AN ACT relating to firearms liability protections and declaring an emergency.

WHEREAS, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. secs. 7901 to 7903, provides essential protections to firearms manufacturers and sellers against certain lawsuits arising from criminal or unlawful use of their products; and

WHEREAS, recent litigation has demonstrated attempts to circumvent the protections afforded by the law through overly broad interpretations of the provided exceptions; and

WHEREAS, it is essential to ensure that firearms manufacturers and sellers are not unfairly held liable for the criminal misuse of their lawfully sold, legal products by defining terms and identifying when a claim may proceed under the laws of the Commonwealth of Kentucky;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Manufacturer" means any person engaged in the business of manufacturing a qualified product, including any and all owners, directors, officers, and employees of a manufacturer;

(b) "Negligent entrustment":

1. Means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others; and

2. Does not include instances in which the harm was caused by a person who was not entrusted with the qualified product directly by the seller;

(c) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity;

(d) "Proximate cause" means the requirement that the plaintiff was directly injured by the defendant's allegedly unlawful conduct;

(e) "Qualified civil liability action":

1. Means a civil action or proceeding, or an administrative proceeding, or any claim asserted in any action or proceeding, brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, including punitive damages, injunctive or declaratory relief, abatement, restitution, fines, penalties, or any other relief, resulting from, on the basis of, arising out of, or in relation to the criminal or unlawful misuse, alteration, or modification of a qualified product by the person or a third party, under any theory of liability, including but not limited to statutory claims, or claims arising from tort or contract; and

2. Does not include a claim:

a. Brought against a transferor convicted under 18 U.S.C. sec. 924(h), or a comparable or identical state felony law, by a party directly harmed by the conduct of which the transferee is convicted;

b. Brought against a seller for negligent entrustment or negligence per se;

c. In which a manufacturer or seller of a qualified product knowingly violated the Gun Control Act, 18 U.S.C. sec. 921 et seq., the National Firearms Act, 26 U.S.C. sec. 5801 et seq., the Arms Export Control Act, 22 U.S.C. sec. 2778 et seq., or the

Export Control Reform Act of 2018, 50 U.S.C. secs. 4801 to 4852, or any equivalent state statute that is intended to and exclusively does impose specific and concrete obligations on manufacturers and sellers regarding the manner in which qualified products are manufactured, distributed, or transferred to unlicensed persons, including the obligations in KRS Chapters 237 and 527, and the violation was the sole proximate cause of the harm for which relief is sought. This exception does not include claims premised on nuisance or negligence, whether based in statute or common law;

d. For breach of contract or warranty in connection with the purchase of the product; or

e. For death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product, when lawfully used as intended in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that meets the elements of a criminal offense, then the act shall be considered the sole proximate cause of any resulting death, personal injuries, or property damage.

The exceptions enumerated in this subparagraph shall not be construed to be in conflict, and this section shall not be construed to create a public or private cause of action, claim, or remedy. The enumerated exceptions in this subparagraph shall be construed to limit the scope of the claims available to the extent that they conflict with the statutory law or common law of this Commonwealth;

(f) "Qualified product" means a firearm as defined in KRS 237.060, ammunition as defined in KRS 237.060, or a component part of, or an

accessory intended for use with, a firearm or ammunition, including but not limited to ammunition magazines or clips, optical devices, or other products intended to be included in, attached to or used while attached to, or in conjunction with, a firearm or ammunition;

(g) "Seller":

1. Means any person engaged in the business of selling a qualified product at wholesale or retail, including import and export, and includes all owners, directors, officers, and employees of the entity; and

2. Does not include entities that meet the definition of "manufacturer" in paragraph (a) of this subsection;

(h) "Trade association" means any corporation, unincorporated association, federation, business league, or professional or business organization:

1. That is not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

2. That is an organization described in 26 U.S.C. sec. 501(c)(6), and exempt from tax under 26 U.S.C. sec. 501(a); and

3. Two (2) or more members of which are manufacturers or sellers of a qualified product; and

(i) "Unlawful use" means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

(2) A qualified civil liability action shall not be brought against any manufacturer or seller of a qualified product, or trade association.

(3) This section expressly preempts any local statutes, laws, or regulations that specifically impose liability on qualified product manufacturers, sellers, or trade associations, or that attempt to do so in a generally applicable manner to the

extent the state or local law, statute, or regulation allows for civil actions, civil proceedings, and administrative proceedings for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, penalties, or other relief resulting from criminal misuse, alteration, or modification of a qualified product under any theory of liability, including but not limited to statutory claims or claims arising from tort or contract, except for causes of action expressly allowed in this section.

(4) (a) A claim premised on an exception to the immunity granted by this section shall plead with particularity the factual allegations providing the basis for the application of the exception, including but not limited to those necessary to establish scienter and proximate cause.

(b) Any qualified civil liability action or any action involving a claim premised on an exception to the immunity granted by subsection (1)(e)2. of this section shall allege particularized facts establishing that the manufacturer or seller of a qualified product, or trade association, was the proximate cause of the damages alleged. The court shall determine whether the particularized facts alleged by the plaintiff suffice to establish proximate cause as a matter of law.

(c) Any manufacturer or seller of a qualified product, or trade association, shall be permitted to make a special motion under this subsection for dismissal or for entry of summary judgment in any qualified civil liability action or any action involving a claim premised on an exception to the immunity granted by this section, which shall be heard within forty-five (45) days of the motion. If discovery is required to rule on the motion, the court may order a discovery period not to exceed sixty (60) days and the discovery shall be limited to the issues of whether the action is subject to dismissal under this section. Any denial of a special motion to dismiss or special

1 ***motion for summary judgment shall be immediately appealable, the appeal***
2 ***shall be expedited, and the timelines in this subsection shall be enforceable***
3 ***as of right by an action in mandamus in the Court of Appeals of Kentucky.***
4 ***(5) Any person, including any attorney of record, who brings, maintains, or***
5 ***continues to pursue a claim in violation of this section after the effective date of***
6 ***this Act shall be subject to:***
7 ***(a) Dismissal of the claim with prejudice;***
8 ***(b) Payment of reasonable attorney's fees and costs incurred by the defendant***
9 ***after the effective date of this Act; and***
10 ***(c) A civil penalty of not less than one hundred dollars ($100) per day and not***
11 ***more than two hundred fifty dollars ($250) per day for each day that any***
12 ***action brought under this section remains pending after the effective date of***
13 ***this Act.***
14 ***(6) Any manufacturer or seller of a qualified product, or trade association, harmed***
15 ***by a claim brought, maintained, or continued in violation of this section after the***
16 ***effective date of this Act may initiate a civil action in a court of competent***
17 ***jurisdiction and may seek against any party, or the party's attorney of record:***
18 ***(a) Appropriate injunctive relief;***
19 ***(b) Actual damages;***
20 ***(c) Punitive damages if it is established that the defendant acted with actual***
21 ***malice or with willful misconduct;***
22 ***(d) Costs;***
23 ***(e) Reasonable attorney's fees; and***
24 ***(f) A civil penalty of not less than one hundred dollars ($100) per day and not***
25 ***more than two hundred fifty dollars ($250) per day for each day that any***
26 ***action brought under this section remains pending after the effective date of***
27 ***this Act.***

(7) Notwithstanding any other law to the contrary, the provisions of:

(a) KRS Chapter 367;

(b) Any public nuisance law; or

(c) Any general law of this Commonwealth;

shall not be considered as statutes intended to and exclusively imposing specific and concrete obligations on manufacturers and sellers regarding the manner in which qualified products are manufactured, distributed, or transferred to unlicensed persons for purposes of this section and shall not provide a basis to circumvent the explicit requirements of subsection (1)(e)2. of this section.

(8) A qualified civil liability action may not be brought in any court by a foreign state or government, and the exceptions to the immunity provided in this section shall not apply to claims brought by a foreign state or government.

(9) The Attorney General shall have authority to:

(a) Enforce the provisions of this section;

(b) Intervene in any civil action brought under this section; and

(c) Issue guidance to carry out the provisions of this section.

➔Section 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

➔Section 3. Whereas protection of the Second Amendment, and industries supporting the Second Amendment, is necessary and essential to fundamental liberty, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.