

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

—————
OCTOBER 7, 2002.—Ordered to be printed
—————

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2037]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2037) to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	00
Purpose and Summary	00
Background and Need for Legislation	2
Hearings	4
Committee Consideration	4
Committee Votes	5
Committee Oversight Findings	5
Statement of General Performance Goals and Objectives	6
New Budget Authority, Entitlement Authority, and Tax Expenditures	9
Committee Cost Estimate	9
Congressional Budget Office Estimate	9
Federal Mandates Statement	10
Advisory Committee Statement	10
Constitutional Authority Statement	10
Applicability to Legislative Branch	11
Section-by-Section Analysis of the Legislation	11
Changes in Existing Law Made by the Bill, as Reported	12
Dissenting Views	16

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC 2. AMENDMENT TO ORGANIC ACT.

The Act entitled “An Act to establish the Department of Commerce and Labor”, approved February 14, 1903 (15 U.S.C. 1501 et seq.), is amended by redesignating section 13 as section 14 and by inserting after section 12 the following:

“SEC. 13. RESTRICTION ON COMMERCE.

“(a) **SECRETARY OF COMMERCE LIST.**—The Secretary of Commerce shall establish and maintain a list consisting of each person that notifies the Secretary under subsection (b) that such person is a licensed manufacturer of a firearm or an ammunition product, a licensed seller of a firearm, a licensed seller of an ammunition product, or a trade association representing such manufacturers or sellers. The list shall contain the name of the person, the chief executive officer of the person, and the address and location of the headquarters of the person. The Secretary shall maintain and update the list and may publish the list in the Federal Register.

“(b) **NOTIFICATION.**—Each person that—

“(1) is a licensed manufacturer of a firearm or an ammunition product,

“(2) is a licensed seller of a firearm,

“(3) is a licensed seller of an ammunition product, or

“(4) is a trade association representing such manufacturers or sellers,

may notify the Secretary of that person’s existence and provide to the Secretary the information described in subsection (a).

“(c) **FREEDOM FROM RESTRICTION.**—Conduct that—

“(1) is carried out by a licensed manufacturer of a firearm or an ammunition product, involves such firearm or ammunition product, and is described in paragraph (5) of subsection (f),

“(2) is carried out by a licensed seller of a firearm, involves such firearm, and is described in paragraph (7) of subsection (f),

“(3) is carried out by a licensed seller of an ammunition product, involves such ammunition product, and is described in paragraph (8) of subsection (f), or

“(4) is carried out by a trade association in the course of organizing, advising, or representing its members who are manufacturers of a firearm or an ammunition product, sellers of a firearm, or sellers of an ammunition product, with respect to conduct of such manufacturers or sellers described in paragraph (5), (7), or (8) of subsection (f), as the case may be,

and that is lawful under applicable Federal, State, or local law, shall not be a basis for imposing a restriction on interstate or foreign commerce on a person on the list described in subsection (a) as a result of harm caused by the criminal, suicidal, negligent, or other unlawful misuse of any such firearm or ammunition product by any other person.

“(d) **ABSENCE FROM LIST.**—The absence from the list maintained under this section of any person who is a manufacturer of a firearm or an ammunition product, a seller of a firearm, or a seller of an ammunition product shall not be construed to create any cause of action or to deprive such person of any lawful defense that may otherwise be available to such person.

“(e) **LIMITATION OF USE OF LIST.**—No officer, agency, or instrumentality of the United States may use the list established and maintained under this section for any purpose other than the enforcement of the provisions of this section.

“(f) **DEFINITIONS.**—In this section:

“(1) **AMMUNITION PRODUCT.**—The term ‘ammunition product’ means ‘ammunition’ as defined in section 921(a)(17) of title 18, United States Code, and includes a component part of such ammunition product that has been shipped or transported in interstate or foreign commerce.

“(2) **ENGAGED IN THE BUSINESS.**—The term ‘engaged in the business’ has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of an ammunition product described in paragraph (8)(A)(ii), means a person who devotes time, attention, and labor to the sale of ammunition products as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition products.

“(3) FIREARM.—The term ‘firearm’ means ‘firearm’ as defined in section 921(a)(3)(A) or (B) of title 18, United States Code, and includes—

“(A) any ‘antique firearm’ as defined in section 921(a)(16) of such title; and

“(B) a component part of any firearm described in this paragraph that has been shipped or transported in interstate or foreign commerce.

“(4) INTERSTATE OR FOREIGN COMMERCE.—The term ‘interstate or foreign commerce’ has the meaning given that term in section 921(a)(2) of title 18, United States Code.

“(5) MANUFACTURER; LICENSED MANUFACTURER.—

“(A) MANUFACTURER.—The term ‘manufacturer of a firearm or an ammunition product’ means a ‘manufacturer’ as defined in section 921(a)(10) of title 18, United States Code, who is engaged in the business of manufacturing a firearm or an ammunition product in interstate or foreign commerce.

“(B) LICENSED MANUFACTURER.—The term ‘licensed manufacturer of a firearm or an ammunition product’ means any manufacturer described in subparagraph (A) who is licensed under chapter 44 of title 18, United States Code, to be engaged in the business as such manufacturer.

“(6) RESTRICTION ON INTERSTATE OR FOREIGN COMMERCE.—The term ‘restriction on interstate or foreign commerce’—

“(A) means—

“(i) civil damages or equitable relief, or

“(ii) any other limitation or condition,

awarded or ordered by a Federal, State, or local court, that restricts the ability of a person on the list established under subsection (a) to freely engage in interstate or foreign commerce with respect to firearms or ammunition products, or of a trade association on the list established under subsection (a) to freely engage in lawful activities on behalf of its membership; and

“(B) does not include any damages, equitable relief, or other limitation or condition arising from—

“(i) breach of contract or warranty in connection with the purchase of a firearm or an ammunition product;

“(ii) physical injuries or property damage resulting directly from a defect in design or manufacture of a firearm or an ammunition product, when used as intended; or

“(iii) the supplying of a firearm or an ammunition product by a seller of a firearm or seller of an ammunition product for use by another person when the seller knows or should know that the person to whom the product has been supplied is likely to use the product, and in fact does use the product, in a manner involving unreasonable risk of physical injury to that person and others.

“(7) SELLER OF A FIREARM; LICENSED SELLER.—

“(A) SELLER.—The term ‘seller of a firearm’ means—

“(i) an importer as defined in section 921(a)(9) of title 18, United States Code, with respect to firearms, or

“(ii) a dealer as defined in section 921(a)(11) of title 18, United States Code,

who is engaged in the business as such importer or dealer in interstate or foreign commerce.

“(B) LICENSED SELLER.—The term ‘licensed seller of a firearm’ means a seller of a firearm who is licensed under chapter 44 of title 18, United States Code, to be engaged in the business as an importer or dealer described in subparagraph (A).

“(8) SELLER OF AMMUNITION PRODUCT; LICENSED SELLER.—

“(A) SELLER.—The term ‘seller of an ammunition product’ means—

“(i) an importer as defined in section 921(a)(9) of title 18, United States Code, with respect to ammunition products, who is engaged in the business as such importer in interstate or foreign commerce; or

“(ii) any other person who is engaged in the business of selling ammunition products, including component parts of such ammunition products, in interstate or foreign commerce at the wholesale or retail level, consistent with Federal, State, and local law.

“(B) LICENSED SELLER.—The term ‘licensed seller of an ammunition product’ means—

“(i) an importer described in clause (i) of subparagraph (A) who is licensed to be engaged in the business as such an importer under chapter 44 of title 18, United States Code; and

“(ii) any other person described in clause (ii) of subparagraph (A) who has met all applicable requirements under Federal, State, or local law to be licensed to be engaged in the business as a seller described in that clause.

“(9) STATE.—The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory of possession of the United States.

“(10) TRADE ASSOCIATION.—The term ‘trade association’ means any association or business organization (whether or not incorporated under the laws of any State) that is not operated for profit, and 2 or more members of which are manufacturers of a firearm or an ammunition product, sellers of a firearm, or sellers of an ammunition product.”.

PURPOSE AND SUMMARY

The purpose of H.R. 2037 is to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

BACKGROUND AND NEED FOR LEGISLATION

Over the past several years, over 30 cities and counties,¹ as well as individuals, have sued the firearms industry. Represented by some of the same law firms that represented plaintiffs in tobacco litigation, municipal plaintiffs have targeted the firearms and ammunition industries for the damages and injuries resulting from guns used during the criminal acts of third parties. These suits are different from past lawsuits against the firearms industry—the cities and counties are not representing specific victims, nor are they claiming specific damage against city property. Instead, they are suing over the “societal effects” of firearms. Specifically, municipal plaintiffs claim that they are entitled to recover as damages the sums that they have been forced to expend as a result of “gun violence” (*i.e.*, police, emergency medical care, court, prison and other costs associated with gun violence).

There are a number of legal theories under which plaintiffs are arguing the firearms industry should be held responsible, including improper or defective distribution, unsafe design or product liability, and public nuisance. To date, every case that has been litigated to conclusion has been dismissed, or dismissed voluntarily by the plaintiff.

Municipal lawsuits against the gun industry, for the most part, have failed because they lack the necessary element of causation. In order to prove that a party is liable under tort law, a plaintiff must prove that the defendant caused the injury to the plaintiff. The municipalities argue that the firearms manufactured and sold by defendants to third parties are used to commit crimes and inflict injury on parties other than the cities and counties who are suing. Courts, however, have routinely found that the damages claimed by the municipal plaintiffs for such theories are too remote and too removed from the actions of the defendants to permit recovery.

¹ Cities and counties filing cases against the firearms industry include: New Orleans; Chicago; State of Illinois; Miami; Bridgeport, CT; Atlanta; Cleveland; Detroit; Cincinnati; St. Louis; Cities of Northern California (Oakland, Berkeley, Sacramento, East Palo Alto, San Francisco, Alameda County and San Mateo County); Cities of Southern California (Los Angeles, Compton, West Hollywood, and Inglewood); County of Los Angeles; Camden County, NJ; Boston; Newark, NJ; Camden, NJ; Gary, IN; Wilmington, DE; Washington, DC; Philadelphia; New York City; the State of New York; and Jersey City, NJ.

Moreover, these lawsuits have attempted to break new legal ground by arguing that every gun manufacturer should be held collectively liable for damages from guns made by any one of the manufacturers (called “market share liability”). This type of liability is permitted if the goods are fungible, meaning the goods look and act identically so there is no way to distinguish between them. Courts, however, have not found firearms to be fungible goods; therefore, courts have not embraced that market share liability argument. Some fear that such tactics eventually will be used to target other industries, such as the spirits and beer makers, and even fast food producers.

Finally, courts have expressed concerns about the separation of powers issues and the role of the judicial branch in deciding these cases. Federal and state courts have been nearly unanimous in ruling against the notion that courts should legislate gun policy. As one court noted, it is the prerogative of the legislative body to “make policy decisions related to gun control and the frustration at the failure of legislatures to enact laws sufficient to curb handgun injuries is not an adequate reason to engage the judicial forum in efforts to implement a broad policy change.” *Wasylow v. Glock*, 975 F. Supp. 370 (D.Mass. 1996). In fact, when given the opportunity to legislate, 26 states have opted to pass laws designed to prevent these lawsuits against firearms manufacturers and dealers. When challenged, these statutes have been upheld by federal and state courts.

Despite the fact that the lawsuits filed against the firearms industry have not produced any successful results, cities and counties continue to file suit. In fact, in March 2002, the day after the City of Boston voluntarily dismissed its lawsuit against the gun industry for lack of evidence, Jersey City, New Jersey filed suit. These lawsuits have cost municipalities, taxpayers and the firearms industry millions of dollars, but to date have produced no tangible benefits. H.R. 2037 is specifically designed to curb such frivolous lawsuits.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on April 18, 2002 on H.R. 2037, the “Protection of Lawful Commerce in Arms Act.” At that hearing, the following persons testified: Lawrence G. Keane, Vice President and General Counsel, National Shooting Sports Foundation; Dr. H. Sterling Burnett, Senior Fellow, National Center for Policy Analysis; Jeff Reh, General Counsel, Beretta USA Corporation; Elisa Barnes, Law Offices of Elisa Barnes; and M. Kristin Rand, Legislative Director, Violence Policy Center.

COMMITTEE CONSIDERATION

On Thursday, May 9, 2002, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and approved H.R. 2037, as amended, for Full Committee consideration by a voice vote, a quorum being present. On Wednesday, September 25, 2002, the Full Committee met in open markup session and ordered H.R. 2037 favorably reported to the House, as amend-

ed, by a roll call vote of 30 ayes to 16 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on the motion by Mr. Tauzin to order H.R. 2037 reported to the House, and on amendments offered to the measure, including the names of those members voting for and against.

**COMMITTEE ON ENERGY AND COMMERCE -- 107TH CONGRESS
ROLL CALL VOTE # 71**

BILL: H.R. 2037, the Protection of Lawful Commerce in Arms Act.

AMENDMENT: An amendment offered by Mr. Waxman, No 1, to prevent liability protection for the sale of a firearm or ammunition when the seller knows, or should know, is for a member or a suspected member of a terrorist organization.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 37 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell		X	
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns		X		Mr. Boucher		X	
Mr. Gillmor		X		Mr. Towns			
Mr. Greenwood		X		Mr. Pallone			
Mr. Cox		X		Mr. Brown	X		
Mr. Deal		X		Mr. Gordon		X	
Mr. Burr		X		Mr. Deutch	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Ganske		X		Ms. Eshoo	X		
Mr. Norwood				Mr. Stupak		X	
Mrs. Cubin		X		Mr. Engel	X		
Mr. Shimkus		X		Mr. Sawyer	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green		X	
Mr. Pickering		X		Ms. McCarthy	X		
Mr. Fossella		X		Mr. Strickland		X	
Mr. Blunt		X		Ms. DeGette	X		
Mr. Davis				Mr. Barrett	X		
Mr. Bryant		X		Mr. Luther	X		
Mr. Ehrlich		X		Ms. Capps	X		
Mr. Buyer		X		Mr. Doyle	X		
Mr. Radanovich		X		Mr. John		X	
Mr. Bass		X		Ms. Harman	X		
Mr. Pitts		X					
Ms. Bono		X					
Mr. Walden		X					
Mr. Terry		X					
Mr. Fletcher		X					

COMMITTEE ON ENERGY AND COMMERCE -- 107TH CONGRESS
ROLL CALL VOTE # 72

BILL: H.R. 2037, the Protection of Lawful Commerce in Arms Act.

AMENDMENT: Motion by Mr. Tauzin to order H.R. 2037 reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 30 yeas to 16 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin	X			Mr. Dingell	X		
Mr. Bilirakis				Mr. Waxman		X	
Mr. Barton				Mr. Markey		X	
Mr. Upton				Mr. Hall			
Mr. Stearns	X			Mr. Boucher			
Mr. Gillmor	X			Mr. Towns			
Mr. Greenwood				Mr. Pallone		X	
Mr. Cox	X			Mr. Brown		X	
Mr. Deal	X			Mr. Gordon	X		
Mr. Burr				Mr. Deutsch		X	
Mr. Whitfield	X			Mr. Rush			
Mr. Ganske	X			Ms. Eshoo		X	
Mr. Norwood	X			Mr. Stupak			
Mrs. Cubin	X			Mr. Engel		X	
Mr. Shimkus	X			Mr. Sawyer		X	
Mrs. Wilson	X			Mr. Wynn		X	
Mr. Shadegg				Mr. Green	X		
Mr. Pickering	X			Ms. McCarthy		X	
Mr. Fossella	X			Mr. Strickland	X		
Mr. Blunt				Ms. DeGette		X	
Mr. Davis	X			Mr. Barrett		X	
Mr. Bryant	X			Mr. Luther		X	
Mr. Ehrlich	X			Ms. Capps		X	
Mr. Buyer	X			Mr. Doyle		X	
Mr. Radanovich	X			Mr. John	X		
Mr. Bass	X			Ms. Harman		X	
Mr. Pitts	X						
Ms. Bono	X						
Mr. Walden	X						
Mr. Terry	X						
Mr. Fletcher	X						

9/25/2002

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has not held oversight hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 2037 is to curb the frivolous lawsuits brought by municipalities and private individuals against the firearms and ammunitions industry for harm caused by the criminal, suicidal or negligent actions of third parties.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2037, the Lawful Commerce in Arms Act of 2002, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 2002.

Hon. W. J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2037, the Protection of Lawful Commerce in Arms Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), Angela Seitz (for the state and local impact), and Cecil McPherson (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2037—Protection of Lawful Commerce in Arms Act

H.R. 2037 would require the Department of Commerce to establish a voluntary list of manufacturers and sellers of guns and ammunition, as well as the trade associations that represent them. Under the bill, courts could not impose civil damages or other re-

strictions on the organizations on this list because of gun-related crimes committed by consumers of these products. In return for choosing to be listed, these entities would be protected from lawsuits that otherwise might result in such damages.

Based on information from the Department of Commerce, CBO expects that implementing H.R. 2037 would require one staff member to manage the voluntary list. Assuming the availability of appropriated funds, CBO estimates that the cost of developing and maintaining the list would be negligible. Enacting the bill would not affect direct spending or receipts.

H.R. 2037 would impose both an intergovernmental mandate and a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting state, local, and tribal governments and private-sector parties from entering into lawsuits against certain manufacturers or sellers of firearms and ammunition products, and related trade associations, when such products are used unlawfully to do harm. Only the entities who have registered with the Secretary of Commerce as a manufacturer or seller in interstate or foreign commerce of a firearm or an ammunition product, or a trade association representing such manufacturers or sellers, would be protected under the legislation.

Depending on how lawsuits would be resolved under current law, plaintiffs could stand to receive significant amounts in damage awards. Because few lawsuits have been completed, CBO has no basis for predicting the level of potential damage awards, if any. Therefore, we cannot determine the costs of these mandates (forgone net revenues from damage awards), or whether such costs would exceed the annual thresholds established in UMRA for intergovernmental mandates (\$58 million in 2002, adjusted annually for inflation) and for private-sector mandates (\$115 million in 2002, adjusted annually for inflation).

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Angela Seitz (for the state and local impact), and Cecil McPherson (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title

Section 1 establishes the short title of the bill as the “Protection of Lawful Commerce in Arms Act.”

Section 2. Amendment to Organic Act

Section 2 amends the Department of Commerce organic statute (15 U.S.C. 1501 *et seq.*) by adding a new section 13. The bill requires that the Department of Commerce establish and maintain a voluntary list composed of federally licensed firearms manufacturers and sellers, federally licensed ammunitions manufacturers and sellers, and firearms trade associations, who would be subject to the protections of this bill.

Section 13(d) states that the absence of a federally licensed firearms manufacturer and seller, federally licensed ammunition manufacturer or seller, and firearms trade association shall not be construed to deprive any such person or entity of any lawful defense they have under current law. Additionally, section 13(e) limits the use of the list only for enforcement of the provisions of this Act.

Under section 13(c), actions taken by those persons and entities on this list, acting lawfully under all Federal, state, and local laws, cannot be the subject of a “restriction on interstate or foreign commerce” as a result of harm caused by the criminal, suicidal, negligent, or other unlawful misuse of a firearm or ammunition product by any other person.

“Restriction on interstate and foreign commerce” is defined in section 13(f)(6) as civil damages or equitable relief, or any other limitation or condition awarded or ordered by a Federal, state, or local court that restricts the ability of a person on the list to freely engage in interstate or foreign commerce with respect to firearms or ammunition products, or of a trade association to freely engage in lawful activities on behalf of its members.

The definition of “restriction on interstate and foreign commerce” does not include any damages, equitable relief, or other limitation arising from breach of contract or breach of warranty from the purchase of a firearm or ammunition product, physical injuries or property damage resulting directly from a defect in design or manufacture of a firearm or ammunition product when used as intended, or supplying a firearm or an ammunition product by a seller to a person the seller knows or should know is likely to use the product, and does use the product, in a manner involving unreasonable risk of physical injury to that person or others, otherwise known as “negligent entrustment” actions.

Section 13(f) also includes definitions for ammunition product, engaged in the business, firearm, interstate or foreign commerce, manufacturer, seller of a firearm, and seller of ammunition product consistently with the definitions in 18 U.S.C. 921. The bill further defines licensed manufacturers and sellers of firearm and ammuni-

tion products as those persons and entities previously defined who are licensed under chapter 44 of title 18 and engaged in the business.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF FEBRUARY 14, 1903

AN ACT To establish the Department of Commerce and Labor.

* * * * *

SEC. 13. RESTRICTION ON COMMERCE.

(a) *SECRETARY OF COMMERCE LIST.*—*The Secretary of Commerce shall establish and maintain a list consisting of each person that notifies the Secretary under subsection (b) that such person is a licensed manufacturer of a firearm or an ammunition product, a licensed seller of a firearm, a licensed seller of an ammunition product, or a trade association representing such manufacturers or sellers. The list shall contain the name of the person, the chief executive officer of the person, and the address and location of the headquarters of the person. The Secretary shall maintain and update the list and may publish the list in the Federal Register.*

(b) *NOTIFICATION.*—*Each person that—*

(1) is a licensed manufacturer of a firearm or an ammunition product,

(2) is a licensed seller of a firearm,

(3) is a licensed seller of an ammunition product, or

(4) is a trade association representing such manufacturers or sellers,

may notify the Secretary of that person's existence and provide to the Secretary the information described in subsection (a).

(c) *FREEDOM FROM RESTRICTION.*—*Conduct that—*

(1) is carried out by a licensed manufacturer of a firearm or an ammunition product, involves such firearm or ammunition product, and is described in paragraph (5) of subsection (f), or

(2) is carried out by a licensed seller of a firearm, involves such firearm, and is described in paragraph (7) of subsection (f),

(3) is carried out by a licensed seller of an ammunition product, involves such ammunition product, and is described in paragraph (8) of subsection (f), or

(4) is carried out by a trade association in the course of organizing, advising, or representing its members who are manufacturers of a firearm or an ammunition product, sellers of a firearm, or sellers of an ammunition product, with respect to conduct of such manufacturers or sellers described in paragraph (5), (7), or (8) of subsection (f), as the case may be,

and that is lawful under applicable Federal, State, or local law, shall not be a basis for imposing a restriction on interstate or foreign commerce on a person on the list described in subsection (a) as

a result of harm caused by the criminal, suicidal, negligent, or other unlawful misuse of any such firearm or ammunition product by any other person.

(d) *ABSENCE FROM LIST.*—The absence from the list maintained under this section of any person who is a manufacturer of a firearm or an ammunition product, a seller of a firearm, or a seller of an ammunition product shall not be construed to create any cause of action or to deprive such person of any lawful defense that may otherwise be available to such person.

(e) *LIMITATION OF USE OF LIST.*—No officer, agency, or instrumentality of the United States may use the list established and maintained under this section for any purpose other than the enforcement of the provisions of this section.

(f) *DEFINITIONS.*—In this section:

(1) *AMMUNITION PRODUCT.*—The term “ammunition product” means “ammunition” as defined in section 921(a)(17) of title 18, United States Code, and includes a component part of such ammunition product that has been shipped or transported in interstate or foreign commerce.

(2) *ENGAGED IN THE BUSINESS.*—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of an ammunition product described in paragraph (8)(A)(ii), means a person who devotes time, attention, and labor to the sale of ammunition products as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition products.

(3) *FIREARM.*—The term “firearm” means “firearm” as defined in section 921(a)(3)(A) or (B) of title 18, United States Code, and includes—

(A) any “antique firearm” as defined in section 921(a)(16) of such title; and

(B) a component part of any firearm described in this paragraph that has been shipped or transported in interstate or foreign commerce.

(4) *INTERSTATE OR FOREIGN COMMERCE.*—The term “interstate or foreign commerce” has the meaning given that term in section 921(a)(2) of title 18, United States Code.

(5) *MANUFACTURER; LICENSED MANUFACTURER.*—

(A) *MANUFACTURER.*—The term “manufacturer of a firearm or an ammunition product” means a “manufacturer” as defined in section 921(a)(10) of title 18, United States Code, who is engaged in the business of manufacturing a firearm or an ammunition product in interstate or foreign commerce.

(B) *LICENSED MANUFACTURER.*—The term “licensed manufacturer of a firearm or an ammunition product” means any manufacturer described in subparagraph (A) who is licensed under chapter 44 of title 18, United States Code, to be engaged in the business as such manufacturer.

(6) *RESTRICTION ON INTERSTATE OR FOREIGN COMMERCE.*—The term “restriction on interstate or foreign commerce”—

(A) means—

- (i) civil damages or equitable relief, or
- (ii) any other limitation or condition,

awarded or ordered by a Federal, State, or local court, that restricts the ability of a person on the list established under subsection (a) to freely engage in interstate or foreign commerce with respect to firearms or ammunition products, or of a trade association on the list established under subsection (a) to freely engage in lawful activities on behalf of its membership; and

(B) does not include any damages, equitable relief, or other limitation or condition arising from—

(i) breach of contract or warranty in connection with the purchase of a firearm or an ammunition product;

(ii) physical injuries or property damage resulting directly from a defect in design or manufacture of a firearm or an ammunition product, when used as intended; or

(iii) the supplying of a firearm or an ammunition product by a seller of a firearm or seller of an ammunition product for use by another person when the seller knows or should know that the person to whom the product has been supplied is likely to use the product, and in fact does use the product, in a manner involving unreasonable risk of physical injury to that person and others.

(7) **SELLER OF A FIREARM; LICENSED SELLER.**—

(A) **SELLER.**—The term “seller of a firearm” means—

(i) an importer as defined in section 921(a)(9) of title 18, United States Code, with respect to firearms, or

(ii) a dealer as defined in section 921(a)(11) of title 18, United States Code,

who is engaged in the business as such importer or dealer in interstate or foreign commerce.

(B) **LICENSED SELLER.**—The term “licensed seller of a firearm” means a seller of a firearm who is licensed under chapter 44 of title 18, United States Code, to be engaged in the business as an importer or dealer described in subparagraph (A).

(8) **SELLER OF AMMUNITION PRODUCT; LICENSED SELLER.**—

(A) **SELLER.**—The term “seller of an ammunition product” means—

(i) an importer as defined in section 921(a)(9) of title 18, United States Code, with respect to ammunition products, who is engaged in the business as such importer in interstate or foreign commerce; or

(ii) any other person who is engaged in the business of selling ammunition products, including component parts of such ammunition products, in interstate or foreign commerce at the wholesale or retail level, consistent with Federal, State, and local law.

(B) **LICENSED SELLER.**—The term “licensed seller of an ammunition product” means—

(i) an importer described in clause (i) of subparagraph (A) who is licensed to be engaged in the business as such an importer under chapter 44 of title 18, United States Code; and

(ii) any other person described in clause (i) of subparagraph (A) who has met all applicable requirements under Federal, State, or local law to be licensed to be engaged in the business as a seller described in that clause.

(9) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory of possession of the United States.

(10) TRADE ASSOCIATION.—The term “trade association” means any association or business organization (whether or not incorporated under the laws of any State) that is not operated for profit, and 2 or more members of which are manufacturers of a firearm or an ammunition product, sellers of a firearm, or sellers of an ammunition product.

SEC. [13] 14. That this Act shall take effect and be in force from and after its passage: *Provided, however,* That the provisions of this Act other than those of section twelve in relation to the transfer of any existing office, bureau, division, officer or other branch of the public service or authority now conferred thereon, to the Department of Commerce and Labor shall take effect and be in force on the first day of July, nineteen hundred and three, and not before.

* * * * *

DISSENTING VIEWS

H.R. 2037 would provide sweeping protections from liability lawsuits to all facets of the gun industry. The bill would deny the right of individuals and other entities harmed by gun violence to bring civil suits against gun manufacturers, sellers, and trade associations in all cases except breach of contract or warranty, product failure, or negligent entrustment. These are specific and special protections that are shared by no other industry. Additionally, the bill would deny legitimate legal courses of action to parties harmed by gun violence and would strip the rights of states to determine tort law, which traditionally has been solely within their jurisdiction.

Americans rely on the civil justice system to impose on gun dealers and manufacturers a duty to act reasonably and responsibly when selling their products. Like every other business in America and everyone else in the country, if gun dealers and manufacturers do not act reasonably, they may be held liable. If they blatantly disregard the obvious consequences of their actions, injured parties may bring lawsuits against them in the nation's civil courts. Yet, if H.R. 2037 becomes law, the right of injured parties to bring civil suits against the gun industry, even in state court, under state law, would be denied.

The extremity of this bill was starkly demonstrated when the Committee rejected a common-sense amendment to keep guns out of the hands of terrorists. During the full Committee's consideration of the bill, Rep. Henry A. Waxman offered an amendment to preserve civil liability for dealers or manufacturers who sell guns to terrorists, suspected terrorists, or people who are likely to provide these weapons to terrorists. This amendment would not have created new liabilities, but simply would have maintained current law protections if such sales are negligent or reckless. Nevertheless, the amendment was rejected.

Proponents of this bill claim it is needed to protect the judiciary from frivolous lawsuits and to protect the livelihood of gun manufacturers and sellers, who may be bankrupted by judgments against them. However, the judicial system already has a mechanism for limiting frivolous lawsuits. Judges may sanction lawyers who bring frivolous lawsuits to their courts. These sanctions can be quite severe and are an effective deterrent to any lawyer considering filing a frivolous suit. Additionally, none of the lawsuits brought against the gun industry to date have been successful. Clearly, the industry is in no danger due to frivolous lawsuits.

H.R. 2037 also raises questions of legal theory. This bill would ultimately harm the public because it prohibits legitimate courses of legal action to parties injured by the gun industry. To support H.R. 2037, proponents point to the fact that no lawsuits based on theories of public nuisance, negligence, and product liability that

were filed by city, county, or state governments have yet been successful in court. However, it is problematic and short sighted to simply deny a course of legal action because no lawsuits have been successful thus far. In July 2002, the Supreme Court of Ohio ruled that an appeals court erred in dismissing a case brought by the City of Cincinnati against the Beretta Corporation and other entities of the firearms industry. The court found that, according to Ohio law, the case could legitimately be brought against the gun industry based on the legal theories of nuisance, negligence, and product liability. The court did not rule that the City of Cincinnati would win its case at trial. But, the court did rule that Cincinnati has a legal right, under state law, to bring the lawsuit.

In August of this year, the California General Assembly and State Senate voted to repeal a law that provided similar liability protections to the gun industry, which was signed by the governor in September. If H.R. 2037 becomes law, it will trump the legitimate decisions of state governments, like those in California, in an area of tort law that is traditionally within the states' jurisdiction. As the American Bar Association stated to the Committee, "H.R. 2037 would mandate new and unwarranted federal legislative 'solutions' to issues that should properly be decided on a case-by-case basis in our nation's courts." We agree. The federal government should not mandate a one-size-fits-all liability preemption on the states and courts. Each case should be considered on the basis of the specific facts surrounding it.

For these reasons, we believe H.R. 2037 is a misguided bill that should not become law.

DIANA DEGETTE.
HENRY A. WAXMAN.
BOBBY L. RUSH.

○