the sale, manufacture, or im-
21 portation of a qualified product as a regular course
22 of trade or business.”;

23 (2) in paragraph (2), by striking “commerce”
24 and all that follows through the period at the end
25 and inserting “commerce, including any owner and
26 employee of such person”;

1 (3) by redesignating paragraphs (4) through
2 (9) as paragraphs (5) through (10), respectively;

3 (4) by inserting after paragraph (3) the fol-
4 lowing:

5 “(4) PROXIMATE CAUSE.—The term ‘proximate
6 cause’ means that the plaintiff was directly injured
7 by the allegedly unlawful conduct of the defendant.”;

8 (5) by striking paragraph (5), as so redesign-
9 ated, and inserting the following:

10 “(5) QUALIFIED PRODUCT.—The term ‘quali-
11 fied product’ means a firearm (as defined in sub-
12 paragraph (A), (B), or (C) of section 921(a)(3) of
13 title 18, United States Code), including any antique
14 firearm (as defined in section 921(a)(16) of such
15 title), ammunition (as defined in section
16 921(a)(17)(A) of such title), or a component part of,
17 or an accessory intended for use with, a firearm or
18 ammunition, including ammunition magazines or
19 clips, optical devices, or other products intended to
20 be included in, attached to, or used while attached
21 to, or in conjunction with, a firearm or ammunition,
22 that has been shipped or transported in interstate or
23 foreign commerce.”;

24 (6) by striking paragraph (6), as so redesign-
25 ated, and inserting the following:

1 “(6) QUALIFIED CIVIL LIABILITY ACTION.—

2 “(A) IN GENERAL.—The term ‘qualified
3 civil liability action’ means a civil action, pro-
4 ceeding, or administrative proceeding, or any
5 claim asserted therein, brought by any person
6 against a manufacturer or seller of a qualified
7 product, or a trade association, for damages,
8 punitive damages, injunctive or declaratory re-
9 lief, abatement, restitution, fines, or penalties,
10 or other relief, resulting from, on the basis of,
11 arising out of, or in relation to the criminal or
12 unlawful misuse, alteration, or modification of a
13 qualified product by the person or a third
14 party, under any theory of liability, including
15 statutory claims or claims arising from tort or
16 contract, but shall not include—

17 “(i) a claim brought against a trans-
18 feror convicted under section 924(h) of
19 title 18, United States Code, or a com-
20 parable or identical State felony law, by a
21 party directly harmed by the conduct of
22 which the transferee is so convicted;

23 “(ii) a claim brought against a seller
24 for negligent entrustment or negligence per
25 se;

1 “(iii) a claim—

2 “(I) in which a manufacturer or
3 seller of a qualified product knowingly
4 violated chapter 44 of title 18, United
5 States Code, chapter 53 of the Inter-
6 nal Revenue Code of 1986, the Arms
7 Export Control Act (22 U.S.C. 2751
8 et seq.), or the Export Control Re-
9 form Act of 2018 (50 U.S.C. 4801 et
10 seq.), or an equivalent State statute,
11 that is intended to and exclusively im-
12 poses specific and concrete obligations
13 on manufacturers and sellers regard-
14 ing the manner in which qualified
15 products are manufactured, distrib-
16 uted, or transferred to unlicensed per-
17 sons;

18 “(II) in which the violation was a
19 proximate cause of the harm for
20 which relief is sought; and

21 “(III) that is not premised on
22 nuisance or negligence, whether based
23 in statute or common law;

1 “(iv) a claim for breach of contract or
2 warranty in connection with the purchase
3 of the product;

4 “(v) a claim for death, physical inju-
5 ries or property damage resulting directly
6 from a defect in design or manufacture of
7 the product, when being lawfully used as
8 intended or in a reasonably foreseeable
9 manner, except that where the discharge of
10 the product was caused by a volitional act
11 which meets the elements of a criminal of-
12 fense, then such act shall be considered the
13 sole proximate cause of any resulting
14 death, personal injuries or property dam-
15 age; or

16 “(vi) a claim or proceeding com-
17 menced by the Attorney General to enforce
18 the provisions of chapter 44 of title 18,
19 United States Code, or chapter 53 of the
20 Internal Revenue Code of 1986.

21 “(B) **NEGLIGENT ENTRUSTMENT.**—As
22 used in subparagraph (A)(ii), the term ‘neg-
23 ligent entrustment’—

24 “(i) means the supplying of a quali-
25 fied product by a seller for use by another

1 person when the seller knows, or reason-
2 ably should know, the person to whom the
3 product is supplied is themselves likely to,
4 and does, use the product in a manner in-
5 volving unreasonable risk of physical injury
6 to the person or others; and

7 “(ii) does not include instances in
8 which the harm was caused by a person
9 who was not entrusted with the qualified
10 product directly by the seller.

11 “(C) RULE OF CONSTRUCTION.—The ex-
12 ceptions enumerated under clauses (i) through
13 (v) of subparagraph (A) shall be construed so
14 as not to be in conflict, and no provision of this
15 Act shall be construed to create a public or pri-
16 vate cause of action, claim, or remedy.

17 “(D) MINOR CHILD EXCEPTION.—Nothing
18 in this Act shall be construed to limit the right
19 of a person under 17 years of age to recover
20 damages authorized under Federal or State law
21 in a civil action that meets one of the require-
22 ments under clauses (i) through (v) of subpara-
23 graph (A).

24 “(E) FOREIGN STATE AND GOVERN-
25 MENTS.—

1 “(i) DEFINITION.—The term ‘foreign
2 state or government’ includes any entity,
3 agency, or instrumentality of a foreign
4 state or government.

5 “(ii) PROHIBITION.—No foreign state
6 or government may bring a civil action,
7 proceeding, or administrative proceeding,
8 or any claim asserted therein against a
9 manufacturer or seller of a qualified prod-
10 uct, or a trade association, for damages,
11 punitive damages, injunctive or declaratory
12 relief, abatement, restitution, fines, or pen-
13 alties, or other relief, resulting from, on
14 the basis of, arising out of, or in relation
15 to the criminal or unlawful misuse, alter-
16 ation, or modification of a qualified prod-
17 uct by the person or a third party, under
18 any theory of liability, including statutory
19 claims or claims arising from tort or con-
20 tract, in any Federal or State court. The
21 exceptions to immunity provided under
22 clauses (i) through (v) of subparagraph
23 (A) shall not apply to any claim brought
24 by a foreign state or government and may
25 not be asserted by any foreign state or

1 government in any Federal or State
2 court.”.

3 (7) by striking paragraph (7), as so redesignated,
4 and inserting the following:

5 “(7) SELLER.—The term ‘seller’, with respect
6 to a qualified product—

7 “(A) means—

8 “(i) an importer (as defined in section
9 921(a)(9) of title 18, United States Code)
10 who is engaged in the business as such an
11 importer in interstate or foreign commerce
12 and who is licensed to engage in business
13 as such an importer under chapter 44 of
14 that title;

15 “(ii) a dealer (as defined in section
16 921(a)(11) of title 18, United States Code)
17 who is engaged in the business as such a
18 dealer in interstate or foreign commerce
19 and who is licensed to engage in business
20 as such a dealer under chapter 44 of that
21 title;

22 “(iii) a person engaged in the business
23 of selling ammunition (as defined in section
24 921(a)(17)(A) of title 18, United
25 States Code); or

1 “(iv) a person engaged in the business
2 of selling any other qualified product in
3 interstate or foreign commerce at the
4 wholesale or retail level, including import
5 and export;

6 “(B) includes any owner or employee of
7 the seller; and

8 “(C) does not include any manufacturer.”.

9 **SEC. 4. PROCEDURE FOR REMOVAL AND DISMISSAL.**

10 The Protection of Lawful Commerce in Arms Act (15
11 U.S.C. 7901 et seq.) is amended by inserting after section
12 3 (15 U.S.C. 7902) the following:

13 **“SEC. 3A. PROCEDURE.**

14 “(a) **REMOVAL AND DISMISSAL.—**

15 “(1) **IN GENERAL.—**In any action before a
16 State court in which a defendant that is a manufac-
17 turer, seller, or trade association asserts that the ac-
18 tion is a qualified civil liability action, the manufac-
19 turer, seller, or trade association may remove the ac-
20 tion to the district court of the United States for the
21 district and division embracing the place where such
22 action is pending.

23 “(2) **JURISDICTION.—**

24 “(A) **IN GENERAL.—**The district court
25 shall have jurisdiction over an action described

1 in paragraph (1) if the defendant seeking re-
2 moval makes a colorable assertion that at least
3 1 of the claims is a qualified civil liability ac-
4 tion.

5 “(B) SUPPLEMENTAL JURISDICTION.—The
6 district court may exercise supplemental juris-
7 diction over all other claims in the action that
8 arise out of the same common nucleus of opera-
9 tive facts.

10 “(3) MOTION TO DISMISS.—Upon determina-
11 tion by the district court that removal is proper, the
12 defendant shall have 30 days to file a motion to dis-
13 miss.

14 “(4) DISCRETION.—The district court has the
15 discretion to retain jurisdiction to resolve any re-
16 maining claims in the case even upon the dismissal
17 of claims barred by the immunity granted by this
18 Act if doing so comports with judicial economy, con-
19 venience, fairness to the parties, and comity.

20 “(5) REVIEW.—An order remanding a case to
21 the State court from which it was removed pursuant
22 to this section shall be immediately reviewable on
23 appeal.

24 “(b) PLEADING.—

1 “(1) IN GENERAL.—A claim brought against a
2 manufacturer or seller of a qualified product, or a
3 trade association, premised on any of the exceptions
4 listed in clauses (i) through (vi) of section 3(6)(A)
5 shall plead with particularity the factual allegations
6 providing the basis for the application of the excep-
7 tion, including those facts necessary to establish
8 scienter and proximate cause.

9 “(2) EXCEPTIONS.—A claim brought against a
10 manufacturer or seller of a qualified product, or a
11 trade association, premised on an exception to the
12 immunity granted in this Act shall allege particular-
13 ized facts showing that the manufacturer or seller of
14 a qualified product, or trade association, was the
15 proximate cause of the damages alleged. The court
16 shall determine whether the particularized facts al-
17 leged by the plaintiff suffice to establish proximate
18 cause as a matter of law.

19 “(c) INTERLOCUTORY APPEALS AS OF RIGHT.—A de-
20 fendant shall have the right to take an immediate inter-
21 locutory appeal of an order, denying a motion to dismiss
22 based on any provision of this Act.

23 “(d) ATTORNEY’S FEES FOR PREVAILING DEFEND-
24 ANTS.—A defendant who prevails in asserting the immu-

1 nity granted in this Act shall be entitled to reasonable at-
2 torney’s fees and court costs.”.

3 **SEC. 5. PREEMPTION.**

4 The Protection of Lawful Commerce in Arms Act (15
5 U.S.C. 7901 et seq.), as amended by section 4 of this Act,
6 is amended by adding at the end the following:

7 **“SEC. 3B. PREEMPTION.**

8 “The provisions of this Act expressly preempt any
9 State and local laws (including regulations) that specifi-
10 cally impose liability on qualified product manufacturers,
11 sellers, and trade associations, or that attempt to do so
12 in a generally applicable manner insofar as the State or
13 local law (including regulations) allows for civil actions,
14 civil proceedings, and administrative proceedings for dam-
15 ages, punitive damages, injunctive or declaratory relief,
16 abatement, restitution, fines, penalties, or other relief re-
17 sulting from the criminal misuse, alteration, or modifica-
18 tion of a qualified product under any theory of liability,
19 including any statutory claim arising from tort or con-
20 tract.”.