



**TESTIMONY OF THE CRITICAL ISSUES FORUM: ADVOCACY
FOR SOCIAL JUSTICE OF MONTGOMERY COUNTY, MARYLAND
ON FEBRUARY 28, 2024
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HB 947 (The Gun Industry Accountability Act of 2024)**

Honorable Chair Luke Clippinger, Vice-Chair J. Sandy Barlett, and
Members of the House Judiciary Committee:

The Critical Issues Forum: Advocacy for Social Justice (CIF), provides this testimony in support of HB 947, the Gun Industry Accountability Act of 2024. SB 947 is designed to deter gun industry members operating in Maryland from engaging in irresponsible practices that actively contribute to the epidemic of gun violence and hold those who engage in such practices accountable for their actions.

CIF is a coalition of three synagogues, Temple Beth Ami, Kol Shalom, and Adat Shalom that include over 1,750 households and three denominations of Judaism: Reform, Conservative, and Reconstructionist. CIF serves as a vehicle for our congregations to speak out on policy issues, such as gun violence prevention, that relate to our shared values, including the Jewish traditions that emphasizes the sanctity and primary value of human life.

In 2005, President Bush signed into law the Protection of Lawful Commerce in Arms Act (PLCAA),¹ which provides immunity for firearm industry members from civil actions seeking damages or other relief “resulting from the criminal or unlawful misuse” of their products by a plaintiff or a third party.² Congress enacted PLCAA to “protect . . . firearm

¹ Pub.L. No. 109- 92, 119 Stat. 2095 (codified at 15 U.S.C. §§ 7901- 03).

² 15 U.S.C. §§7902(a), 7903(5)(A).

companies that operate *lawfully* . . . under the numerous federal and state laws regulating their operations.”³

Consistent with that purpose, PLCAA exempts from the prohibition state laws authorizing “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.”⁴ This exemption insures PLCAA “does not insulate firearm companies from their unlawful behavior.”⁵ In short, PLCAA allows States to enact laws designed to deter gun industry members from engaging in irresponsible practices that actively contribute to the increasing gun violence facing individual States and, where necessary, to hold those who engage in such practices accountable for their actions.

HB 947 is such a law. It is a narrowly tailored bill, which creates a right to file a civil action by the Attorney General or a member of the public⁶ against a firearm industry member that “knowingly” caused “harm to the public through the sale, manufacture, distribution, importation, or marketing” of a firearm-related product “by engaging in conduct that is: (1) Unlawful; or (2) Unreasonable under the totality of the circumstances.”⁷

The “[u]nreasonable under the totality of the circumstances” language is consistent with both the “knowingly” requirement of HB 947 and PLCAA. Specifically, an example in the “knowingly violated” section of PLCAA authorizes state laws where the person acted “*having reasonable cause to believe*, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm”⁸ Thus, the authorization in HB 947 of a civil action based on conduct that is “[u]nreasonable under the totality of the circumstances” clearly falls within PLCAA’s exemption.

HB 947 further requires that a firearm industry member establish reasonable controls, which it specifically defines as policies that:

³ *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 22-1823, slip op. at 26 (1st Cir. 2024).

⁴ 15 U.S.C. § 7903(5)(A)(iii).

⁵ *Estados*, slip op. at 31.

⁶ §3-2303

⁷ §3-2302(A).

⁸ 15 U.S.C. § 7903(5)(A)(iii)(II)(emphasis added).

- prevent the sale or distribution of a firearm-related product to (a) a straw purchaser, (b) a firearm trafficker, (c) a person prohibited from possessing a firearm under state or federal law, and (d) a person who it has reasonable cause to believe will use the firearm to commit a crime or harm a person;
- prevent the loss or theft of a firearm-related product; and
- ensure that the member complies with all Federal and State laws and does not promote the unlawful sale, manufacture, alteration, importation, marketing, possession, or use of a fire-arm related product.⁹

Clearly each of these “controls” is reasonable and intended to prevent conduct that is unlawful or unreasonable under the totality of the circumstances. None imposes a significant burden on law abiding firearm industry members. And none of the “controls” impinge on anyone’s Second Amendment rights.

The gun industry cannot seriously contend that the requirements of HB 947 are unduly burdensome. It, after all, provides a level of accountability that is significantly lower than that imposed by Maryland’s tort law on any other industry doing business in the state. But just as the accountability under that tort law has benefitted society, HB 497 will hopefully reduce gun violence caused by improper activities by the firearm industry.

As shown in an amicus brief filed by 18 Attorneys General,¹⁰ empirical evidence demonstrates the need for, and effectiveness of, laws such as HB 947. For example, a 2017 report determined that a quarter of all firearms recovered at crime scenes in Chicago between 2013 and 2016 were purchased at just ten dealers.¹¹ Similarly, a California study showed that 12 percent of gun dealers were responsible for selling 86 percent of the firearms recovered from the scene of violent firearm related offenses

⁹ §§3-2302(B) and 3-2301(G).

¹⁰ https://www.marylandattorneygeneral.gov/news/documents/011722_Amici_in_Support_of_New_York.pdf. This lawsuit involved a challenge to a New York statute similar to SB 488.

¹¹ City Of Chicago, Gun Trace Report 2017, at 4, bit.ly/3ltoLS2.

committed in the State between 1996 and 2000.¹² Finally, the Bureau of Alcohol, Tobacco, Firearms and Explosives reported that 14 percent of federally licensed gun dealers sold all of the firearms recovered in gun crimes nationwide in 1998.¹³

It is also well-documented that gun dealers contribute to the harm caused by firearms entering the illegal market when they engage in unlawful or irresponsible business practices, such as by selling firearms to known straw purchasers or to individuals who do not provide appropriate documentation.¹⁴ Studies reveal that most dealers are confronted with individuals whom they believe may be a straw purchaser. One study concluded that one in five dealers would sell a firearm to an individual whom they suspected was purchasing it on behalf of someone else, including for those who may not legally be allowed to buy it.¹⁵ One consequence of this conduct in the aggregate is that a large number of firearms enter the illegal market; indeed, by some estimates, nearly half of all guns that are trafficked on the secondary market began as straw purchases.¹⁶ But studies show that when gun dealers either are held accountable for their sales to straw purchasers or choose to engage in more responsible business practices that prevent such sales, there is a significant decrease in the flow of firearms into the illegal market.¹⁷

Studies also show that some gun dealers do not record sales in the manner required under state and federal law. According to one report, there were

¹² Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use* 12 (2007), bit.ly/3G6uMkO.

¹³ *Id.*

¹⁴ E.g., Philip J. Cook et al., *Some Source of Crime Guns in Chicago: Dirty Dealers, Straw Purchasers, and Illegal Traffickers*, 104 *J. Of Crim. L. & Criminology* 717, 723 (2015); Rachana Bhowmik, *Aiming for Accountability: How City Lawsuits Can Help Reform an Irresponsible Gun Industry*, 11 *J.L. & POL'Y* 67, 108-09 (2002).

¹⁵ Garen J. Wintemute, *Firearm Retailers' Willingness to Participate in an Illegal Gun Purchase*, 87 *J. URBAN HEALTH* 865, 870 (2010), bit.ly/3QCeSUn.

¹⁶ Garen J. Wintemute, *Frequency of and responses to illegal activity related to commerce in firearms: findings from the Firearms Licensee Survey*, *BMJ Inj. Prevention*, Mar. 11, 2013, at 6, bit.ly/3WQgOL1.

¹⁷ See, e.g., Daniel W. Webster et al., *Effects of Undercover Police Stings of Gun Dealers on the Supply of New Guns to Criminals*, 12 *INJ. PREVENTION* 225, 225-230 (2006); Daniel W. Webster et al., *Effects of a Gun Dealer's Change in Sales Practices on the Supply of Guns to Criminals*, 83 *J. Of Urban Health* 778, 778-87 (2006).

no records of the requisite federal forms for five percent of firearms recovered at crime scenes, even though those firearms were traced to a specific seller, suggesting that the sales were “off the books.”¹⁸

Significantly, the states of Delaware, New York, New Jersey, California, Hawaii, Washington, Illinois, and Colorado have taken advantage of the exemption in PLCAA and have enacted legislation similar to HB 947.¹⁹ The New York law has been upheld by the United States District Court for the Northern District of New York.²⁰ While the plaintiffs have appealed that decision, the Attorney General of Maryland, along with 17 other Attorneys General have filed an amicus brief in support of the District Court decision, asserting that the New York law is a valid exercise of the authority granted to the States by the Act.²¹

HB 497 is similarly a valid exercise of that authority. Importantly, it will not interfere with gun dealers who follow the rules. It is properly aimed at those who do not. It is, in short, a much needed tool to help combat the illegal sale of firearms in Maryland, which contributes to the epidemic of gun violence.

CIF urges this committee to produce a favorable report on HB 497.

¹⁸ Cook, *supra* note 7, at 744-45.

¹⁹ Del Code tit. 10 §3930; New York General Business Law §§ 898-a-e; N.J. Stat. Ann. §2C:58-35; 2022 Cal. Legis. Serv. Ch. 98 (A.B. 1594).

²⁰ *National Shooting Sports Foundation, Inc. v. James*, No. 1:21-cv-1348 (MAD/CFH) (N.D. N.Y. May 25, 2022)

²¹ See, *supra* note 3.