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The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

SENATE BILL 488 OPPOSE

Re: Senate Bill 488 - Public Safety – Firearm Industry Members – Public Nuisance

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

On behalf of the National Shooting Sports Foundation (“NSSF”), and our industry members located throughout the state of Maryland, I write today to express our opposition to Senate Bill 488 (“SB 488”), the so-called “Gun Industry Accountability Act of 2023.” SB 488 seeks to gut the federal Protection of Lawful Commerce in Arms Act (“PLCAA”) and hold firearm industry members liable for the criminal misuse of firearms.

BACKGROUND ON NSSF

As the trade association for America’s firearms, ammunition, hunting, and recreational shooting sports industry, the National Shooting Sports Foundation (“NSSF”) seeks to promote, protect, and preserve hunting and the shooting sports. NSSF represents more than 10,000 members which include federally licensed manufacturers, wholesale distributors and retailers of firearms, ammunition and related goods and accessories, as well as public and private shooting ranges, sportsmen’s clubs, and endemic media, including close to 100 businesses located in Maryland, such as Beretta USA, Benelli USA and its family of brands, and LWRC International. Nationally, our industry contributes close to \$70.5 billion dollars annually to the economy creating over 345,000 good paying jobs and paying over \$7.8 billion dollars in taxes. Our industry has a \$1 billion dollar impact on the Maryland economy, creating more than 4,200 jobs paying over \$287 million in wages and nearly \$109 million dollars in taxes.

Members of the firearm industry are proud of their longstanding cooperative relationship with law enforcement. For example, on behalf of our industry members, for over two decades NSSF has partnered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) on an anti-straw purchasing campaign called *Don’t Lie for the Other Guy* (www.dontlie.org). This joint effort assists ATF in training licensed retailers to be better able to identify potential illegal straw purchases and avoid those transaction. Don’t Lie also provides public service announcements to educate the public that it is a serious crime to illegally straw purchase a firearm for which you can be sentenced to up to ten years in prison and fined of up to \$250,000.

Another example is *Operation Secure Store* (www.operationsecurestore.org), a joint ATF/NSSF initiative providing licensed retailers with education on solutions and services that enhance operational security and aid in identifying potential risks, protecting interests, and limiting the disruption of operations. The mission is to deter and prevent thefts from retailers and enhance public safety.

NSSF also provides significant compliance resources and educational opportunities to members of the industry. See <https://www.nssf.org/retailers/ffl-compliance/>.

OPPOSITION TO SB 488

NSSF is strongly opposed to SB 488 for several reasons. First and foremost, the bill seeks to subject members of the heavily regulated firearm industry to civil lawsuits for the criminal misuse or unlawful possession of firearms in Maryland. SB 488 is trying to use the threat of crushing liability to coerce out-of-state businesses to adopt sales practices and procedures not required by Congress or the law of the state where they operate. The Constitution reserves the power to regulate interstate commerce solely to Congress. This law interferes with the sovereignty of other states to make policy choices about how firearms should be sold in their state, subject only to the Second Amendment and federal law.

As proposed, SB 488 would permit lawsuits by victims of criminal acts and citizens claiming they have been harmed by an alleged public nuisance in Maryland. It also allows lawsuits by the State and any local government. Cities around the country were part of a wave of similar lawsuits filed over twenty years ago that led to Congress passing the bipartisan PLCAA in 2005.

The PLCAA codified a bedrock legal principle. Manufacturers and retailers are not responsible for the subsequent criminal misuse or illegal possession of their lawfully sold, non-defective products by remote third parties – criminals – over whom they have no control. Firearm industry members are not legally responsible for illegal shootings any more than a cookware manufacturer is responsible if a criminal misuses a sharp kitchen knife to stab someone.

This bill seeks to impose liability on law abiding firearms business for the criminal misuse of firearms. This is contrary to the will of Congress which, in enacting the PLCAA found –

Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully

competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

15 U.S.C. § 790(a)(5),(6).

Congress' purposes in enacting the PLCAA included -

To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful of firearm products or ammunition products by others when the product functioned as designed and intended.

To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

15 U.S.C. § 790(b)(1),(4),(6).

The logic underlying this bill is seriously flawed. It seeks to impose liability on members of the firearm industry for the “lawful design, manufacture, marketing, distribution, importation, [and] sale” of firearms in compliance with all federal, state, and local laws, when those firearms are subsequently obtained by third parties¹ over whom the industry member has no ability to control and later illegally find their way into Maryland and are criminally misused. This is tantamount to declaring drunk driving a public nuisance and then imposing liability on Ford for lawfully designing, make and selling a car later used by a drunk driver who causes an accident. Selling a legal, non-defective product in compliance with all laws and regulations – especially a heavily regulated product – does not “create, maintain or contribute to a condition in the State that endangers the safety or health of the public...” and is not a public nuisance under American jurisprudence. The bill goes further, it declares that the lawful business practices are “constitute a proximate cause of the public nuisance.... notwithstanding any intervening actions, including but not limited to criminal actions by third parties.”

The U.S. Supreme Court held that the Second Amendment protects the right of individuals to keep and bear arms and that the Second Amendment applies to the States. *See e.g., District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). The courts have since held that the Second Amendment includes the right to acquire firearms *See e.g., Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), *Jackson v City and County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2011); *Ill. Ass'n of Firearms Retailers v City of Chicago*, 961 F.Supp.2d 928, 930 (N.D. Ill. 2014); *See also, Andrews v State*, 50 Tenn.

¹ According to the U.S. Department of Justice studies, most (>80%) firearms used in crime are stolen, borrowed from friends and family members, or obtained on the black market.

165, 178 (1871). The Second Amendment protects the lawful commerce in firearms because that “[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense...” *Teixeira v. City. of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017).

If enacted, businesses in the firearm industry will abandon the Maryland market to avoid a tidal wave of vexatious “regulation through litigation” the bill is intended to bring about. Maryland residents will no longer be able to exercise their Second Amendment right to purchase firearms. The bill will undermine and diminish, if not violate, the Second Amendment rights of Maryland resident.

The bills own findings demonstrate that this legislation will not make Maryland safer. The conduct complained of arises from the actions of criminals who misuse firearms to perpetrate their crimes. It does not arise from lawful, heavily regulated commerce.

CONCLUSION

It is for these reasons, the National Shooting Sports Foundation opposes this ill-advised and ill-considered bill that will not improve public safety but will force result in vexatious litigation and drive business out of Maryland and diminish the ability of law abiding residents of Maryland to acquire firearms for lawful purposes. We would respectfully request an “Unfavorable Report” for Senate Bill 488 from the Senate Judicial Proceedings Committee.

Sincerely,



Jake McGuigan