

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2708
OFFERED BY Mr. Nadler

Strike all that follows after the enacting clause and
insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Disarm Hate Act”.

3 **SEC. 2. PREVENTION OF PERSON WHO HAS BEEN CON-**
4 **VICTED OF A MISDEMEANOR HATE CRIME,**
5 **OR RECEIVED AN ENHANCED SENTENCE FOR**
6 **A MISDEMEANOR BECAUSE OF HATE OR BIAS**
7 **IN ITS COMMISSION, FROM OBTAINING A**
8 **FIREARM.**

9 (a) DEFINITIONS.—Section 921(a) of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 “(36) The term ‘convicted in any court of a mis-
13 demeanor hate crime’—

14 “(A) means being convicted by a court of an of-
15 fense that—

16 “(i) is a misdemeanor under Federal,
17 State, or tribal law;

1 “(ii) has, as an element, that the conduct
2 of the offender was motivated by hate or bias
3 because of the actual or perceived race, color,
4 religion, national origin, gender, sexual orienta-
5 tion, gender identity (as defined in section
6 249), or disability of any person; and

7 “(iii) involves the use or attempted use of
8 physical force, the threatened use of a deadly
9 weapon, or other credible threat to the physical
10 safety of any person; and

11 “(B) does not include—

12 “(i) a conviction of an offense described in
13 subparagraph (A), unless—

14 “(I) the person—

15 “(aa) was represented by counsel
16 in the case; or

17 “(bb) knowingly and intelligently
18 waived the right to counsel in the
19 case; and

20 “(II) in the case of a prosecution for
21 an offense described in subparagraph (A)
22 for which a person was entitled to a jury
23 trial in the jurisdiction in which the case
24 was tried—

1 “(aa) the case was tried by a
2 jury; or

3 “(bb) the person knowingly and
4 intelligently waived the right to have
5 the case tried by a jury, by guilty plea
6 or otherwise; or

7 “(ii) a conviction of an offense described in
8 subparagraph (A) if—

9 “(I) the conviction—

10 “(aa) has been expunged or set
11 aside; or

12 “(bb) is an offense for which the
13 person has been pardoned or has had
14 civil rights restored (if the law of the
15 applicable jurisdiction provides for the
16 loss of civil rights under such an of-
17 fense); and

18 “(II) the pardon, expungement, or
19 restoration of civil rights does not ex-
20 pressly provide that the person may not
21 ship, transport, possess, or receive fire-
22 arms.

23 “(37) The term ‘received from any court an enhanced
24 hate crime misdemeanor sentence’—

1 “(A) means a court has imposed a sentence for
2 a misdemeanor under Federal, State, or tribal law—

3 “(i) that involves the use or attempted use
4 of physical force, the threatened use of a deadly
5 weapon, or other credible threat to the physical
6 safety of any person; and

7 “(ii) based, in whole or in part, on a judi-
8 cial finding that the conduct of the offender
9 was motivated, in whole or in part, by hate or
10 bias for any reason referred to in paragraph
11 (36)(A)(ii); and

12 “(B) does not include—

13 “(i) the imposition of a sentence described
14 in subparagraph (A), unless—

15 “(I) the person—

16 “(aa) was represented by counsel
17 in the case; or

18 “(bb) knowingly and intelligently
19 waived the right to counsel in the
20 case; and

21 “(II) if the sentence described in sub-
22 paragraph (A) was imposed in a prosecu-
23 tion for an offense for which a person was
24 entitled to a jury trial in the jurisdiction in
25 which the case was tried—

1 “(aa) the case was tried by a
2 jury; or

3 “(bb) the person knowingly and
4 intelligently waived the right to have
5 the case tried by a jury, by guilty plea
6 or otherwise; or

7 “(ii) the imposition of a sentence described
8 in subparagraph (A) if—

9 “(I)(aa) the conviction of the offense
10 for which the sentence was imposed has
11 been expunged or set aside; or

12 “(bb) the offense for which the sen-
13 tence was imposed is an offense for which
14 the person has been pardoned or has had
15 civil rights restored (if the law of the appli-
16 cable jurisdiction provides for the loss of
17 civil rights under such an offense); and

18 “(II) the pardon, expungement, or
19 restoration of civil rights does not ex-
20 pressly provide that the person may not
21 ship, transport, possess, or receive fire-
22 arms.”.

23 (b) PROHIBITION ON SALE OR OTHER DISPOSITION
24 OF FIREARM.—Section 922(d) of such title is amended in
25 the first sentence—

1 (1) in paragraph (8)(B)(ii), by striking “or” at
2 the end;

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

5 (3) by inserting after paragraph (9) the fol-
6 lowing:

7 “(10) has been convicted in any court of a mis-
8 demeanor hate crime, or has received from any court
9 an enhanced hate crime misdemeanor sentence.”.

10 (c) PROHIBITION ON POSSESSION, SHIPMENT, OR
11 TRANSPORT OF FIREARM.—Section 922(g) of such title
12 is amended—

13 (1) in paragraph (8), by striking “or” at the
14 end;

15 (2) in paragraph (9), by striking the comma
16 and inserting “; or”; and

17 (3) by inserting after paragraph (9) the fol-
18 lowing:

19 “(10) who has been convicted in any court of
20 a misdemeanor hate crime, or has received from any
21 court an enhanced hate crime misdemeanor sen-
22 tence,”.

23 **SEC. 3. SEVERABILITY.**

24 If any provision of this Act or any amendment made
25 by this Act, or any application of such provision or amend-

1 ment to any person or circumstance, is held to be invalid,
2 the remainder of the provisions of this Act and the amend-
3 ments made by this Act and the application of the provi-
4 sion or amendment to any other person or circumstance
5 shall not be affected.

