

AMENDMENT TO RULES COMMITTEE PRINT 119-

33

OFFERED BY MR. HUDSON OF NORTH CAROLINA

At the end of subtitle B of title XVII, insert the following:

1 **SEC. 17___ . STOPPING HARMFUL AND OUTRAGEOUS**
2 **TORTS.**

3 (a) CLARIFICATION OF ARMAMENTS INDUSTRIAL
4 BASE POLICY.—Section 7552 of title 10, United States
5 Code, is amended—

6 (1) in paragraph (8), by striking “and” at the
7 end;

8 (2) in paragraph (9), by striking the period and
9 inserting “; and”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(10) to protect the commercial firearm and
13 ammunition industry from lawsuits seeking to im-
14 pose civil liability for the criminal and unlawful mis-
15 use of legal, non-defective, lawfully manufactured
16 and sold products which litigation threatens the
17 United States small arms defense industrial base
18 critical to national security.”.

1 (b) CLARIFYING THE BROAD SCOPE OF IMMUNITY
2 AGAINST QUALIFIED CIVIL ACTIONS.—Section 3 of the
3 Protection of Lawful Commerce in Arms Act (15 U.S.C.
4 7902) is amended by striking subsection (b) and inserting
5 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 (c) UPDATING DEFINITIONS TO HALT THE SPREAD
13 OF FRIVOLOUS LAWSUITS.—Section 4 of the Protection
14 of Lawful Commerce in Arms Act (15 U.S.C. 7903) is
15 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

1 and inserting “commerce, including any owner and
2 employee of such person”;

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

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

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

10 (5) by striking paragraph (5), as so redesign-
11 nated, and inserting the following:

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

1 (6) by striking paragraph (6), as so redesign-
2 nated, and inserting the following:

3 “(6) QUALIFIED CIVIL LIABILITY ACTION.—

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

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

1 “(ii) a claim brought against a seller
2 for negligent entrustment or negligence per
3 se;

4 “(iii) a claim—

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

21 “(II) in which the violation was a
22 proximate cause of the harm for
23 which relief is sought; and

1 “(III) that is not premised on
2 nuisance or negligence, whether based
3 in statute or common law;

4 “(iv) a claim for breach of contract or
5 warranty in connection with the purchase
6 of the product;

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

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

1 “(B) NEGLIGENT ENTRUSTMENT.—As
2 used in subparagraph (A)(ii), the term ‘neg-
3 ligent entrustment’—

4 “(i) means the supplying of a quali-
5 fied product by a seller for use by another
6 person when the seller knows, or reason-
7 ably should know, the person to whom the
8 product is supplied is themselves likely to,
9 and does, use the product in a manner in-
10 volving unreasonable risk of physical injury
11 to the person or others; and

12 “(ii) does not include instances in
13 which the harm was caused by a person
14 who was not entrusted with the qualified
15 product directly by the seller.

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

22 “(D) MINOR CHILD EXCEPTION.—Nothing
23 in this Act shall be construed to limit the right
24 of a person under 17 years of age to recover
25 damages authorized under Federal or State law

1 in a civil action that meets one of the require-
2 ments under clauses (i) through (v) of subpara-
3 graph (A).

4 “(E) FOREIGN STATE AND GOVERN-
5 MENTS.—

6 “(i) DEFINITION.—The term ‘foreign
7 state or government’ includes any entity,
8 agency, or instrumentality of a foreign
9 state or government.

10 “(ii) PROHIBITION.—No foreign state
11 or government may bring a civil action,
12 proceeding, or administrative proceeding,
13 or any claim asserted therein against a
14 manufacturer or seller of a qualified prod-
15 uct, or a trade association, for damages,
16 punitive damages, injunctive or declaratory
17 relief, abatement, restitution, fines, or pen-
18 alties, or other relief, resulting from, on
19 the basis of, arising out of, or in relation
20 to the criminal or unlawful misuse, alter-
21 ation, or modification of a qualified prod-
22 uct by the person or a third party, under
23 any theory of liability, including statutory
24 claims or claims arising from tort or con-
25 tract, in any Federal or State court. The

1 exceptions to immunity provided under
2 clauses (i) through (v) of subparagraph
3 (A) shall not apply to any claim brought
4 by a foreign state or government and may
5 not be asserted by any foreign state or
6 government in any Federal or State
7 court.”;

8 (7) by striking paragraph (7), as so redesign-
9 nated, and inserting the following:

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

12 “(A) means—

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

20 “(ii) a dealer (as defined in section
21 921(a)(11) of title 18, United States Code)
22 who is engaged in the business as such a
23 dealer in interstate or foreign commerce
24 and who is licensed to engage in business

1 as such a dealer under chapter 44 of that
2 title;

3 “(iii) a person engaged in the business
4 of selling ammunition (as defined in sec-
5 tion 921(a)(17)(A) of title 18, United
6 States Code); or

7 “(iv) a person engaged in the business
8 of selling any other qualified product in
9 interstate or foreign commerce at the
10 wholesale or retail level, including import
11 and export;

12 “(B) includes any owner or employee of
13 the seller; and

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

15 (d) PROCEDURE FOR REMOVAL AND DISMISSAL.—
16 The Protection of Lawful Commerce in Arms Act (15
17 U.S.C. 7901 et seq.) is amended by inserting after section
18 3 (15 U.S.C. 7902) the following:

19 **“SEC. 3A. PROCEDURE.**

20 “(a) REMOVAL AND DISMISSAL.—

21 “(1) IN GENERAL.—In any action before a
22 State court in which a defendant that is a manufac-
23 turer, seller, or trade association asserts that the ac-
24 tion is a qualified civil liability action, the manufac-
25 turer, seller, or trade association may remove the ac-

1 tion to the district court of the United States for the
2 district and division embracing the place where such
3 action is pending.

4 “(2) JURISDICTION.—

5 “(A) IN GENERAL.—The district court
6 shall have jurisdiction over an action described
7 in paragraph (1) if the defendant seeking re-
8 moval makes a colorable assertion that at least
9 1 of the claims is a qualified civil liability ac-
10 tion.

11 “(B) SUPPLEMENTAL JURISDICTION.—The
12 district court may exercise supplemental juris-
13 diction over all other claims in the action that
14 arise out of the same common nucleus of opera-
15 tive facts.

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

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

1 “(5) REVIEW.—An order remanding a case to
2 the State court from which it was removed pursuant
3 to this section shall be immediately reviewable on
4 appeal.

5 “(b) PLEADING.—

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

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

24 “(c) INTERLOCUTORY APPEALS AS OF RIGHT.—A de-
25 fendant shall have the right to take an immediate inter-

1 locutory appeal of an order, denying a motion to dismiss
2 based on any provision of this Act.

3 “(d) ATTORNEY’S FEES FOR PREVAILING DEFEND-
4 ANTS.—A defendant who prevails in asserting the immu-
5 nity granted in this Act shall be entitled to reasonable at-
6 torney’s fees and court costs.”.

7 (e) PREEMPTION.—The Protection of Lawful Com-
8 merce in Arms Act (15 U.S.C. 7901 et seq.) is further
9 amended by adding at the end the following:

10 **“SEC. 3B. PREEMPTION.**

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

