

Testimony

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Position: FAV

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

February 27, 2024

The Honorable Luke Clippinger
Chair, Judiciary Committee
101 House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: House Bill 947- Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

Dear Chair Clippinger:

The Office of the Attorney General supports House Bill 947, *Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)*.

House Bill 947 would provide citizens, as well as this Office, with an important tool for holding the gun industry accountable for its contributions to the crisis of gun violence in our communities. A federal statute—enacted to protect the gun industry—generally bars suits against industry members arising from the unlawful misuse of a firearm. But the statute contains an exception for suits arising out of the violation of a state or federal statute applicable to the sale or marketing of firearms and ammunition. House Bill 947 would enable use of that exception by (1) requiring firearms industry members to implement reasonable controls to prevent guns and ammunition from falling into the wrong hands; (2) requiring firearms industry members to refrain from knowingly contributing to public harm through unreasonable or unlawful conduct; and (3) allowing both the public and the Attorney General to enforce the statute against violators. I urge the Committee to favorably report House Bill 947 so that the firearms industry can be held accountable for its conduct, and so that it can be incentivized to prevent the deadly misuse of its products.

All of us are familiar with the tragic costs of Maryland’s epidemic of gun violence. On average, guns kill nearly 800 people each year in our state, with Baltimore City particularly hard-hit.¹ Much of the blame lies with the gun industry, which has done far too little to keep guns and ammunition out of the hands of those who are not allowed to have them or who would use them to do harm. According to Brady: United Against Gun Violence, “only 5% of gun dealers are responsible for 90% of recovered crime guns.”² In 2022 alone, federal firearms licensees reported the loss or theft of some 17,000 firearms.³ And the gun industry has a history of marketing its products to young people and those most prone to commit acts of violence.⁴

Federal law, however, creates impediments to holding the firearms industry accountable. The Protection of Lawful Commerce in Arms Act (“PLCAA”), enacted in 2005, prohibits any “qualified civil liability action” from being brought in federal or state court.⁵ The term “qualified civil liability action” is defined to mean “a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association . . . resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.”⁶ And “qualified product” includes firearms, ammunition, and component parts thereof.⁷ Thus, as a general matter, when guns and ammunition are used to commit acts of violence, their manufacturers and sellers are immune from suit, regardless of how blameworthy their conduct may have been.

PLCAA’s definition of “qualified civil liability action” contains exceptions, though. For instance, “an action for breach of contract or warranty in connection with the purchase of the product” is not included.⁸ Nor is “an action brought against a seller for negligent entrustment or negligence per se.”⁹ And, most important for present purposes, the definition of “qualified civil

¹ Everytown for Gun Safety, *At a Glance—Maryland*, <https://www.everytown.org/state/maryland/>.

² Brady: United Against Gun Violence, *Combating Crime Guns Initiative*, <https://brady-static.s3.amazonaws.com/crimegunsinitiative.pdf>. A “crime gun” is defined as “a gun that has been recovered by law enforcement after being used in a crime, suspected of being used in a crime, or the possession of the gun itself may have been a crime.” *Id.*

³ Bureau of Alcohol, Tobacco, Firearms and Explosives, *Federal Firearms Licensee Theft/Loss Report—2022*, <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2022>.

⁴ See, e.g., Rick Rojas et al., *Sandy Hook Families Settle with Gunmaker for \$73 Million over Massacre*, N.Y. Times, Feb. 15, 2022, <https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html>.

⁵ 15 U.S.C. § 7902(a).

⁶ *Id.* § 7903(5)(A).

⁷ *Id.* § 7903(4).

⁸ *Id.* § 7903(5)(A)(iv).

⁹ *Id.* § 7903(5)(A)(ii).

liability action” excepts “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.”¹⁰

This exception has come to known as the “predicate exception,” and it holds great promise for holding the gun industry accountable. Under the predicate exception, if a gun manufacturer or seller violates a state or federal statute governing the sale or marketing of guns and ammunition—a “predicate statute”—a suit to redress the resulting harm is not barred by PLCAA. PLCAA itself provides examples of suits that would fall within the predicate exception: suits arising out of a defendant’s noncompliance with federal or state recordkeeping requirements, suits arising out of certain false statements of fact material to the legality of firearms and ammunition transactions, and suits arising out of certain efforts to provide firearms or ammunition to people statutorily prohibited from possessing them.¹¹

House Bill 947 would add a predicate statute to Maryland law, enabling firearm manufacturers, sellers, and marketers to be sued for their irresponsible conduct without running afoul of PLCAA. The bill would create two obligations for firearms industry members (defined to include manufacturers and sellers, as well as others involved in the firearms trade). First, it would prohibit them from knowingly creating, maintaining, or contributing to public harm by engaging in conduct that is unlawful or unreasonable. Second, it would require them to establish and implement reasonable controls regarding the sale, manufacture, distribution, importation, marketing, possession, and use of firearm-related products. And the bill would enable citizens to enforce these obligations, by suing for injury or loss resulting from their violation.

The bill would allow for wider-scale enforcement, too: It would define violations as a public nuisance, and it would authorize the Attorney General to sue firearms industry members for their creation of that public nuisance. Should House Bill 947 become law, I intend to make full use of this authority to hold the firearms industry to account for its behavior.

Enacting House Bill 947 would place Maryland alongside other states that have put in place predicate legislation to hold the firearms industry accountable: In the last two years, California,¹²

¹⁰ *Id.* § 7903(5)(A)(iii).

¹¹ *Id.* § 7903(5)(A)(iii)(I), (II).

¹² Cal. Civ. Code §§ 3273.50 to .55.

Colorado,¹³ Delaware,¹⁴ Hawaii,¹⁵ Illinois,¹⁶ New Jersey,¹⁷ New York,¹⁸ and Washington¹⁹ have all enacted legislation meant to enable citizens or Attorneys General to sue bad actors in the firearm industry in a manner consistent with PLCAA. Although the details vary, these states generally require, at a minimum, that firearms industry members implement reasonable controls in marketing, selling, and distributing firearms. Some states impose additional or more specific obligations as well. All of these states allow their Attorneys General to enforce the law by suing violators. To date, none of these states' statutes has been successfully challenged in court, and at least one has been expressly upheld.²⁰

House Bill 947 would provide Marylanders harmed by gun violence with a way to recover for their injuries or for family members' loss of life, when those harms flow from a manufacturer or seller's failure to do what the statute requires. For instance, if a seller fails to secure a firearm against theft, and it is subsequently stolen and used to kill, the seller may be liable. Similarly, if a seller fails to take reasonable precautions against firearm sales to convicted felons, and a convicted felon purchases a firearm and uses it to kill, the seller may be liable.

At the same time, House Bill 947 also would provide firearms industry members with important incentives to act responsibly. The prospect of civil liability will give gun manufacturers and sellers ample reason to establish and implement controls designed to keep firearms out of the wrong hands. On that score, the statute provides industry members with guidance: It defines "reasonable controls" as policies designed to (1) prevent the sale or distribution of firearm-related products to straw purchasers, traffickers, people prohibited from possessing firearms, and certain people apt to use firearms to cause harm or commit crimes; (2) prevent loss or theft of firearm-related products; and (3) ensure that members comply with state and federal law and do not otherwise promote certain unlawful firearm-related conduct. I expect that, guided by that framework, firearms industry members will be able to devise and implement reasonable controls that comply with the statute. And if they do not, I will use the statute's enforcement mechanisms to compel them to change their behavior.

¹³ Colo. Rev. Stat. § 6-27-101 to -106.

¹⁴ Del. Code tit. 10, § 3930.

¹⁵ Hawaii Rev. Stat. § 134-A to -D.

¹⁶ 815 Ill. Comp. Stat. 505/2BBBB.

¹⁷ N.J. Stat. Ann. §§ 2C:58-34 to -36.

¹⁸ N.Y. Gen. Bus. Law § 898-A to -E.

¹⁹ Wash. Rev. Code Ann. 7.48.330.

²⁰ *See National Shooting Sports Found., Inc. v. James*, 604 F. Supp. 3d 48 (N.D.N.Y. 2022), *appeal pending*, No. 22-1374 (2d Cir.).

The Honorable Luke Clippinger

Re: HB 947— *Civil Actions - Public Nuisances - Firearm Industry Members*

February 27, 2024

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Once again, I support passage of this important legislation, and I look forward to the Committee's questions.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

HB0947_Gun_Industry_Accountability_Act_of_2024_MLC

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR HB0947

Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

Bill Sponsor: Delegate Phillips, et al

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Aileen Alex, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of HB0947 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

Our members believe firmly in common sense gun legislation, as do most gun owners and the majority of residents in Maryland. We have a lot of solid, common-sense laws on the books, but like many states, continue to see deaths from random shootings by people who should never, ever have been able to purchase a gun.

This legislation should be re-named to the "About Time the Gun Industry Was Required to Act Responsibly Act of 2024". This legislation does not make the job of gun owners more difficult. Instead, it makes firearm industry members act responsibly, by not putting profits over lives. It allows the Attorney General, or an individual, to sue them for negligence under the public nuisance statute.

Our members think this legislation is overdue and should be passed as quickly as possible. We support this bill and recommend a **FAVORABLE** report in committee.

Webster Testimony HB 947 Support Gun Accountabilit

Uploaded by: Daniel Webster

Position: FAV

HB 947
Favorable

TO: The Honorable Chair Clippinger, Vice Chair Bartlett, and Committee House *Judiciary Committee*

FROM: Daniel Webster, Sc.D., M.P.H.
Professor and Distinguished Scholar for the Johns Hopkins Center for Gun Violence Solutions

DATE: February 28, 2024

RE: HB 947

The Johns Hopkins Center for Gun Violence Solutions supports **House Bill 947: Gun Industry Accountability Act of 2024**. I am a professor at Johns Hopkins University's Bloomberg School of Public Health and Distinguished Scholar for the Johns Hopkins Center for Gun Violence Solutions. I have conducted research on state gun laws for over 30 years and communicated with many law enforcement officials charged with keeping the public safe from gun violence.

A study of ATF gun trafficking investigations found that **illegal or grossly negligent practices by retail firearm dealers accounted for more guns diverted into the illegal market than any other single trafficking channel.**ⁱ A very small percentage of firearm retailers sell the majority of guns recovered from criminals.ⁱⁱ Research shows that the disproportionate share of guns diverted for criminal use by this small fraction of gun dealers **cannot be explained solely by differences in sales volume, customer demographics, or local crime rates.**ⁱⁱⁱ My colleagues and I conducted an anonymous survey of individuals on parole or probation in Baltimore and found that 24% of those who had experience in the underground gun market indicated that they knew of gun shops in Maryland where it was easy to get a gun without a background check or record keeping.^{iv}

In 2021, more than 10,000 firearms were reported as stolen or lost from federally licensed firearms dealers. 33 Maryland dealers accounted for 153 of these lost or stolen firearms.^v **These numbers may be a gross undercount of the number of firearms that employees or the dealers themselves take from inventories and sell off the books to traffickers and criminals. ATF compliance inspections commonly reveal many firearms for which dealers cannot account.**

Weak federal laws and resource constraints hamper the ATF's ability to ensure gun dealers comply with gun laws.^{vi,vii} There are egregious examples of scofflaw gun dealers whose guns were commonly linked to violent crime for many years before federal action was taken.^{viii,ix} **Maryland's laws governing firearm dealers are stronger than those in many state; but HB**

947 will, in my opinion, enhance the state’s ability to prevent guns from being diverted for use in crime. My research has shown that states with strong regulation and oversight of firearms dealers will have lower rates of firearms being diverted for criminal use than other states.^x

I have led two studies showing that lawsuits against retail gun dealers led to significant reductions guns diverted for criminal use in three major cities.^{xi} One examined the effects of firearms dealers being sued by New York City for practices that contributed to firearm trafficking. **Twenty-four dealers settled their lawsuit by agreeing to adopt a series of policies to prevent illegal sales and theft including measures included in HB 947 such as requiring security cameras and strong inventory control measures. We found an 82% decrease in the probability that guns sold by these gun dealers were subsequently recovered by NYPD after the dealers implemented these new measures.**^{xii}

Accordingly, the Johns Hopkins Center for Gun Violence Solutions respectfully requests a **FAVORABLE** committee report on **HB 947**.

ⁱ Braga AA, Wintemute GJ, Pierce GL, Cook PJ, Ridgeway G. Interpreting the empirical evidence on illegal gun market dynamics. *Journal of Urban Health* 2012; DOI 10.1007/s11524-012-9681-y.

ⁱⁱ Bureau of Alcohol, Tobacco and Firearms (ATF). *Crime Gun Trace Reports (2000): The Youth Gun Interdiction Initiative*. Washington, DC: U.S. Department of the Treasury, 2002.

ⁱⁱⁱ Wintemute GJ, Cook PJ, Wright MA. Risk factors among handgun retailers for frequent and disproportionate sales of guns used in violent and firearm related crimes. *Injury Prevention* 2005; 11:357-363.

^{iv} Crifasi CK, Buggs SAL, Booty MD, Webster DW, Sherman SG. Baltimore’s Underground Gun Market: availability of and access to guns. *Violence and Gender* 2020. <https://doi.org/10.1089/vio.2019.0054>

^v Bureau of Alcohol, Tobacco, Firearms and Explosives. *Federal Firearms Licensee Theft/Loss Report – 2021*. <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>

^{vi} Inspector General of the United States Department of Justice. *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*. Report I-2004-2005. Washington, DC, July 2004.

^{vii} Braga AA, Gagliardi PL. “Enforcing Federal Laws Against Firearms Traffickers: Raising Operational Effectiveness by Lowering Enforcement Obstacles,” pages 143-156 in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, Daniel W. Webster and Jon S. Vernick, Eds. Baltimore: Johns Hopkins University Press, 2013.

^{viii} Brady Center to Prevent Gun Violence. *Death Valley: Profile of a Rouge Gun Dealer: Valley Gun Baltimore, Maryland*. Washington, DC, June 2006.

^{ix} *The Washington Post*. “The Dance of Revocation.” December 14, 2010.

^x Webster DW, Vernick JS, Bulzachel MT. Effects of state-level firearm seller accountability policies on firearms trafficking. *Journal of Urban Health* 2009; 86:525-537.

^{xi} Webster DW, Vernick JS, Bulzacchelli MT. Effects of a gun dealer's change in sales practices on the supply of guns to criminals. *Journal of Urban Health* 2006; 83:778-787.

^{xii} Webster DW, Vernick JS. "Spurring Responsible Firearms Sales Practices through Litigation: The Impact of New York City's Lawsuits Against Gun Dealers on Interstate Gun Trafficking," p. 123-32. Webster DW, Vernick JS, Eds. *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*. Baltimore, MD: Johns Hopkins University Press, 2013.

Final CIF testimony HB 947-1.pdf

Uploaded by: Jim Lieberman

Position: FAV



**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.

2024 SB488_HB947 House testimony (PLCAA).pdf

Uploaded by: Karen Herren

Position: FAV



Testimony in **Support** of
Civil Actions - Public Nuisances -
Firearm Industry Members
(Gun Industry Accountability Act of 2023)

SB488/HB947
Executive Director Karen Herren
Marylanders to Prevent Gun Violence

February 28, 2024

Dear Chair Clippinger, Vice-Chair Bartlett, and distinguished members of the committee,

Marylanders to Prevent Gun Violence (MPGV) is a statewide organization dedicated to reducing gun deaths and injuries throughout the state of Maryland. We urge the committee for a **FAVORABLE** report on **House Bill 947** to create a State cause of action permissible under the Protection of Lawful Commerce in Arms Act (“PLCAA”)¹.

BACKGROUND

Civil liability is effectively used in the United States as an important check on irresponsible and harmful industry behaviors. When legislators have been unwilling or unable to enact laws regulating a dangerous industry, the possibility of civil litigation has helped to incentivize industries to take reasonable steps to prevent their products or business practices from causing foreseeable risks to human life and well-being. Traditionally, this means that victims harmed by wrongful conduct, or public officials on the people’s behalf, can seek fair justice and accountability in the courts by filing lawsuits seeking monetary compensation or other court-ordered relief when industries have negligently or recklessly caused harm or failed to take reasonable steps to prevent foreseeable harm. However, in 2005, President Bush signed the Protection of Lawful Commerce in Arms Act (“PLCAA”) which gave the gun industry enormous exemptions from liability and accountability within the justice system. PLCAA has granted the gun industry unprecedented immunity from this system of justice and accountability. In

¹ 15 U.S.C. § 7901-7903

addition to shielding the gun industry, these legal immunities also provide an unfair business advantage to irresponsible firearm industry members over more responsible competitors who take stronger precautions to protect human life and well-being.

PLCAA AND EXCEPTIONS

PLCAA provides general immunity from lawsuits to federally licensed manufacturers, federally licensed firearm dealers and importers, and entities engaged in the business of selling ammunition at the wholesale or retail level. PLCAA prohibits plaintiffs from bringing “qualified civil liability actions” against these industry defendants. “Qualified civil liability actions” are civil or administrative proceedings for damages or other relief brought by any person including a governmental entity, “resulting from the criminal or unlawful misuse” of firearms, ammunition, or firearm or ammunition component parts by the plaintiff or a third party. There are 6 exceptions to the general industry immunity under 15 U.S.C. § 7903(5)(A):

- An action brought against someone convicted of “knowingly transfer[ing] a firearm, knowing that such firearm will be used to commit a crime of violence” by someone directly harmed by such unlawful conduct;
- An action brought against a seller (or importer) for negligent entrustment or negligence per se;
- **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, if the violation was a proximate cause of the harm for which relief is sought.**
- An action for breach of contract or warranty in connection with the purchase of the product;
- An action for death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or
- An action commenced by the Attorney General to enforce the Gun Control Act or the National Firearms Act.

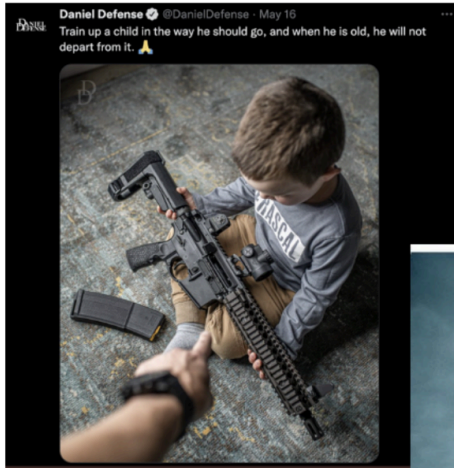
PLCAA provides firearm industry defendants with broad immunity from many common law tort actions, but also provides exceptions, including what has been

called the “predicate exception,” which authorizes plaintiffs to bring civil actions against a firearm industry defendant who has knowingly violated a statute applicable to the sale or marketing of a firearm or other qualified product, if the violation was a proximate cause of the plaintiffs’ harm.

CONCLUSION

House Bill 947 seeks to codify into Maryland law a firearm industry standard of conduct under the predicate exception clarifying the obligations and prohibitions that are unquestionably and specifically applicable to the sale and marketing of firearms and to provide redress to victims when the industry fails to uphold that standard. MPG^V urges a FAVORABLE report on **House Bill 947**.

Gun Industry Marketing has given us a national nightmare.



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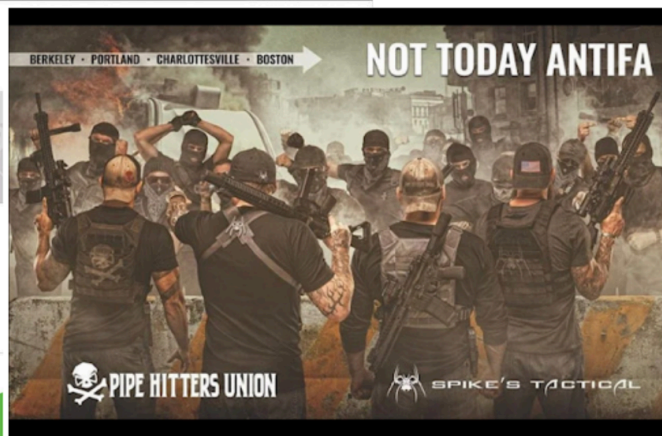
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 PATENTED SAFETY
 MADE IN USA

Our goal was to develop a shooting platform that was not only sized correctly, and safe, but also looks, feels, and operates just like Mom and Dad's gun. Safety was at the heart of our thought process that we developed and patented a tamper resistant safety that puts the adult in control of the firearm safety switch. The WHEEL and School Tool Team brought their collective experience in the firearms business, specifically the AR platform, to the table to launch the JR-15. We are so excited to start capturing the imagination of the next generation to enter the shooting sports.

SPECIFICATIONS

SIZE:	30.75"
WEIGHT:	APPROX 2.85
SAFETY:	PATENTED TAMPER RESISTANT
LOWER:	POWNER
UPPER:	POWNER
RAIL:	STANDARD PICATINNY RAIL WITH M-LOK FOR ALL STANDARD ACCESSORIES
TRIGGER:	MPH MIL-SPEC
BARREL:	16"
SIGHT:	NO SIGHT INCLUDED
MAGAZINE:	100, 150, 190, with WHEEL 30 MAG

WHEEL TACTICAL



HB 947 - MoCo_Boucher_FAV (GA 24).pdf

Uploaded by: Kathleen Boucher

Position: FAV



Montgomery County

Office of Intergovernmental Relations

ROCKVILLE: 240-777-6550

ANNAPOLIS: 240-777-8270

HB 947

DATE: February 28, 2024

SPONSOR: Delegate Phillips, et al

ASSIGNED TO: Judiciary

CONTACT PERSON: Kathleen Boucher (Kathleen.boucher@montgomerycountymd.gov)

POSITION: Support

Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2024)

This bill allows the Attorney General and members of the public to sue a “firearm industry member” (i.e., manufacturer, distributor, dealer, marketer, or importer) when they knowingly create a “public nuisance” by engaging in conduct that is unlawful or unreasonable under the totality of circumstances. The Attorney General may seek injunctive relief, restitution, compensatory and punitive damages, reasonable attorney’s fees and costs, and any other appropriate relief. A member of the public may seek compensatory and punitive damages for injury or loss as well as injunctive relief and reasonable attorney’s fees and costs.

The bill requires firearm industry members to establish “reasonable controls” regarding firearm-related products (i.e., firearms, component parts, and ammunition) to protect against public harm. The term “reasonable controls” is defined to mean policies that are designed to: (1) prevent the sale or distribution of a firearm-related product to a straw purchaser, firearm trafficker, or any person prohibited from possessing a firearm-related product under federal or State law or for whom the manufacturer or distributor has reasonable cause to believe intends to use the product to commit a crime or cause harm to self or others; (2) prevent the loss or theft of firearm-related products; and (3) ensure compliance with State and federal law.

The County supports this bill and respectfully requests that the House Judiciary Committee give the bill a favorable report with any amendments necessary to ensure its legal validity. Gun violence throughout our country continues unabated and regulation of these deadly instruments is woefully inadequate. It is critically important the Attorney General and individuals harmed by gun violence have a clear path for holding the firearms industry accountable for practices that pose a risk to public health and safety.

Support - HB 947 - Civil Actions- Public Nuisances

Uploaded by: Ken Shilling

Position: FAV



Unitarian Universalist Legislative Ministry of Maryland

Testimony in Support of - HB 947- Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

TO: Delegate Luke Clippinger, Chair and Members of the Judiciary Committee
FROM: Ken Shilling, Gun Violence Prevention Lead Advocate
Unitarian Universalist Legislative Ministry of Maryland
DATE: February 28, 2024

As a Unitarian Universalist, I know that my conscience will not be quieted by anything less than truth and justice. The gun industry should be held accountable for dangerous products and irresponsible business practices. In pursuit of justice, I ask you to support **HB 947 - Gun Industry Accountability Act**.

Gun manufacturers have failed to include safety features that could prevent unauthorized access to firearms. The industry is irresponsible for not applying childproofing technologies that can prevent unintentional shootings by children.

It is reprehensible that gun marketing is aimed to appeal to children. We have laws that prohibit selling alcohol or tobacco to minors. There is no justification to design and market a child-sized assault weapon—the JR-15—to children.¹ Children do not have the training nor the mature judgment needed to handle an assault weapon.

There are some bad actors in the gun industry who have poor safety or training practices. They do not follow basic security measures. Some commit intentional criminal acts. We believe that they should be held accountable for dangerous and irresponsible business practices that harm people and endanger public safety. Unfortunately, these bad actors aren't being held to the same standards to which we hold any other citizen.

HB 947 prohibits the firearm industry from creating or contributing to a public nuisance through irresponsible and dangerous business practices. It requires the firearm industry to establish and implement certain reasonable controls which prevent guns from falling into the hands of criminals or individuals unfit to possess a firearm.

Responsible business practices are necessary—but not sufficient.

Reasonable controls are necessary—but not sufficient.

We must acknowledge that justice denied is an injustice to those who have been harmed. We need to ensure justice for those harmed by irresponsible and dangerous business practices, or unsafe products.

HB 947 aims to protect public safety and promote accountability within the gun industry. Those harmed should be able to make their case in courts in order to hold the firearm industry accountable to protect public safety.

This is American justice.

We urge a favorable report. Vote for HB 947.

Ken Shilling

Ken Shilling, Gun Violence Prevention Lead Advocate

¹ <https://www.medpagetoday.com/opinion/second-opinions/106206>

The JR-15 Rifle Places Children's Safety in the Crosshairs

by Apurva Bhatt, MD September 6, 2023

HB947 Legislative Testimony Feb28.pdf

Uploaded by: Kevin Sullivan

Position: FAV



2024 LEGISLATIVE TESTIMONY

HB 947

CIVIL ACTIONS - PUBLIC NUISANCES - FIREARM INDUSTRY MEMBERS (GUN INDUSTRY ACCOUNTABILITY ACT OF 2024) FAVORABLE

Good morning, Chairman Clippinger and Vice Chairman Bartlett and members of the committee. My name is Kevin Sullivan. I am an attorney at Salsbury Sullivan, LLC in Baltimore. I am here on behalf of the Maryland Association of Justice to speak in favor of House Bill 947.

This bill aims to hold the sellers of firearms responsible for selling a firearm to someone who should not possess one. That seems like common sense.

If we are going to entrust a company to sell a dangerous weapon – the most dangerous weapon – to members of the public, we should insist that they do so in a responsible way.

I currently represent the family of Jake Mace in a federal lawsuit against Walmart. Jake was a Walmart employee experiencing an acute mental health crisis. He was hospitalized several times after expressing suicidal intentions. Jake's managers at Walmart knew of his hospitalizations and suicidal intentions. A week before his death, Jake sent a text message to a Walmart co-worker explaining his plan to purchase a gun to kill himself. The co-worker forwarded that text message to Jake's manager and pleaded with the manager to put Jake on a blacklist so he could not buy a firearm at Walmart. The manager said he would "take care of it." But nothing was done. A week later, Walmart sold Jake a gun. He used it to take his life in the parking lot. Jake was married with a young son and another one on the way when he died.

House Bill 947 would help ensure that something like that will not happen to another family.

The proposed law also provides for punitive damages. This is important because, in Maryland, there is cap on the amount of damages one can recover in a wrongful death case and unfortunately the cap reduces the value of cases to the point where big companies like Walmart are not incentivized to make changes. But, if punitive damages were available, that is the type of law that will make large companies take notice and make substantive changes.



2024 LEGISLATIVE TESTIMONY HB 947

CIVIL ACTIONS - PUBLIC NUISANCES - FIREARM INDUSTRY MEMBERS (GUN INDUSTRY ACCOUNTABILITY ACT OF 2024) FAVORABLE

And the types of changes we are talking about— instituting reasonable controls— should be ones we can all get behind.

Gun violence is real. The experts all agree that firearms are the most effective means of ending a life. As the father of three daughters in Maryland public schools this is not lost on me. One of my biggest fears is an active shooter at a school. We must do everything in our power to reduce the risk of that.

House Bill 947 will not eliminate gun violence, but it will help to assure that guns are not placed into the hands of individuals who should not have them, and it will hold companies accountable for the irresponsible sale of firearms.

For all of these reasons, I urge the committee to submit a favorable report on HB 947.

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

10440 Little Patuxent Parkway, Suite 250
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mdforjustice.com

hb947- firearms, civil actions- JUD 2-28-2024.pdf

Uploaded by: Lee Hudson

Position: FAV



Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony prepared for the
Judiciary Committee
on
House Bill 947
February 28, 2024
Position: **Favorable**

Mr. Chairman and members of the Committee, thank you for this opportunity to testify for public safety as a human right. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America, a faith community with three judicatories across our State.

Our community has stated support for adequate weapons regulation as an essential for public security and safety. At this point the American public has substantially come into agreement with most of our community's commitments on the subject, according to polling data.

It is also reliably reported that the primary reason the American landscape is a free-fire zone is that, uniquely among commercial product sold to the public, firearms have been exempted from legislated safety standards and regulation. We do not do to weapons what we do to appliances, vehicles, and other implements. This is on purpose: here is that narrative from the Giffords.org webpage—

The Protection of Lawful Commerce in Arms Act and Child Safety Lock Act of 2005 ("PLCAA" and "CSLA") provided the gun industry with immunity from most tort liability. The PLCAA prohibited a "qualified civil liability action" from being brought in any state or federal court and required immediate dismissal of any such action upon the date the PLCAA was enacted (October 26, 2005). The strategy that birthed the American free-fire zone removed manufacturers from any possibility of civil accountability for their products. Again, this is so exceptional as to be without example; or warrant.

House Bill 947 re-authorizes members of the Maryland public to initiate civil actions when a manufacturer's product causes harm. It is apparent that juries are becoming receptive to this right, despite all else. Certainly, the members of this Committee know that the harm being caused by the product is the most extreme there can possibly be.

Thus, we implore your favorable report.

Lee Hudson

2-28 HB 947 Civil Actions- Public Nuisances- Fire

Uploaded by: Nancy Soreng

Position: FAV



TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE

HB 947: Civil Actions- Public Nuisances- Firearm Industry Members (Gun Industry Accountability Act of 2024)

POSITION: Support

BY: Linda Kohn, President

DATE: February 28, 2024

The League of Women Voters is a nonpartisan organization that works to influence public policy through education and advocacy. The League supports strong federal measures to limit accessibility and regulate the ownership of firearms by private citizens and **supports the allocation of resources to better regulate and monitor gun dealers.**

The League of Women Voters thus supports **House Bill 0947 Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024).**

Over 820 people are killed by gun violence every year in Maryland. Another 1400 are injured.ⁱ To address this issue, Maryland must target illegal practices within the gun pipeline. For example, under a similar nuisance law, New York City has sued five online ghost-gun retailers to stop the companies from illegally selling these guns and the kits to make them. To date, New York City has successfully negotiated agreements with four firearm companies, and obtained a preliminary injunction against a fifth, to stop the illegal sale of these ghost guns and kits.ⁱⁱ

HB 947 will allow both the Office of the Attorney General and private citizens to defend against improper practices within the firearms industry that threaten the lives and well-being of Maryland residents.

Reducing firearm violence is of crucial importance to our families, our schools, our communities, and our state. The League of Women Voters Maryland, representing 1,500+ concerned members throughout Maryland, urges a favorable report on House Bill 947.

ⁱ <https://www.marylandnonprofits.org/action-to-care-maryland-needs-a-big-plan-to-tackle-gun-violence-in-2023-and-we-all-play-a-part/>

ⁱⁱ <https://www.nyc.gov/office-of-the-mayor/news/039-23/new-york-city-supports-new-york-state-fight-against-gun-violence>

2024 MD Industry Accountability Written Testimony

Uploaded by: Ramya Swami

Position: FAV

Brady
840 First St. NE Ste. 400
Washington, DC 20002



Testimony of Ramya Swami, Manager, State Policy, Brady
Support for HB 947 [FAV]
Before the Maryland House Judiciary Committee
February 28, 2024

Chair Clippinger, Vice Chair Moon, and distinguished members of the Maryland House Judiciary Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America’s gun violence epidemic. Brady today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah’s legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence. **In furtherance of our goal to reduce firearm violence across Maryland, the Brady Campaign to Prevent Gun Violence and Brady Maryland are proud to support the passage of House Bill 947.** HB 947 creates a path for gun industry members to be held accountable for dangerous, unlawful, negligent and unsafe business practices that impact Marylanders and removes barriers that currently prevent victims and survivors from obtaining justice in the courtroom.

The Gun Industry has been Afforded Special Protections that Harm Marylanders

A top priority of the gun industry, the Protection of Lawful Commerce in Arms Act (PLCAA) was signed into law by then-President George W. Bush in 2005.¹ PLCAA provides gun manufacturers, distributors, and gun dealers with special protections from civil liability that no other U.S. industry is currently afforded. Although PLCAA does not provide complete immunity from all civil lawsuits, some courts have interpreted the law to effectively bar victims and survivors of gun violence from holding firearms businesses liable for injuries caused by negligence, defective products, or unreasonably dangerous conduct that would otherwise be actionable under civil justice principles. Enabling the gun industry to evade accountability at the expense of victims of gun violence significantly contributes to the gun violence epidemic by removing key incentives for the gun industry to adopt life-saving business practices.²

¹ 15 U.S.C. § 7901 (2005).

² Brady Campaign & Brady Center, “*What is PLCAA?*”, Brady, available at <https://www.bradyunited.org/fact-sheets/what-is-plcaa>.

Moreover, PLCAA has had a chilling effect on civil cases against the gun industry and has worked to prevent victims and survivors from recovering damages they are owed after tragic injuries or deaths. HB 947 would ensure that the gun industry would no longer be shielded from accountability for their dangerous, irresponsible, or illegal practices that endanger the lives of Marylanders.

PLCAA Denies Justice to Victims and Survivors

Victims should have recourse for the gun industry's negligence and dangerous practices, but PLCAA currently protects gun dealers and manufacturers from being held responsible. Gun dealers and manufacturers should be held responsible for negligent and irresponsible sales practices that are the proximate cause of an individual's injuries or death, and for selling to someone who is likely to harm themselves or others. Manufacturers who design firearms without life-saving safety features, such as chamber-loaded indicators and magazine disconnect safeties, or sell to someone who is clearly likely to harm themselves should be held liable for their design failures and malpractice.³

PLCAA Perpetuates the Flow of Crime Guns into Communities of Color

The latest available data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reveals that just 2.7 percent of dealers accounted for over 71 percent of crime gun traces.⁴ While this small minority of gun dealers are the sources of crime guns recovered in communities of color, these gun dealers typically sit outside those communities in less diverse and more affluent suburbs.⁵ Residents of these communities suffer from the chronic stress of daily interpersonal gun violence and the negative impacts on their community's economic prosperity, without recourse or compensation, while irresponsible gun dealers face no consequences. The implications of this lack of accountability cannot be overstated. While gun violence touches Americans across the country, it disproportionately impacts communities of color. Approximately 80 percent of America's gun deaths occur in urban areas with large minority populations.⁶ Black Americans are 11 times more likely than their white peers to be the victim of a firearm homicide, and this problem is exacerbated for Black males, who lose four years in life expectancy on the basis of gun violence alone.⁷ Non-Hispanic Black males in Maryland are 27.7 times more likely to be victims of firearm homicide than non-Hispanic white males.⁸

³ Vernick, J., Meisel, Z., Teret, S., Milne, J. and Hargarten, S., 1999. "I Didn't Know the Gun Was Loaded": An Examination of Two Safety Devices That Can Reduce the Risk of Unintentional Firearm Injuries," *Journal of Public Health Policy*, 20(4), pp.427-440, available at <https://www.jstor.org/stable/3343129?seq=1>.

⁴ Department of the Treasury, "Commerce in Firearms in the United States," Bureau of ATF (Feb. 2000), available at http://www.joebrower.com/RKBA/RKBA_FILES/GOV_DOCS/BATF_report_020400.pdf.

⁵ Brady Campaign and Brady Center, "Crime Guns in Impacted Communities," Brady, available at <https://www.bradyunited.org/reports/crime-guns-in-impacted-communities>.

⁶ *Id.*

⁷ CDC, "Injury Prevention & Control," available at <https://www.cdc.gov/injury/wisqars/fatal.html>; Kalesan, B., Vyliparambil, M., Zuo, Y., Siracuse, J., Fagan, J., Branas, C. and Galea, S., 2018. "Cross-sectional study of loss of life expectancy at different ages related to firearm deaths among black and white Americans," *BMJ Evidence-Based Medicine*, 24(2), pp.55-58, available at <https://ebm.bmj.com/content/24/2/55>.

⁸ CDC, "Injury Prevention & Control," available at <https://www.cdc.gov/injury/wisqars/fatal.html>.

PLCAA Disincentivizes Responsible Business Practices

The mere threat of civil liability motivates companies to adopt safe business practices that prevent future injuries and death.⁹ For example, car manufacturers made numerous safety improvements that have cut automobile-related deaths by 50 percent since the 1960s, primarily because of technological advancements spurred by fear of liability.¹⁰ PLCAA effectively removed this motivation for the gun industry, disincentivizing gun dealers from adopting safe sales practices and gun manufacturers from incorporating affordable life-saving safety devices into their products and monitoring their distribution practices.¹¹ While the gun industry claims that mental health and violent video games are to blame for gun violence, it's actually common industry practices that create the conditions that enable most gun violence to occur.¹² The limitations on the ability to hold the industry accountable prevent public awareness and deter regulatory changes, as well as disincentivize independent action by the industry to avoid liability, all of which would reduce gun violence and save lives.

Conclusion

HB 947 will function as an exception to PLCAA, ensuring that valid civil claims can be brought against the gun industry for their dangerous, negligent, and even unlawful actions. The possibility of civil liability will not only provide civil justice to victims and survivors but also encourage the gun industry to act responsibly to help stem the tide of crime guns that harm Marylanders, particularly in urban areas where communities of color are disproportionately harmed. Having operated with special protections for years, the industry has had no financial incentive to curb irresponsible conduct and instead puts profits over people. The prospect of civil liability can lead to safer products and better conduct that the industry has resisted for years.

HB 947 must be enacted because no industry should be above the law, especially not one that makes and sells lethal weapons. HB 947 will make sure that bad actors in the gun industry are held accountable and victims of gun violence are able to get justice through the law. ***For the reasons described above, Brady urges the committee to support the passage of Senate Bill 488.***

Sincerely,

Ramya Swami
State Policy Manager
Brady Campaign to Prevent Gun Violence

Mindy Landau
State Executive Director
Brady, Montgomery County

⁹ Vernick, J. et al., 2003. "Role of Litigation in Preventing Product-related Injuries," *Epidemiologic Reviews*, 25(1), pp.90-98, available at <https://academic.oup.com/epirev/article/25/1/90/718671>.

¹⁰ LaFrance, Adrienne, "Why Haven't Gunmakers Improved Safety Technology the Way Automakers Did?," *The Atlantic* (Jan. 21, 2016), available at <https://www.theatlantic.com/technology/archive/2016/01/guns-cars/424878/>.

¹¹ Sampson, Kelly, "Tobacco Kills People. Opioids Kill People. But Guns Don't?," *Brady* (Sept. 4, 2019), available at <https://bradyunited.medium.com/tobacco-kills-people-opioids-kill-people-but-guns-dont-7852c288d496>.

¹² Zeballos-Roig, Joseph, "The NRA Issued a Statement Supporting Trump's Call to Focus on Mental Illness to Reduce Gun Violence after the Shootings in El Paso and Dayton," *Insider* (Aug. 5, 2019), available at <https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8>; Hudson, Laura, "The NRA Solution to Gun Violence: More Guns, Fewer Video Games," *Wired* (Dec. 21, 2012), available at <https://www.wired.com/2012/12/nra-video-games/>; Gluck, A., Nabavi-Noori, A. and Wang, S., 2021. Gun Violence in Court. *The Journal of Law, Medicine & Ethics*, 48(S4), pp.90-97, available at <https://journals.sagepub.com/doi/abs/10.1177/1073110520979406>.

Testimony in support of HB0947.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

HB0947_RichardKaplowitz_FAV
2/28/2022

Richard Keith Kaplowitz
Frederick, MD 21703-7134

TESTIMONY ON HB#0947 - POSITION: FAVORABLE

Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

TO: Chair Clippinger, Vice Chair Bartlett, and members of the Judiciary Committee

FROM: Richard Keith Kaplowitz

My name is Richard Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of/ HB#/0947, Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

Multiple laws exist that protect consumers from harm from unsafe products. We have an epidemic of gun violence in this country with more than one mass shooting a day since the beginning of the year. Much of this is attributable to the firearms industry's total disregard of how their products are marketed and sold. Weapons of war are being manufactured, imported, and sold, and the responsible parties have been shielded from responsibility for the carnage.

This bill is an attempt to alleviate some of the problems caused by this immoral conduct by that industry that no other industry would and is held harmless for. It will permit those damaged by the weapons so carelessly made available to have a path to redress the effects on them and our society at large by the willful proliferation of these dangerous weapons. The misinterpretation of the second amendment ignores the "well regulated militia" component of the amendment and favors arming everyone with weapons not meant for personal protection but for conducting warfare. The framers of the Constitution could not have foreseen, in a era of muskets, the quick and deadly arms now overwhelming our society.

This bill is an attempt to restore a balance between those harmed by guns and those whose sale, manufacture, distribution, importation and marketing have impacted their lives so tragically.

I respectfully urge this committee to return a favorable report on HB0947.

HB 947, Civil Actions-Firearm Industry, 2024, Shar

Uploaded by: Bradford Sharpless

Position: UNF

DATE: February 28, 2024
BILL NO.: House Bill 947
COMMITTEE: Judiciary
TITLE: *Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)*
POSITION: Oppose

Testimony from: Bradford V. Sharpless
316 Townleigh Road
Reisterstown, MD 21136
Registered Democrat, District 10

HB 947 creates a requirement that “A FIREARM INDUSTRY MEMBER SHALL ESTABLISH AND IMPLEMENT REASONABLE CONTROLS REGARDING THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, MARKETING, POSSESSION, AND USE OF THE FIREARM INDUSTRY MEMBER’S FIREARM-RELATED PRODUCTS.” The bill in no way defines “reasonable controls,” making it impossible for firearm industry members to fully verify that they are compliant with the bill’s provisions. HB 947 doesn’t even require that industry members be aware that they are violating the law before they are opened to potential civil action. It is unreasonable for the government to place regulatory burdens on an industry for which industry members can be held liable without providing associated safe harbor mechanisms.

I request an “**unfavorable**” vote on HB 947.

House Bill 947 PLCAA.pdf

Uploaded by: Cathy Wright

Position: UNF



House Bill 947
Civil Actions – Public Nuisances – Firearm Industry Members
Gun Industry Accountability Act of 2024

UNFAVORABLE

The Maryland State Rifle & Pistol Association (MSRPA) opposes HB 947, the Gun Industry Accountability Act of 2024.

The intent of this bill is to overrule the Protection of Lawful Commerce in Arms Act (PLCAA), a United States Federal law which protects firearm manufacturers and dealers from being held liable for criminal misuse of their products. The PLCAA was enacted in 2005 by a broad bipartisan majority in response to dozens of frivolous lawsuits orchestrated and largely funded by gun control groups, solely to put gun companies out of business based on circumstances beyond their control.

Despite political rhetoric to the contrary, the PLCAA does not grant the firearm and ammunition industry blanket immunity from suit different than that enjoyed by other industries. Instead, the PLCAA codifies common law and common sense principles to prevent baseless litigation from bankrupting an entire lawful industry. In addition, PLCAA does not shield gun companies from being sued for wrongdoings. It includes carefully crafted exceptions to allow legitimate victims their day in court for cases involving defective firearms, breaches of contract, criminal behavior by a gun maker or seller, or the negligent entrustment of a firearm to an irresponsible person.

HB 947 is similar to HB 259 in 2023 which was considered by this committee last year but failed to advance. This bill will not pass muster with the Maryland Declaration of Rights. In addition, a federal judge has blocked California's attorney general from enforcing a new law that allows residents, the state and local governments to sue members of the firearms industry that manufacture or sell "abnormally dangerous" guns. U.S. District Judge Andrew Schopler found the law likely violated the Constitution's so-called dormant Commerce Clause, which restricts states from interfering with interstate commerce. The ruling stems from a lawsuit filed by the National Shooting Sports Foundation (NSSF), arguing that the law violates constitutional provisions, including the Second Amendment and the dormant Commerce Clause. Judge Schopler found that the law likely interferes with interstate commerce by extending liability beyond California's borders. He issued a preliminary injunction preventing the state's Attorney General from suing NSSF members while the legal challenge progresses.

Page 2

MSRPA testimony HB 947

Maryland's licensed firearms dealers are NOT the source of reckless, illegal actions of negligent citizens or violent criminals. (See OAG Maryland Firearm Crime, Injuries, Fatalities and Crime Firearms Study; pages 25-27) The firearms industry is already highly regulated by federal and state statutes, with severe civil and criminal penalties for any and all criminal transgressions.

The manufacture, distribution, and sales of firearms, ammunition, and accessories associated with hunting and shooting sports contribute to Maryland's economy. There are hundreds of firearm related businesses, with good paying jobs, which contribute millions of dollars in taxes to the state, including taxes used for conservation. You will put an industry out of business, cause people to lose their jobs, reduce the state's income tax receipts, and thereby harm Maryland's economy, *that on top of a \$1.1 billion deficit.* (See NSSF Economic Impact of the Firearm Industry / Maryland)

Bottom line: HB 947 threatens a lawful industry, our basic constitutional rights of self-defense, and our civil liberties, *and* it will not make Maryland safer from criminal violence.

The MSRPA respectfully requests an unfavorable report on HB 947.

Cathy S. Wright, MSRPA VP, Legislative Affairs

cwright@msrpa.org

<http://www.msrpa.org>

The MSRPA is the official National Rifle Association state organization for Maryland. The MSRPA's mission is to defend our rights in Maryland, support training in firearm safety and shooting skills through its affiliated clubs, and sponsor and sanction local competition throughout the state.

Maryland 2022.pdf

Uploaded by: Cathy Wright

Position: UNF

The Firearm Industry Creates Jobs in Maryland

Maryland companies that manufacture, distribute, and sell sporting firearms, ammunition, and supplies are an important part of the state's economy. Manufacturers of firearms, ammunition, and supplies, along with the companies that sell and distribute these products, provide well-paying jobs in Maryland and pay significant amounts in tax to the state and Federal governments.

The Economic Impact of the Sporting Arms and Ammunition Industry in Maryland

	Direct	Supplier	Induced	Total
Jobs (FTE)	1,913	935	1,379	4,227
Wages	\$136,731,200	\$91,533,300	\$105,822,700	\$334,087,200
Economic Impact	\$458,358,500	\$228,542,200	\$310,615,200	\$997,515,900

The Firearm & Ammunition Industry is an Important Part of Maryland's Economy

Companies in Maryland that manufacture, distribute, and sell firearms, ammunition, and hunting equipment employ as many as 1,913 people in the state and generate an additional 2,314 jobs in supplier and ancillary industries. These include jobs in supplying goods and services to manufacturers, distributors, and retailers, and those that depend on sales to workers in the firearm and ammunition industry.¹

These are good jobs paying an average of \$79,000 in wages and benefits. And today, every job is important. The state currently has an unemployment rate of 4.0 percent. This means that there are already 127,600 people trying to find jobs in the state and collecting unemployment benefits.²

The Economic Benefit of the Industry Spreads Throughout the State

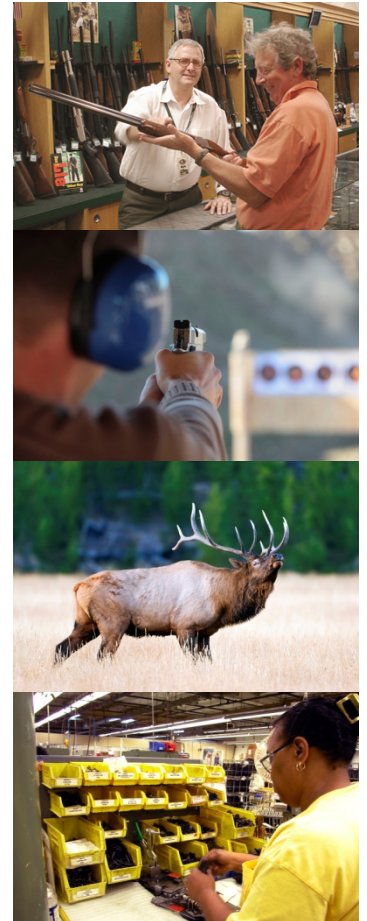
Not only does the manufacture and sale of firearms and hunting supplies create good jobs in Maryland, but the industry also contributes to the economy as a whole. In fact, in 2022 the firearm and ammunition industry was responsible for as much as \$997.52 million in total economic activity in the state.

The broader economic impact flows throughout the economy, generating business for firms seemingly unrelated to firearms. Real people, with real jobs, working in industries as varied as banking, retail, accounting, metal working, even in printing, all depend on the firearm and ammunition industry for their livelihood.

The State Also Benefits From the Taxes Paid By The Industry

Not only does the industry create jobs, it also generates sizeable tax revenues. In Maryland, the industry and its employees pay over \$82.93 million in taxes including property, income, and sales based levies.³

Taxes Generated in Maryland		
Tax Impact	Business Taxes	Excise Taxes
Federal Taxes	\$68,688,400	\$12,924,900
State Taxes	\$14,245,100	
Total Taxes	\$82,933,500	\$12,924,900



¹ John Dunham & Associates, Florida, December 2022. Direct impacts include those jobs in firearms and ammunition manufacturers, as well as companies that manufacture products such as ammunition holders and magazines, cases, decoys, game calls, holsters, hunting equipment, scopes, clay pigeons and targets. Direct impacts also include those resulting from the wholesale distribution and retailing of these products.

² The Bureau of Labor Statistics. Available online at: www.bls.gov/lau/home.htm. Data for Dec.-2022.

³ This is in addition to over \$12.92 million in federal excise taxes per Alcohol and Tobacco Tax and Trade Bureau.

OAG_122023_Firearms_Report.pdf

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Maryland Firearm Crime, Injuries, Fatalities, and Crime Firearms Study

For the period of August 1, 2020 through July 31, 2021



Maryland Firearm Crime, Injuries, Fatalities, and Crime Firearms Study

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Background and Purpose

The Office of the Maryland Attorney General (OAG) contracted with the Wyoming Survey & Analysis Center (WYSAC) at the University of Wyoming to collect, analyze, and report data about firearm crimes, firearm injuries and fatalities, and crime firearms. House Bill (HB) 1186 (2021) requires OAG to submit four reports. The first two reports – submitted December 2021 and December 2022 – analyzed data provided by 91 and 80 law enforcement agencies (LEAs) respectively, about firearm crimes that occurred between August 1, 2015, and July 31, 2019 (report 1) and August 1, 2019, and July 31, 2020 (report 2). This report, the third in the four-part series, provides detailed findings from WYSAC’s analysis of firearm crimes in the State from August 1, 2020, to July 31, 2021.

Key Definitions

Compliance Inspection

Inspections conducted to ensure that Federal Firearms Licensees (FFLs) are following record-keeping requirements. Specifically, FFLs must account for all firearms that they have bought and sold and report all multiple handgun sales and firearms thefts to the United States Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF).

Crime Firearm

HB 1186 § 1(a)(2 (i-ii) defines “crime firearm” as a firearm that is used in the commission of a crime of violence; or recovered by law enforcement in connection with illegal firearm possession, transportation, or transfer.

Crime of Violence

The Public Safety Article §5–101 defines these offenses as crimes of violence:

- 1) abduction;
- 2) arson in the first degree;
- 3) assault in the first or second degree;
- 4) burglary in the first, second, or third degree;
- 5) carjacking and armed carjacking;
- 6) escape in the first degree;
- 7) kidnapping;
- 8) voluntary manslaughter;
- 9) maiming as previously proscribed under former Article 27, § 386 of the Code;
- 10) mayhem as previously proscribed under former Article 27, § 384 of the Code;
- 11) murder in the first or second degree;

- 12) rape in the first or second degree;
- 13) robbery;
- 14) robbery with a dangerous weapon;
- 15) sexual offense in the first, second, or third degree;
- 16) home invasion under § 6-202(b) of the Criminal Law Article;
- 17) a felony offense under Title 3, Subtitle 11 of the Criminal Law Article;

Further, Public Safety Article §5–101 classifies an attempt to commit any of the crimes listed above; or assault with intent to commit any of the crimes listed, or a crime punishable by imprisonment for more than 1 year as a crime of violence.

Firearm Crime

HB 1186 § 1(a)(3) defines “firearm crime” as a crime of violence involving the use of a firearm.

Firearm Injury and Fatality

HB 1186 § 1(a)(4) defines “firearm injury and fatality” as an injury or fatality caused by a firearm.

Jurisdiction

In this report, jurisdiction is synonymous with county, apart from Baltimore City which WYSAC analyzed as its own jurisdiction. For data provided by agencies that operate statewide (e.g., the Maryland State Police [MSP]), the incident’s jurisdiction is the county where the incident occurred. In this report, data are included from 24 unique jurisdictions; each of Maryland’s 23 counties and Baltimore City.

Privately Made Firearm

WYSAC asked LEAs to indicate if a recovered firearm had a serial number. To measure the proliferation of “ghost guns” in the State, WYSAC also asked LEAs to indicate if the firearm was privately made. Based on the ATF Frame or Receiver Rule (2021R-05F), WYSAC defined “ghost gun” as any firearm, including a frame or receiver; completed, assembled, or otherwise produced by a person other than a licensed manufacturer; and without a serial number placed by a licensed manufacturer at the time of production.ⁱ

Straw Purchase

Section 5–101 of the Public Safety Article defines “straw purchase” as the sale of a regulated firearm in which a person uses another, known as the straw purchaser, to:

- 1) complete the application to purchase a regulated firearm;
- 2) take initial possession of the regulated firearm; and
- 3) subsequently transfer the regulated firearm to the person.

Targeted Inspection

Audits initiated as a result of specific data on sales practices (e.g., sales volume, multiple handgun sales, time-to-crime for guns traced to an FFL) indicative of firearm trafficking.

Time-to-Crime

The ATF defines “time-to-crime” as the amount of time between the retail sale of a firearm by an FFL and its recovery by law enforcement.ⁱⁱ

Type of Firearm

WYSAC limited LEA responses to eight firearm types based on the Federal Bureau of Investigation’s (FBI) National Incident-Based Reporting System (NIBRS) definitions: handgun, automatic handgun, rifle, automatic rifle, shotgun, automatic shotgun, other firearm, and other automatic firearm. NIBRS defines an automatic firearm as any firearm that shoots, or is designed to shoot, more than one shot at a time by a single pull of the trigger without manual reloading.ⁱⁱⁱ WYSAC provided the NIBRS definition to LEAs in the data collection template.

Methodology

WYSAC used data from four sources to provide a robust analysis. WYSAC solicited data from Maryland LEAs about firearm crimes including the responding agency; incident date; if the LEA response resulted from a 9-1-1 call; firearms recovered and information about each firearm; associated arrests; and related injuries and fatalities. To supplement LEA charging and disposition data, WYSAC requested data from the Maryland Administrative Office of the Court (AOC) about firearm crimes, crimes of violence, and charging and disposition information. WYSAC also received the results of dealer audits conducted by the MSP. Finally, WYSAC collected data from the ATF about firearms recovered in Maryland, including time-to-crime and state-of-origin.

Data Collection

LAW ENFORCEMENT AGENCIES

Identifying Law Enforcement Agencies

WYSAC utilized the list of agencies and contacts from the previous year and contacted 146 people across 131 agencies on January 12, 2023, to confirm correct contact information. WYSAC updated contact information as necessary and identified one agency that had not participated in previous years. In total, WYSAC requested data from 132 LEAs.

Collecting Data from Law Enforcement Agencies

On April 5, 2023, OAG emailed each LEA introducing the research team and explaining the requirements of HB 1186 (2021). The following day, WYSAC emailed an Excel data collection template to each LEA and reiterated the requirements of HB 1186 (2021). WYSAC asked LEAs to return completed data templates no later than September 1, 2023. To maximize response rates, WYSAC and OAG sent regular reminder emails and contacted nonresponsive LEAs by phone on July 17, 2023, and again on August 1, 2023.

In all, 114 (86%) LEAs provided data on or before the deadline and 6 (5%) LEAs submitted data after the deadline. Twelve LEAs (9%) declined to provide data or did not respond (Appendix A). WYSAC closed data collection on September 8, 2023.

Quality Control

Technical Assistance

Some LEAs had difficulties entering data into the Excel template. WYSAC provided technical assistance to these LEAs via phone, email, and Zoom video conferencing. WYSAC adjusted the template for some agencies, upon request, to make the template compatible with their record management system(s). Every email correspondence between WYSAC, OAG, and the LEAs included the study team's contact information and instructions on how to request technical assistance.

Data Collection Template

WYSAC used an Excel data collection template that featured data validation tools to enhance user-friendliness and reduce errors. These tools included drop-down lists to standardize entries (e.g., limiting firearm type selections to eight options) and date fields that accepted only incident dates within the reporting period. The template also included a 'quick start guide' with instructions and hyperlinks to key definitions.

Requests for Information and Clarification

WYSAC reviewed data templates for completeness and consistency and contacted LEAs when the data provided appeared incomplete or were unclear.

MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS

WYSAC provided offender information (first name, last name, and date of birth) and incident information (date and arresting agency) to AOC. AOC matched these data to court records and provided WYSAC with charging and disposition information related to each incident.

MARYLAND DEPARTMENT OF STATE POLICE – FIREARMS REGISTRATION SECTION

WYSAC requested the dates and outcomes of audits conducted by the MSP Dealer Audit Unit of the top-10 dealers of crime firearms in the State. MSP provided the results of ten audits, each including a compliance inspection report and a supplemental narrative description of the audit.

BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

The ATF's National Tracing Center (NTC) is authorized by the Gun Control Act of 1968 to trace crime firearms and is the only crime gun tracing facility in the United States.^{iv} The NTC traces crime firearms by tracking each firearm's movement through the supply chain from manufacture through distribution, via wholesalers or retailers, using the gun's serial number. Tracing allows the ATF and LEAs to identify unlicensed purchasers and patterns in the sources and types of crime firearms.^v The ATF provides free *eTrace* software that allows LEAs to request firearm trace data, monitor the progress of requests, retrieve results, and query data. The ATF's *eTrace* software also allows LEAs to download and analyze trace data.^{vi} The ATF publishes aggregate data annually on a calendar year basis.

Analysis

Law Enforcement Data

Of the 120 LEAs that responded to WYSAC's data request, 83 (69%) provided data about one or more firearm crimes, 31 (26%) reported that the agency did not respond to any firearm crimes during the reporting period, and six (5%) reported that a separate agency is responsible for reporting the agency's data.

LIMITATIONS

Differences in Data Reporting

Each LEA has a unique process and system for tracking and managing records. As a result, there are differences in the data LEAs reported. Additionally, LEAs had considerable variations in how they defined data elements such as "illegal possession" or "illegal transfer." In an attempt to address these differences, WYSAC provided every LEA with a data collection template to limit the range of possible entries and provide clear definitions for key terms. WYSAC consulted with agencies on a case-by-case basis to ensure they understood all definitions and data elements and provided technical assistance filling out the templates when needed.

Missing Disposition Data

WYSAC collected arrestee information from LEAs and sent 2,756 cases to the AOC to match filing, charging, and disposition information. WYSAC received 22,957 records back that matched with 2,129 of the initial cases.

Missing Crime Firearm Origin Data

Only 28 (23%) LEAs provided information about place of purchase and purchase date for recovered firearms. The remaining LEAs reported that they either 1) do not keep origin data, or 2) do not trace crime firearms. Fewer than 21% (n=917) of recovered firearms included origin data. WYSAC used ATF gun-trace data to supplement missing crime firearm origin data.

Missing or Incomplete Injury and Fatality Data

Most LEAs (n=118, 98%) reported data about firearm-related injuries and fatalities. Neither the MSP nor the Baltimore City Police Department (BPD) could specify if an incident included more than one injury or fatality, only that an injury or fatality occurred. In addition, BPD was unable to disaggregate injury and fatality data by age or classify injuries and fatalities as accidental or intentional. WYSAC included injuries and fatalities reported by both agencies (MSP and BPD) as a single event. As a result, the total number of injuries and fatalities is likely much higher.

Maryland Department of State Police, Dealer Audit Unit

WYSAC requested the dates and outcomes of audits conducted by the MSP's Dealer Audit Unit of the top-ten dealers of crime firearms identified in WYSAC's analysis. The Dealer Audit Unit audited each dealer one time, except for *Arundel Firearms & Pawn, Inc.*, which was audited twice. WYSAC summarized the results of the audits of the top-ten dealers of crime firearms.

MSP's audit forms are organized into five sections: 1) Regulated Firearms Dealer Information; 2) Licenses; 3) Inventory of Regulated Firearms; 4) Applications to Purchase a Regulated Firearm; and 5) Conclusion. Each form included an attachment with additional notes.

Maryland Administrative Office of the Courts

WYSAC sent AOC arrest data for 2,756 individuals for matching to charges and dispositions. AOC matched and provided data about 22,957 unique findings that included all charging information for the arrestee with an exact match on the date of offense. WYSAC requested but has not received District court data for Baltimore City at the time of publication.

AOC extracted filings from four records management systems (CCDC_MDEC, 8th Circuit [Baltimore City], CC Prince George's County, and DC_NonMDEC). AOC did not provide records with the following dispositions: remanded to - Juvenile Court; waived from Criminal to

Juvenile Court; forwarded - Juvenile Authorities; transferred for Juvenile Sentencing; or forwarded - Circuit Court if the defendant was under 18 pursuant to CP § 4-202(i) and CJ § 3-8A-27. AOC provided data about 9,574 unique filings.

WYSAC categorized firearm-related charges into eight categories (ammunition; armor, trigger, or magazine violation; altering or possessing an altered firearm; discharging a firearm; illegal possession; illegal sale; illegal transfer; illegal transportation; and straw purchase). WYSAC categorized crimes of violence into 37 categories (Table 1). Researchers relied on § 5-101 of the Public Safety Article for definitions and included charges for an attempt, conspiracy, accessory, and soliciting a crime of violence.

Table 1: Crimes of Violence Categories

Arson in the first degree	Kidnapping	Attempted robbery
Assault in the first or second degree	Attempted kidnapping	Conspiracy robbery
Attempted assault in the first or second degree	Conspiracy kidnapping	Robbery with a dangerous weapon
Conspiracy assault in the first or second degree	Voluntary manslaughter	Attempted robbery with a dangerous weapon
Burglary in the first, second, or third degree	Murder in the first or second degree	Conspiracy robbery with a dangerous weapon
Attempted burglary in the first, second, or third degree	Attempted murder in the first or second degree	Sexual offense in the first, second, or third degree
Conspiracy burglary in the first, second, or third degree	Conspiracy murder in the first or second degree	Attempted sexual offense in the first, second, or third degree
Solicitation burglary in the first, second, or third degree	Accessory murder in the first or second degree	Conspiracy sexual offense in the first, second, or third degree
Carjacking and armed carjacking	Rape in the first or second degree	Home invasion
Attempted carjacking and armed carjacking	Attempted rape in the first or second degree	Attempted home invasion
Conspiracy carjacking and armed carjacking	Conspiracy rape in the first or second degree	Conspiracy home invasion
Escape in the first degree	Robbery	Human trafficking
Attempted escape in the first degree		

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Equipment used to complete the project

WYSAC used Microsoft Excel to collect, clean, and summarize firearm crime data provided by LEAs; Microsoft Access to track contacts, submissions, and communications; and *Statistical Package for the Social Sciences 29* (SPSS) to analyze data.

Findings

Firearm Crimes Committed in the State of Maryland

LEAs in all 24 jurisdictions provided information about 7,185 firearm crimes (Table 2). Prince George’s County provided data about 3,460 firearm crimes, 48% of the total. Kent County reported the fewest number of firearm crimes (n=3, <0.01%).

9-1-1 Requests for Emergency Assistance

Sixty-four percent (n=4,599) of LEA responses were initiated by a 9-1-1 call (Figure 1). 9-1-1 origination data were missing for 2% (n=172) of incidents.

Figure 1: Firearm Crimes, by 9-1-1 Origination

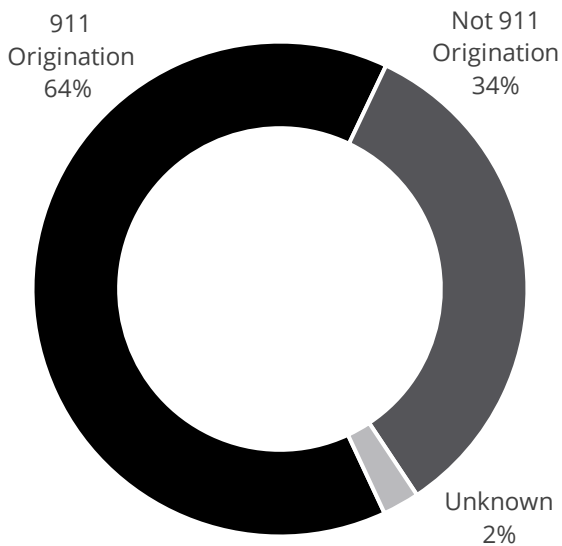


Table 2: Number of Firearm Crimes, by Jurisdiction

Jurisdiction	Number of Crimes
Allegany	62
Anne Arundel	439
Baltimore City	859
Baltimore County	627
Calvert	5
Caroline	11
Carroll	35
Cecil	84
Charles	198
Dorchester	26
Frederick	95
Garrett	8
Harford	62
Howard	171
Kent	3
Montgomery	568
Prince George’s	3,460
Queen Anne’s	15
Somerset	21
St. Mary	75
Talbot	26
Washington	162
Wicomico	157
Worcester	16
Total	7,185

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Table 3: Firearm Crimes with 9-1-1 Requests for Service, by Jurisdiction

Jurisdiction	9-1-1 Origination	Not a 9-1-1 Origination	Unknown or Missing Origination	Arrests from 9-1-1 Originations
Allegany	29	33	0	17
Anne Arundel	187	173	79	135
Baltimore City	745	114	0	76
Baltimore County	591	36	0	282
Calvert	5	0	0	5
Caroline	5	4	2	5
Carroll	21	14	0	15
Cecil	61	22	1	37
Charles	133	65	0	63
Dorchester	16	10	0	8
Frederick	80	15	0	33
Garrett	4	4	0	3
Harford	36	25	1	21
Howard	130	40	1	61
Kent	2	1	0	2
Montgomery	389	100	79	135
Prince George's	1,834	1,618	8	306
Queen Anne's	8	7	0	6
Somerset	13	8	0	4
St. Mary	39	36	0	20
Talbot	6	19	1	5
Washington	135	27	0	57
Wicomico	128	29	0	42
Worcester	2	14	0	2

Note: Incidents where 9-1-1 origination status or arrest information is missing, or unknown are not included in the number of arrests. The actual number of arrests is likely higher.

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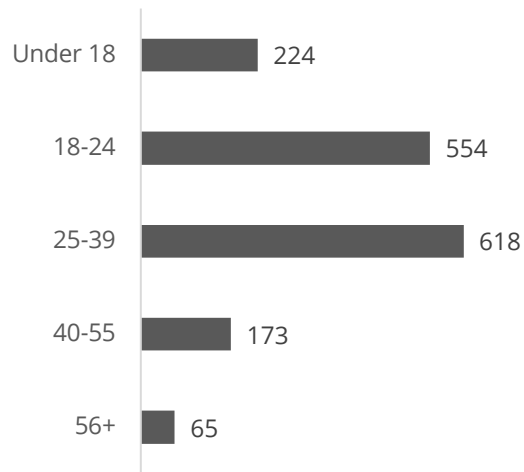
Of the 4,599 LEA incidents initiated by a 9-1-1 call, 1,340 resulted in arrest (29%). WYSAC asked LEAs to provide the age at arrest for each arrestee. LEAs provided ages for 98% (n=1,634) of the arrests where the incident was called in to 9-1-1. The youngest person arrested was 11 years old and the oldest was 87 years old. The median age of arrestees was 25 years old.

Injuries and Fatalities

WYSAC asked LEAs to report the number of accidental and intentional injuries, fatalities, and suicides for adults and juveniles (Table 4). LEAs reported a total of 2,813 injuries and fatalities. LEAs did not report victim age for 23 (1%), intent for 1,988 (71%), and both age and intent for three (<0.1%) injuries and fatalities.¹ Most victims with reported ages were adults (93%, n=2,590), only 197 (7%) were juveniles. Intentional injury was the most common outcome reported by LEAs for both adults and juveniles. Sixty-three percent (n=480) of adult victims and 60% (n=21) of juvenile victims suffered an intentional injury.

WYSAC used the Centers for Disease Control and Prevention’s (CDC) National Violent Death Reporting System (NVDRS) to supplement LEA-reported death data. Researchers included estimates for all firearm-related deaths including unintentional, homicide, and undetermined intent. NVDRS reported 267 firearm-related suicides and 526 other firearm-related deaths in Maryland during the calendar year 2020 (the most recent data available).^{vii}

Figure 2: Age of Arrestees in 9-1-1 Originated Firearm Crime



Note: Only includes arrestees in cases that indicated “yes” to arrest and “yes” to 911 call. Does not include cases with missing information.

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¹ MSP and BPD did not provide or provided limited information about victim age, number of victims, and type of injury. WYSAC included injuries and fatalities reported by both agencies as a single event.

Table 4: Firearm Crimes Injuries and Deaths

	Accidental Injury		Intentional Injury		Accidental Homicide		Intentional Homicide		Suicide	
	Adult	Juvenile	Adult	Juvenile	Adult	Juvenile	Adult	Juvenile	Adult	Juvenile
Allegany	0	1	1	0	0	0	0	0	0	0
Anne Arundel	3	1	33	4	0	0	11	0	33	0
Baltimore City	0	0	0	0	0	0	0	0	0	0
Baltimore County	0	0	0	0	0	0	0	0	0	0
Calvert	0	0	1	0	0	0	0	0	0	0
Caroline	0	0	1	0	0	0	0	0	0	0
Carroll	0	0	2	0	0	0	2	0	1	0
Cecil	0	0	9	2	0	0	2	0	3	0
Charles	0	0	29	2	0	1	12	1	6	0
Dorchester	0	0	6	1	0	0	1	0	0	0
Frederick	2	0	10	0	0	0	3	1	3	0
Garrett	0	0	0	0	0	0	1	0	0	0
Harford	0	0	14	0	0	0	3	0	1	0
Howard	2	0	6	2	0	0	17	1	0	0
Kent	0	0	1	0	0	0	0	0	0	0
Montgomery	0	0	24	0	2	0	3	0	13	0
Prince George's	3	1	284	4	2	0	105	4	22	1
Queen Anne's	0	0	2	1	0	0	1	1	1	1
Somerset	0	0	4	0	0	0	0	0	0	0
St. Mary	0	0	14	3	0	0	5	0	2	0
Talbot	0	0	2	0	0	0	0	0	0	0
Washington	1	0	24	1	0	0	6	0	2	0
Wicomico	2	0	13	1	0	0	2	0	4	0
Worchester	0	0	0	0	0	0	0	0	0	0
Total	13	3	480	21	4	1	174	8	91	2

Note: MSP and BPD did not provide or provided limited information about victim age, number of victims, and type of injury. WYSAC included injuries and fatalities reported by both agencies as a single event.

Arrests

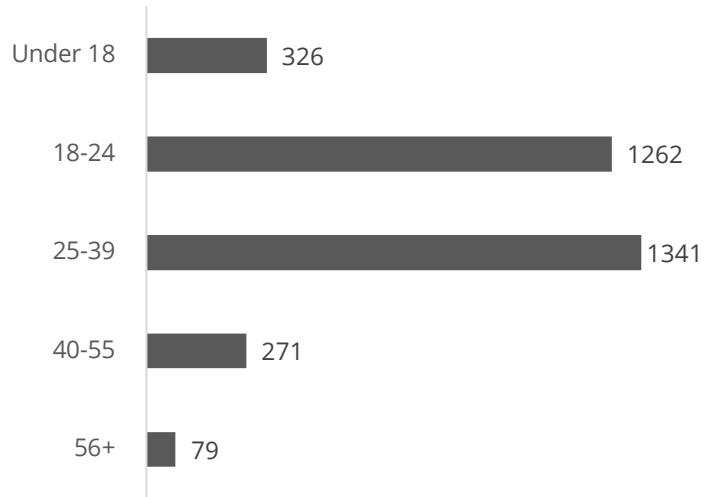
Of the 7,185 reported incidents, 38% (n=2,710) indicated an arrest was made and 52% (n=3,720) reported no arrest. Arrest status was missing for 11% (n=755) of arrests.

In total, 2,665 (98%) incidents that reported an arrest included arrest-age information. Agencies could report more than one arrest for each incident. The 2,665 incidents that included one or more arrests and provided the age(s) of arrestees resulted in 3,279 total arrests. The youngest person arrested was 10 years old, and the oldest was 87 years old. The average age was 25 years old (Figure 3).

Dispositions

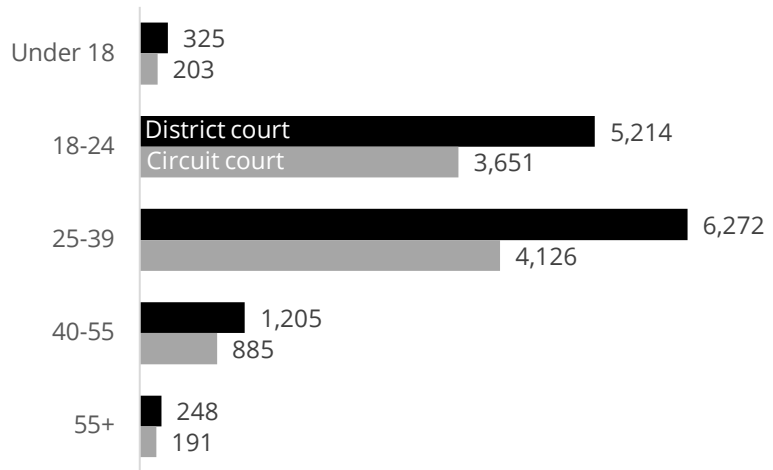
In total, Maryland prosecuted 1,404 unique cases with a total of 5,823 firearm-related charges in district courts. Among adults and those tried as adults in district courts, most (47%, n=6,272) were between the ages of 25 and 39 (Figure 4). The youngest person tried as an adult in district court was 14 years old, and the oldest was 86 years old. The median age was 26.

Figure 3: Age of Arrestees in Firearm Crime Incidents (9-1-1 and Not 9-1-1 Originated)



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Figure 4: Age of Defendant in Firearm Crime Disposition Charges, by Court



Note: Because district court cases are regularly transferred to circuit court, we analyzed district and circuit court dispositions separately.

Source: AOC

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Maryland prosecuted 979 unique cases with a total of 4,023 firearm related charges in circuit courts. Some circuit court cases started in district court and then transferred to circuit court. Because of this, WYSAC analyzed district and circuit court data separately.

Among adults and those tried as adults, most (43%, n=4,126) circuit court defendants were between the ages of 25 and 39 (Figure 4). The youngest person tried as an adult in circuit court was 15 years old, and the oldest was 86 years old. The median age of circuit court defendants was 26.

CHARGE AT DISPOSITION

Table 5 lists the types of firearm crimes by district and circuit court. The 5th District Court (which serves Prince George’s County) had the most (n=3,892) firearm-related charges among district courts. The 8th District Court (serving Baltimore County) had the fewest firearm-related charges (n=32) among district courts.

The 7th Circuit Court (serving Calvert, Charles, Prince George’s and St. Mary’s counties) had the most firearm-related charges (n=3,447) among circuit courts. The 3rd Circuit Court had the fewest firearm-related charges among circuit courts with 136 charges (Table 5).

In district courts, illegal possession was the most commonly charged firearm-related crime (n=4,228) followed by crimes of violence (n=3,054). In circuit courts, crimes of violence were most common (n=3,098) followed by illegal possession (n=3,016).

Table 6 shows disposition by firearm-crime category for district courts, the majority (57%, n=3,669) were a forward to circuit court.

Table 7 shows disposition by firearm-crime for circuit courts. In circuit court, the majority (70%, n=4,385) of cases ended with a Nolle Prosequi.

Violent Crimes

Table 8 lists charges at disposition for firearm-related crimes of violence in district and circuit courts. In both courts, assault in the first or second degree was the most common type of violent crime, followed by murder in the first or second degree.

Table 5: Charge at Disposition, by Court

	Violent Crime	Altered Firearm	Ammunition, Armor, Trigger, or Magazine Violation	Discharged Firearm	Illegal Possession	Illegal Sale	Illegal Transport	Straw Purchase	Total
1 st District	349	1	11	35	168	0	22	0	586
2 nd District	159	4	17	0	148	0	38	0	366
3 rd District	130	5	36	0	189	5	33	0	398
4 th District	268	3	21	0	206	0	50	0	548
5 th District	1,009	47	308	0	2,063	2	463	0	3,892
6 th District	262	6	37	0	324	1	55	0	685
7 th District	342	9	84	0	615	1	126	1	1,178
8 th District	2	0	4	0	22	0	6	0	34
9 th District	57	0	11	0	53	0	9	0	130
10 th District	222	2	30	0	192	0	25	0	471
11 th District	239	3	37	0	180	0	18	0	477
12 th District	15	2	12	0	68	0	15	0	112
Total	3,054	82	608	35	4,228	9	860	1	8,877

	Violent Crime	Altered Firearm	Ammunition, Armor, Trigger, or Magazine Violation	Discharged Firearm	Illegal Possession	Illegal Sale	Illegal Transport	Straw Purchase	Total
1 st Circuit	144	2	13	0	131	1	24	0	315
2 nd Circuit	132	2	33	0	159	4	25	0	355
3 rd Circuit	53	0	8	0	65	0	10	0	136
4 th Circuit	152	5	31	0	144	0	18	0	350
5 th Circuit	572	10	91	0	733	1	149	1	1,557
6 th Circuit	233	4	17	2	142	0	14	0	412
7 th Circuit	1,534	15	219	0	1,413	2	264	0	3,447
8 th Circuit	278	0	17	23	229	0	2	0	549
Total	3,098	38	429	25	3,016	8	506	1	7,121

Note: Because district court cases are regularly transferred to circuit court, we analyzed district and circuit court dispositions separately.

Source: AOC

Table 6: District Court - Charge at Disposition, by Disposition

	Violent Crime	Altered Firearm	Ammunition, Armor, Trigger, or Magazine Violation	Discharged Firearm	Illegal Possession	Illegal Sale	Illegal Transport	Straw Purchase	Total
Abate by death	4	2	3	0	17	0	1	0	27
Acquittal	2	1	0	0	11	0	3	0	17
Dismissed	43	1	1	0	38	0	5	0	88
Extradition	1	0	0		0	0	0	0	1
Forwarded - Circuit Court	1,595	24	226	34	1,515	5	269	1	3,669
Guilty	11	0	2	0	63	0	19	0	95
Jury trial prayed	21	1	14	1	119	0	28	0	184
Nolle Prosequi	602	24	127	0	1,161	1	239	0	2,154
Not guilty	4	0	2	0	4	0	0	0	10
Not guilty/NP/dismissed	0	0	1	0	2	0	0	0	3
Probation before judgement	10	0	0	0	32	0	21	0	63
Stet	13	1	3	0	67	0	22	0	106

Note: Because district court cases are regularly transferred to circuit court, we analyzed district and circuit court dispositions separately.

Source: AOC

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Table 7: Circuit Court- Charge at Disposition, by Disposition

	Violent Crime	Altered Firearm	Ammunition, Armor, Trigger, or Magazine Violation	Discharged Firearm	Illegal Possession	Illegal Sale	Illegal Transport	Straw Purchase	Total
Abate by death	0	1	2	0	17	0	3	0	23
Acquittal	11	0	0	0	4	0	0	0	15
Closed jeopardy or other conviction	121	0	13	13	92	0	2	0	241
Dismissed	3	0	5	0	44	0	11	0	63
Guilty	494	0	28	0	503	0	53	0	1,078
Incompetent to stand trial	5	0	0	0	6	0	0	0	11
Jury trial prayed	1	0	0	0	0	0	0	0	1
Lesser included offenses	6	0	0	0	0	0	0	0	6
No verdict	14	0	0	1	2	0	0	0	17
Nolle Prosequi	1,874	30	297	9	1,848	5	321	1	4,385
Not criminally responsible	2	0	0	0	0	0	0	0	2
Not guilty	70	1	3	1	29	0	4	0	108
Not sent to jury	3	0	0	0	7	0	0	0	10
Probation before judgement	9	0	0	0	35	1	27	0	72
Stet	116	1	19	1	99	0	28	0	264
Sub curia	1	0	0	0	1	0	0	0	2
Transferred to other Jurisdiction	2	0	0	0	0	0	0	0	2

Note: Because district court cases are regularly transferred to circuit court, we analyzed district and circuit court dispositions separately.

Source: AOC

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Table 8: Charge at Disposition for Firearm-related Crimes of Violence, by Court Level

	District	Circuit
Not Violent Crime	10,171	6,597
Accessory assault in the first or second degree	6	4
Accessory murder in the first, second, or third degree	6	1
Arson	1	1
Assault in the first or second degree	1,910	1,939
Attempted armed carjacking	7	0
Attempted armed robbery with a dangerous weapon	194	175
Attempted burglary in the first, second, or third degree	13	7
Attempted carjacking	6	6
Attempted home invasion	5	5
Attempted kidnapping	0	1
Attempted murder in the first or second degree	159	165
Attempted rape in the first or second degree	1	2
Burglary in the first, second, or third degree	18	12
Carjacking	18	19
Conspiracy armed carjacking	31	18
Conspiracy armed robbery with a dangerous weapon	41	59
Conspiracy assault in the first, second, or third degree	81	85
Conspiracy attempted murder in the first or second degree	20	0
Conspiracy carjacking	0	46
Conspiracy kidnapping	0	6
Conspiracy manslaughter	1	0
Conspiracy murder in the first or second degree	16	42
Conspiracy robbery	25	60
Escape in the first degree	1	0
Home Invasion	20	23
Human trafficking	2	0
Kidnapping	3	8
Manslaughter	2	4
Murder in the first or second degree	328	258
Rape in the first or second degree	7	6
Robbery	128	142
Sexual offense in the first, second, or third degree	4	2

Note: Because district court cases are regularly transferred to circuit court, we analyzed district and circuit court dispositions separately.

Source: AOC

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Table 9: Other Charges at Disposition

Animal Cruelty	2
Arson	1
Assault Offenses	161
Bribery	2
Burglary/Breaking and Entering	46
Destruction/Damage/Vandalism of Property	150
Disorderly Conduct	139
Driving Under the Influence	284
Drug/Narcotics Offense	2,992
Drunkenness	1
Escape	6
Fraud Offenses	79
Homicide Offenses	141
Hunting	20
Kidnapping/Abduction	15
Larceny/Theft Offenses	435
Motor Vehicle Theft	143
Other Offenses	1,262
Prostitution Offenses	1
Robbery	17
Sex Offenses	17
Stalking	6
Traffic	1,249
Trespass of Real Property	29
Violation of Protection Order	33

Note: Because district court cases are regularly transferred to circuit court, we analyzed district and circuit court dispositions separately.

Source: AOC

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Non-Violent Crimes

Table 9 shows the number of dispositions related to firearms, but unrelated to crimes of violence and weapons law violations. Among these dispositions, the most common offenses were drug/narcotic (41%; n=2,992), other (18%; n=1,262) and traffic (17%; n=1,249).

Crime Firearms

LEAs recovered one or more firearms in 49% (n=3,513) of reported incidents and provided information about 4,454 recovered firearms. Most incidents reported only one related firearm recovery. A total of 474 (13%) incidents resulted in the recovery of more than one firearm. In a single incident, one LEA recovered 42 firearms.

LEAs recovered firearms in all 24 jurisdictions. LEAs responding to incidents in Prince George’s County recovered the greatest number of firearms (n=1,464, 33%), followed by Montgomery County (n=748, 17%), and Baltimore County (n=633, 14%).

Of the 4,454 crime firearms recovered by LEAs, 65% (n=2,881) had a serial number (Figure 5). LEAs were unsure if there was a serial number for 3% (n=135) of recovered firearms. Information on serial numbers was missing for 2% (n=95) of recovered firearms. Twenty-three percent of recovered firearms were recorded as unknown or were missing data (n=1,028). Only 4% (n=181) of recovered firearms were recorded as privately made.

Seventy eight percent (n=3,491) of recovered firearms were handguns, followed by rifles (11%, n=454), and then by shotguns (6%, n=266; Figure 7). Five percent (n=243) of recovered firearms were unknown or ‘other.’

A total of 2,419 firearms were recovered during incidents initiated by a 9-1-1 call (Figure 6).

Figure 5: Recovered Firearms, by Serial Number Status

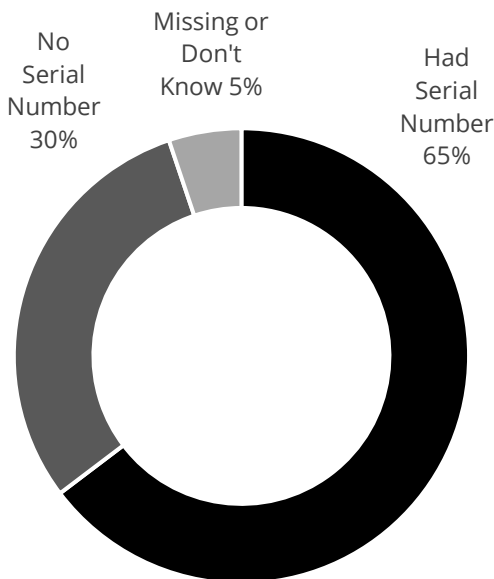


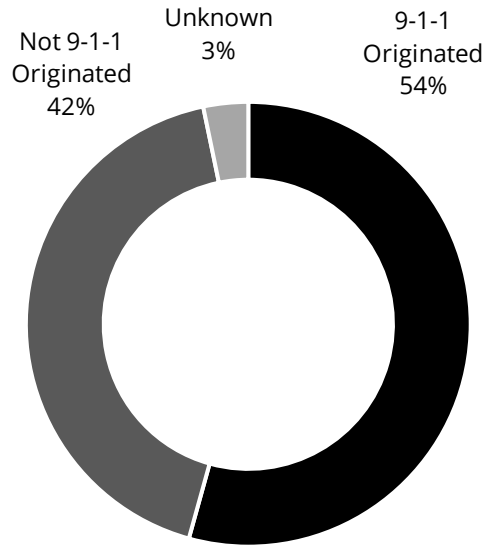
Table 10: Recovered Firearms, by Incident Location

Jurisdiction	Number of Firearms
Allegany	76
Anne Arundel	444
Baltimore City	206
Baltimore County	633
Calvert	4
Caroline	23
Carroll	33
Cecil	94
Charles	160
Dorchester	20
Frederick	43
Garrett	8
Harford	41
Howard	127
Kent	3
Montgomery	748
Prince George's	1,464
Queen Anne's	15
Somerset	10
St. Mary	72
Talbot	33
Washington	84
Wicomico	93
Worcester	20

Note: The jurisdiction is the location the incident was reported in.

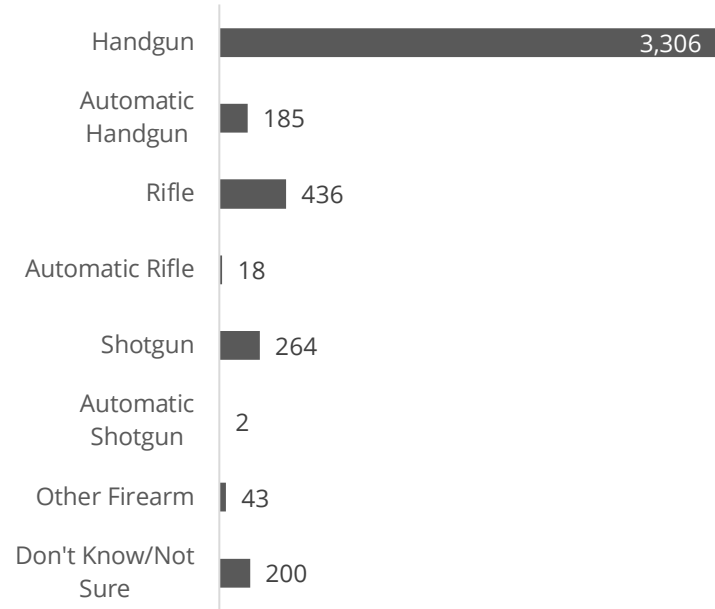
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Figure 6: Firearm Recovery, by 9-1-1 Origination



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Figure 7: Recovered Firearm Type



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Recovery Location

LEAs provided a recovery location for recovered firearms in 80% (n=3,562; Table 11) of the firearm records. A total of 892 (20%) firearms did not specify a recovery location.

WYSAC used data from the ATF to supplement recovery location data provided by LEAs (Table 12 and Table 13). The ATF reports the top-ten firearm recovery cities each calendar year.

Table 12: Firearm Recovery Location

Jurisdiction	Number of Firearms
Not Specified	892
Allegany	73
Anne Arundel	430
Baltimore City	205
Baltimore County	11
Calvert	4
Caroline	21
Carroll	31
Cecil	91
Charles	156
Dorchester	20
Frederick	42
Garrett	8
Harford	41
Howard	102
Kent	2
Montgomery	582
Prince George's	1,458
Queen Anne's	15
Somerset	10
St. Mary	36
Talbot	28
Washington	84
Wicomico	92
Worcester	20

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Table 11: Top-10 Maryland Firearm Recovery Cities, 2020

City	2020
Baltimore	2,407
Glen Burnie	267
Hagerstown	214
Hyattsville	214
Pasadena	189
Silver Springs	183
Laurel	182
Waldorf	179
Frederick	174
Elkton	171

Note: ATF data is available by calendar year, not fiscal year.

Source: ATF

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Table 13: Top-10 Maryland Firearm Recovery Cities, 2021

City	2021
Baltimore	2,631
Frederick	308
Silver Springs	305
Laurel	303
Waldorf	260
Hyattsville	241
Oxon Hill	214
Hagerstown	201
Temple Hills	194
Pasadena	193

Note: ATF data is available by calendar year, not fiscal year.

Source: ATF

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Origin of Crime Firearms

WYSAC requested data about each firearm's origin, however, only 1,053 firearms (24%) included origin data. Both the data collected from LEAs, and data reported by ATF indicate Maryland is the origin state for most crime firearms recovered in the State. Virginia is the second most common source state.

IN-STATE ORIGIN

Of the recovered crime firearms with origin information, 428 (41%) originated from Maryland.

Atlantic Guns in Rockville sold the largest number of crime firearms (n=49). Table 15 lists the top-ten locations with the most crime firearm sales.

RESULTS OF AUDITS OF FIREARM DEALERS

WYSAC summarized the results of the MSP's audits for the top-ten Maryland retailers of recovered firearms during the time period of August 1, 2020 to July 31, 2021.

Atlantic Guns

The Dealer Audit Unit conducted a compliance audit of *Atlantic Guns* in Rockville, Maryland on February 10, 2021.

The audit found that the dealer had a valid and properly displayed regulated firearm dealer (RFD) license, federal firearms license (FFL), trader's license, and a Maryland tax license. At the time of inspection, the dealer had 85 regulated firearms (RFs), all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

Table 14: Jurisdiction of In-State Originated Recovered Firearms

Jurisdiction	Number of Firearms
Allegany	1
Anne Arundel	122
Baltimore City	0
Baltimore County	0
Calvert	0
Caroline	3
Carroll	4
Cecil	14
Charles	17
Dorchester	5
Frederick	9
Garrett	0
Harford	1
Howard	10
Kent	0
Montgomery	231
Prince George's	3
Queen Anne's	0
Somerset	0
St. Mary	6
Talbot	0
Washington	2
Wicomico	0
Worcester	0

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Table 15: Top-Ten Maryland Retailers of Recovered Firearms

Store Name	Number of Handguns	Number of Rifles	Number of Shotguns	Total Number of Firearms
Atlantic Guns	26	15	8	49
United Guns	26	8	4	38
Engage Armament	4	2	5	11
A&D Pawn	7	0	1	8
Maryland Small Arms	4	1	1	7*
Fort Meade Exchange	2	2	2	6
Realco Guns	5	1	0	6
The Gun Shop	3	1	2	6
Heritage Training & Shooting	1	1	0	5
Arundel Firearms & Pawn	2	2	0	4

Note: Of recovered firearms with origin information.

*Includes reported "other" firearms

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United Gun Shop

The Dealer Audit Unit conducted a compliance audit of *United Gun Shop* on March 24, 2021. The audit found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. At the time of inspection, the dealer had 55 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

Engage Armament

The Dealer Audit Unit conducted a compliance audit of *Engage Armament* on June 10, 2021. The audit found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. At the time of inspection, the dealer had 152 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

A&D Pawn

The Dealer Audit Unit conducted a compliance audit of A&D Pawn Shop on September 7, 2020. A discrepancy was identified between the compliance inspection report and the supplemental documentation. The compliance inspection report documented 47 RFs in the store's inventory, all properly logged. However, the audit's supplemental report indicated 92 firearms in the store, also properly logged. The audit found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. The auditor found the dealer had

incorrectly recorded a serial number during one firearm transfer. The auditor recommended the dealer correct the serial number in all documentation. The audit was satisfactory.

Realco Guns

The Dealer Audit Unit conducted a compliance audit of *Realco Guns, Inc* on April 16, 2021. The audit found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. At the time of inspection, the dealer had 13 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

Maryland Small Arms

The Dealer Audit Unit conducted a compliance audit of *Maryland Small Arms* on June 8, 2021. The audit found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. At the time of inspection, the dealer had 33 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

Fort Meade [Army Air Force] Exchange

The Dealer Audit Unit conducted a compliance audit of *Army Air Force Exchange* on January 20, 2021. The audit found that the dealer had a valid and properly displayed RFD license and FFL. A trader's license and a Maryland tax license were not required due to the store being a military dealer. At the time of inspection, the dealer had 11 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

Heritage Training and Shooting Center

The Dealer Audit Unit conducted a compliance audit of the *Heritage Training and Shooting Center* on January 28, 2021. The audit found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. At the time of inspection, the dealer had 50 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

Arundel Firearms & Pawn

The Dealer Audit Unit completed two audits of Arundel Firearms & Pawn. The first audit, a compliance inspection on May 24, 2021, found that the dealer had a valid and properly displayed RFD license, FFL, trader's license, and a Maryland tax license. At the time of inspection, the dealer had 41 RFs, all were properly logged in inventory. The auditor found no issues in the inventory or recorded transfers. The audit was satisfactory, with no further action recommended.

The Dealer Audit Unit conducted a second audit, a targeted audit, on July 21, 2021. This targeted audit was initiated due to a dealer's transfer of a lower receiver to a customer. Although the dealer completed form 4473, the 'Firearms Transaction Record,' they failed to fill out form 77R, the 'Maryland State Police Application and Affidavit to Purchase a Regulated Firearm.' The Dealer Audit Unit communicated to the dealer that form 77R was necessary for this sale, as the lower receiver, being AR-15 capable, falls under regulation. The customer returned the lower receiver to the dealer for appropriate reprocessing.

OUT OF STATE ORIGIN

LEAs reported 620 recovered firearms with an out-of-state origin. Table 16 lists the top-ten states of origin reported by LEAs during the reporting period. Table 17 lists the ATF's top-ten states-of-origin for calendar year 2020 and Table 18 lists the ATF's top-ten states-of-origin for calendar year 2021.

Table 16: Top-Ten States of Origin of Recovered Firearms with Out-of-State Origin

State	Number of Firearms
Virginia	154
Georgia	55
Pennsylvania	46
West Virginia	40
North Carolina	39
Florida	32
South Carolina	32
Delaware	28
Texas	24
Massachusetts	21

Note: Of recovered firearms with origin information.

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Table 18: Top-Ten States of Origin of Recovered Firearms, 2020

State	2020
Virginia	1,070
Georgia	340
Pennsylvania	313
West Virginia	247
North Carolina	221
South Carolina	188
Delaware	138
Florida	133
Ohio	114
Texas	105

Note: ATF data is by calendar year, not fiscal year.

Source: ATF

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Table 17: Top-Ten States of Origin of Recovered Firearms, 2021

State	2021
Virginia	1,128
Georgia	376
Pennsylvania	325
North Carolina	288
South Carolina	259
West Virginia	248
Delaware	141
Ohio	139
Florida	134
Texas	132

Note: ATF data is by calendar year, not fiscal year.

Source: ATF

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OTHER STATE’S FIREARM LAWS

As shown in Table 16, for the period August 2020 to July 2021, the ten states where the most crime firearms recovered in Maryland originated, in descending order, are: (1) Virginia; (2) Georgia; (3) Pennsylvania; (4) West Virginia; (5) North Carolina; (6) Florida; (7) South Carolina; (8) Delaware; (9) Texas; and (10) Massachusetts. Since last year’s report, Texas and Massachusetts have replaced Alabama and Arizona in the top ten (Texas previously appeared in the top ten in 2021’s report). What follows is a summary of major changes to those states’ laws regarding licensing, background checks, waiting periods, straw purchases, and concealed carry since 2022’s report, followed by a brief comparison of the laws in those states in those five areas.² Each section begins with a short summary of Maryland law—and, as necessary, federal law—to put these laws in perspective.

Significant Changes Since 2021

At its 2023 session, the Maryland General Assembly passed several pieces of firearm legislation in response to the United States Supreme Court’s decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022), and the Appellate Court of Maryland’s decision in *In re Rounds*, 255 Md. App. 205 (2022), which invalidated under the Second Amendment the State’s former requirement that only an individual with “good and substantial reason” to carry a handgun could apply for a handgun carry permit.

As relevant here, House Bill 824 (2023 Md. Laws, ch. 651) repealed the “good and substantial reason” requirement but added other new prerequisites for a handgun carry permit, discussed further below in Part F. Senate Bill 1 (the Gun Safety Act of 2023, 2023 Md. Laws, ch. 680) established a list of sensitive places where an individual, even with a permit, may not wear, carry, or transport a handgun. As of this writing, the United States District Court for the District of Maryland has preliminarily enjoined, in part, the enforcement of S.B. 1, specifically its restrictions on carrying in locations selling alcohol, on private property (other than dwellings) without the owner’s consent, and within 1000 feet of a public demonstration. Order, *Kipke v. Moore*, No. GLR-23-1293 (D. Md. Sept. 29, 2023), ECF No. 32; *see also* Order Granting Defendants’ Motion for Relief (D. Md. Oct. 2, 2023), ECF No. 35.

In 2023, North Carolina repealed its permit requirement to purchase handguns and abolished its state-law background check requirements, so that only the minimum requirements of federal law apply to the purchase of firearms in North Carolina. N.C. Sess. Laws 2023-8. However, the state still requires a permit to carry a concealed weapon.

² This comparison draws from the survey of state gun laws prepared by the Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/browse-gun-laws-by-state/> (last visited Nov. 6, 2023).

Florida abolished its requirement for a concealed carry permit in 2023. Fla. Laws 2023-18. Any person who would satisfy the requirements for a permit (other than the training requirement, which does not apply to permitless carry) may now carry a concealed firearm in Florida without obtaining a permit. Fla. Stat. § 790.01.

Licensing

Maryland

Maryland does not require a license to own a firearm. It does, however, have an application process to purchase, rent, or transfer certain firearms and a specific licensing requirement to purchase, rent, or receive a handgun. As to application requirements, generally speaking, a person must submit a firearm application “before the person purchases, rents, or transfers a regulated firearm.” Md. Code Ann., Pub. Safety (“PS”) § 5-117. The term “regulated firearm” is defined as handguns and specified assault weapons, so this requirement does not apply to non-assault weapon rifles and shotguns. PS § 5-101(r). The firearm application must be submitted to either a licensed firearms dealer or a designated law enforcement agency, PS § 5-118(a), which, in turn, must forward a copy to the Secretary of the Maryland State Police for processing, PS § 5-120.

As part of Maryland’s firearm application, the applicant must state under the penalty of perjury that the applicant: (i) is at least 21 years old; (ii) has never been convicted of a disqualifying crime; (iii) has never been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years; (iv) is not a fugitive from justice; (v) is not a “habitual drunkard”; (vi) is not addicted to a controlled dangerous substance or is not a habitual user; (vii) does not suffer from a mental disorder and have a history of violent behavior; (viii) has never been found incompetent to stand trial; (ix) has never been found not criminally responsible; (x) has never been voluntarily admitted for more than 30 consecutive days to a facility for individuals with mental disorders; (xi) has never been involuntarily committed to such a facility; (xii) is not under the protection of a guardian appointed by a court unless solely as a result of a physical disability; (xiii) is not a respondent against whom protective orders have been entered; and (xiv) if under the age of 30 years at the time of application, has not been adjudicated delinquent by a juvenile court for certain acts. PS § 5-118(b).

On receipt of a firearm application, the Secretary of the Maryland State Police “shall conduct an investigation promptly to determine the truth or falsity of the information supplied and statements made in the firearm application.” PS § 5-121. The Secretary shall disapprove a firearm application if the Secretary determines it contains falsities or is not properly completed,

or if the Secretary “receives written notification from the firearm applicant’s licensed attending physician that the firearm applicant suffers from a mental disorder and is a danger to the firearm applicant or to another.” PS § 5-122. An aggrieved applicant may request a hearing in writing within 30 days after the Secretary gives notice that the application has been disapproved, and the Secretary shall grant the hearing within 15 days. PS § 5-126(a). The hearing must be held in the county of the applicant’s legal residence, PS § 5-126(c), and is subject to judicial review, PS § 5-127.

As to licensing requirements, there is a specific provision that requires a license to obtain a handgun. With certain limited exceptions, a person may “purchase, rent, or receive a handgun” only if the person possesses a valid handgun qualification license issued by the Secretary of the Maryland State Police and is not prohibited from purchasing or possessing a handgun under state or federal law. PS § 5-117.1(c). The Secretary “shall issue” a handgun qualification license to a person who the Secretary finds is at least 21 years of age, is a resident of the state, has demonstrated satisfactory completion within the past 3 years of a firearms safety training course approved by the Secretary, and, based on an investigation, is not prohibited by state or federal law from purchasing or possessing a handgun. PS § 5-117.1(d). As part of the investigation, the Secretary must submit a complete set of the applicant’s fingerprints to the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services and apply for a state and national criminal history records check. PS § 5-117.1(f). The Secretary shall issue a handgun qualification license if the application is approved, or a written denial, within 30 days of receipt of the application, and aggrieved applicants have similar appeal rights to those described above. PS § 5-117.1(h). The license expires 10 years from the date of issuance. PS § 5-117.1(i). A person who meets the requirements for a permit to carry, wear, or transport a handgun (*i.e.*, a concealed carry permit), may also be issued a handgun qualification license without an additional application or fee. PS § 5-306(e).

Other states

A person wishing to purchase or possess a firearm in Massachusetts generally must obtain either a Firearm Identification Card or a License to Carry. A Firearm Identification Card allows the purchase and possession of rifles and shotguns that are not “large capacity” weapons. Mass. Gen. Laws ch. 140, §§ 129B(6), 131E; *see also id.* § 121 (defining “large capacity”). A License to Carry allows the purchase and possession of all lawful firearms and also functions as a concealed carry permit. *Id.* §§ 131, 131E. Both types of license are issued by local police departments. *Id.* §§ 121, 129B, 131. Both types require a determination that no grounds for disqualification apply, following a background check. *Id.* §§ 129B(1), 131, 131F. A license may also be denied on the grounds that the applicant is “unsuitable,” meaning that there is reliable reason to believe they pose a threat to public safety. To deny a Firearm Identification Card on

this ground, a licensing authority must petition a court for a determination of unsuitability, *id.* § 129B(1.5); in contrast, a licensing authority may deny a License to Carry upon its own determination that the applicant is unsuitable, subject to judicial review, *id.* § 131(d).

None of the other states surveyed require a license to own a firearm nor do they have a firearm application process to obtain or transfer a firearm (beyond the background checks discussed in the next section). North Carolina formerly required a license to purchase or receive a “pistol,” but repealed that requirement in 2023. N.C. Sess. Laws 2023-8.

Background Checks

In order to understand state laws on background checks, some knowledge of federal law is required. The principal federal law concerning background checks is the Brady Act, which, among other things, requires licensed firearms dealers to request a background check on a purchaser prior to the sale of a firearm. 18 U.S.C. § 922(t). States have the option under that law to serve as the “point of contact” for all firearm transactions and have state and local agencies conduct required background checks using state and federal databases or to have the Federal Bureau of Investigation (“FBI”) conduct background checks using only the National Instant Criminal Background Check System (“NICS”). The key difference is that point-of-contact states often search records that may not show up in the NICS. Notably, the Brady Act does not require private sellers (i.e., sellers who are not licensed firearms dealers) to request a background check.

Maryland

Maryland is considered a partial point-of-contact state, because the background check process depends on the type of firearm. For handguns, licensed firearms dealers contact the Secretary of the Maryland State Police to request a background check; for long guns, they contact the FBI. PS § 5-117.1(f). Private sellers, meanwhile, must process transfers of regulated firearms through a licensed dealer or designated law enforcement agency, which, in turn, requests a background check from the appropriate entity. PS § 5-124(a).

Other states

Four of the states surveyed—Virginia, Pennsylvania, Delaware, and Florida—are currently point-of-contact states. Thus, licensed firearm dealers in those states process all of their background checks through the State Police (in Florida, the Department of Law Enforcement), rather than the FBI. Each state has enacted laws to implement its own background check requirements. For example, Virginia provides that no dealer shall “sell, rent, trade, or transfer from his inventory” any firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and other information from the applicant and (ii) requested criminal

history information from the State Police and is authorized by law to complete the sale or transfer. Va. Code Ann. § 18.2-308.2:2. Pennsylvania, meanwhile, requires licensed firearms dealers to request that the State Police conduct a “criminal history, juvenile delinquency and mental health records background check” prior to the transfer of a firearm. 18 Pa. Cons. Stat. Ann. § 6111. Delaware enacted legislation in 2022 to require dealers to submit requests for background checks to the State Bureau of Identification of the Delaware State Police, which will then transmit a request for a background check to the NICS system and also “search other available databases” to determine if the requesting individual is a prohibited purchaser. Del. Code Ann. tit. 11, § 8572.³ Florida prohibits a licensed firearms dealer from selling or delivering a firearm until the licensed firearms dealer has obtained a prescribed form with photo identification, collected a fee, requested a check of information reported in the Florida Crime Information Center and National Crime Information Center systems, and received a unique approval number from the Department of Law Enforcement. Fla. Stat. Ann. § 790.065.⁴

Six of the states surveyed—Georgia, West Virginia, North Carolina, South Carolina, Texas, and Massachusetts—are not point-of-contact states. North Carolina was a partial point-of-contact state until 2023, when it repealed its law on the subject. N.C. Sess. Laws 2023-8. Licensed firearms dealers in those states run the background checks required by federal law through the FBI and the NICS. Georgia has a state law, and Massachusetts has a regulation, reiterating the requirement in federal law that all transfers by licensed firearms dealers are subject to background checks through the NICS. Ga. Code Ann. § 16-11-172; 803 Mass. Code Regs. § 10.07(3). The remaining four states have no state law requiring licensed firearms dealers to initiate background checks prior to transferring a firearm, thus relying solely on federal law.⁵

³ While Delaware’s new legislation required the state to begin processing background checks by June 2023, the implementation of the measure making Delaware a point-of-contact state has been delayed by staffing constraints. Paul Kiefer, *State Senate Passes Permit-To-Purchase Bill for Handguns*, Delaware Public Media (May 2, 2023), <https://www.delawarepublic.org/politics-government/2023-05-02/state-senate-passes-permit-to-purchase-bill-for-handguns>.

⁴ In 2018, following the Marjory Stoneman Douglas High School mass shooting in Parkland, Florida, Maryland and three of the surveyed states, namely Florida, Delaware, and Massachusetts, enacted “red flag” laws permitting state courts to order the temporary removal of firearms from individuals who pose a danger to themselves or others, known as a “risk protection order,” Fla. Stat. Ann. § 790.401, “lethal violence protective order,” Del. Code Ann. Tit. 10, § 7701 *et seq.*, or “extreme risk protective order,” PS § 5-601 *et seq.*; Mass. Gen. Laws ch. 140, § 131R. Virginia enacted a similar law in 2020. Va. Code Ann. § 19.2-152.14. Maryland’s law allows law enforcement officers, spouses, cohabitants, persons related by blood, marriage, or adoption, individuals who have a child in common, current dating or intimate partners, current or former legal guardians, and medical professionals or social workers to petition for such an order, which requires a person to surrender any firearm in the person’s possession and prohibits the person from purchasing or possessing a firearm for the duration of the order, up to one year. *See* PS § 5-601 *et seq.* West Virginia, in contrast, affirmatively prohibits the enforcement of “red flag” orders. W. Va. Code § 61-7B-6.

⁵ Individuals who hold certain permits issued by state or local authorities, often referred to as Brady permits, may bypass the federally required background check, provided the permit has been issued (1) within the previous five years in the state in which the transfer is to take place and (2) after an authorized government official has conducted a

Three of the states surveyed—Virginia, Delaware, and Pennsylvania—have enacted state laws that require private sellers to obtain a background check. In Virginia, private sellers must obtain verification from a licensed firearms dealer that information on the prospective purchaser has been submitted for a background check and that a determination has been received by the State Police that the purchaser is not prohibited from possessing a firearm. Va. Code Ann. § 18.2-308.2:5. Similarly, in Delaware, private sellers must request a licensed firearms dealer to facilitate a firearms transaction, including the background check, prior to transferring a firearm to another unlicensed person. Del. Code Ann. tit. 11, § 1448B. In Pennsylvania, private sellers may only sell a handgun or short-barreled rifle or shotgun at “the place of business of a licensed importer, manufacturer, dealer or county sheriff’s office” and the licensed entity must conduct a background check “as if [it] were the seller of the firearm.” 18 Pa. Cons. Stat. Ann. § 6111(c).

Seven of the states surveyed—Florida, Georgia, North Carolina, South Carolina, West Virginia, Massachusetts, and Texas—do not require private sellers to initiate a background check when transferring a firearm. However, the Florida Constitution states that “[e]ach county shall have the authority to require a criminal history records check . . . in connection with the sale of any firearm occurring within such county.” The term “sale” for purposes of this section “means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access.” Fla. Const. Art. VIII § 5(b). Notably, this local option provision does not extend to “[h]olders of a concealed weapons permit as prescribed by general law” when purchasing a firearm. *Id.* Massachusetts allows private sellers to sell or transfer up to four firearms per calendar year without going through a licensed gun dealer; there is no requirement of a background check for the individual sale or transfer, although, as discussed above, the buyer or recipient of the firearm must have a valid permit (which itself requires a background check). *See* Mass. Gen. Laws ch. 140, § 128A. Private sales must also be conducted through an online portal which reports the transaction to the state and allows the seller to verify the validity of the buyer’s license. *Id.* North Carolina previously required background checks for private sales of pistols, but repealed that law in 2023.

Under federal law, if a licensed firearms dealer who has initiated a background check has not been notified within three business days that the purchaser is prohibited from possessing a firearm, the dealer may proceed with the sale by default. 18 U.S.C. § 922(t)(1). Four of the states

background investigation to verify that the purchaser is not prohibited from possessing a firearm. *See* 18 U.S.C. § 922(t)(3); *see also* Bureau of Alcohol, Tobacco, Firearms and Explosives, Permanent Brady Permit Chart, <https://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart> (last updated Aug. 10, 2023). Five of the states surveyed—Georgia, West Virginia, North Carolina, South Carolina, and Texas—issue Brady permits. Maryland does not.

surveyed—Virginia, Delaware, Pennsylvania, and Florida—have enacted laws that extend this timeframe either directly or indirectly. In Virginia, if a licensed firearms dealer is told that the background check will not be available by the end of the dealer’s fifth business day, the dealer may immediately complete the sale. Va. Code Ann. § 18.2-308.2:2(B)(2). In Delaware, if 25 days have elapsed from the time the background check is requested and the State Police still have not issued a denial, the transfer may proceed. Del. Code Ann. tit. 11, § 1448A(b). In a departure from those specified extensions, Pennsylvania law provides that if the criminal history or juvenile delinquency check indicates a conviction for a misdemeanor that the State Police cannot determine is or is not related to an act of domestic violence, the State Police shall issue a temporary delay and investigate as expeditiously as possible, but no firearm may be transferred during the temporary delay. 18 Pa. Cons. Stat. Ann. § 6111(b)(7). Thus, the transfer is held not for a specific number of days but rather pending the investigation. In all other cases, Pennsylvania law allows ten days for completion of the background check. *Id.* § 6111(b)(1.1)(iii). Florida’s mandatory waiting period for the delivery of a firearm, discussed further below, ends after three days or upon completion of a background check, whichever is *later*. Fla. Stat. Ann. § 790.0655.

Massachusetts grants licensing authorities 40 days to complete a background check; however, this 40-day period only applies to the issuance of a firearm license, and not to each individual purchase of a firearm, where the default federal rule applies. *See* Mass. Gen. Laws ch. 140, §§ 129B(3), 131(e).

Waiting Periods

Maryland

In Maryland, except for transfers to certain law enforcement and military personnel, no person—regardless of whether they are a licensed firearms dealer or a private seller—may “sell, rent, or transfer a regulated firearm,” that is, a handgun or specified assault weapon, until 7 days after a firearm application is forwarded to the Secretary of the Maryland State Police. PS §§ 5-123(a), 5-124(a)(1), 5-137(b).

Other states

Only one of the states surveyed—Florida—has enacted a waiting period law. In Florida, there is a mandatory waiting period between the purchase and delivery of any firearm. The waiting period is 3 days, excluding weekends and legal holidays, or the time that it takes to complete the background check, whichever is later. Fla. Stat. Ann. § 790.0655. However, there are exemptions to this requirement. For example, the waiting period does not apply when the purchaser of any firearm has a concealed carry permit, when the purchaser of a rifle or shotgun has completed a hunter safety course, or when the purchaser of a rifle or shotgun is a law

enforcement officer, correctional officer, or service member. *Id.* The waiting period also does not apply to the trade-in of another firearm. *Id.*

The remaining states do not have any express waiting period. As discussed above, though, some states effectively have waiting periods to the extent the purchase or transfer of a firearm cannot be completed until the appropriate license or permit has been issued or required background checks have been completed.

Straw Purchases

The term “straw purchase” generally refers to the situation where a purchaser is buying a firearm on behalf of someone else who is ineligible to purchase or possess that firearm. Federal law prohibits any person from selling or otherwise disposing of a firearm to a person if the seller “know[s]” or has “reasonable cause to believe” the buyer is prohibited from possessing a firearm. *See* 18 U.S.C. § 922(d).

The federal Safer Communities Act, enacted in 2022, added a new prohibition on straw purchases. The statute makes it a federal crime to knowingly purchase, or conspire to purchase, a firearm for another person, “knowing or having reasonable cause to believe” that the other person is prohibited from purchasing a firearm under federal law, intends to use the firearm in furtherance of a felony, terrorism, or drug trafficking, or intends to sell or dispose of the firearm to a prohibited person. 18 U.S.C. § 932.

Maryland

Maryland law expressly defines “straw purchase” to mean “a sale of a regulated firearm in which a person uses another, known as the straw purchaser, to: (1) complete the application to purchase a regulated firearm; (2) take initial possession of the regulated firearm; and (3) subsequently transfer the regulated firearm to the person.” PS § 5-101(v). A person may not “knowingly or willfully participate” in a straw purchase of a regulated firearm. PS § 5-136(b). If the regulated firearm is a gift to the purchaser’s spouse, parent, grandparent, grandchild, sibling, or child, the recipient must nonetheless complete a firearm application and forward a copy to the Secretary within 5 days of receipt of the firearm. PS § 5-136(a). A person may not “knowingly give false information or make a material misstatement in a firearm application or in an application for a dealer’s license.” PS § 5-139.

Other states

Seven of the states surveyed—Virginia, Florida, Delaware, North Carolina, Pennsylvania, Texas, and Massachusetts—prohibit providing false information in connection with a firearms transfer. In Virginia and Florida, the law prohibits both the buyer from “willfully” providing false information and the seller from requesting criminal history information “under false pretenses.”

See Va. Code Ann. § 18.2-308.2:2(E), (K); Fla. Stat. Ann. § 790.065(7), (12)(a). The other states focus more on information that is provided by the buyer in order to deceive the seller. For example, Delaware prohibits a “materially false oral or written statement” that is “intended or likely to deceive” the seller. Del. Code Ann. tit. 11, § 1448A(g). North Carolina similarly prohibits any person from providing “information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer.” N.C. Gen. Stat. Ann. § 14-408.1(c). In Pennsylvania, the law prohibits “any person, purchaser or transferee” from “knowingly and intentionally” making materially false oral or written statements, and also penalizes one who “willfully furnishes or exhibits any false identification intended or likely to deceive the seller.” 18 Pa. Cons. Stat. Ann. § 6111(g)(4).⁶ In Texas, a person who is prohibited from possessing a firearm under state or federal law commits an offense if they knowingly make a “material false statement” on a legally required form submitted to a federally licensed firearms dealer. Tex. Penal Code § 46.06(a)(7). Finally, Massachusetts prohibits knowingly including false information on an application for a Firearm Identification Card, Mass. Gen. Laws ch. 140, § 129B(8), and also prohibits making false statements about one’s own identifying information or criminal record in purchasing a firearm, *id.* § 129.

Six of the states surveyed—Delaware, Virginia, Georgia, North Carolina, Florida, and Massachusetts—have laws that target the “straw purchaser,” that is, the person who buys a firearm on behalf of a prohibited person. (And, as noted above, there is now a federal prohibition on straw purchasing applicable in all states.) The laws in these states primarily differ in terms of the level of knowledge that is required for culpability. Delaware simply prohibits “engaging in a firearms transaction on behalf of another” who is not qualified to purchase, own, or possess a firearm. Del. Code Ann. tit. 11, § 1455. Virginia imposes penalties if the buyer intends to resell or otherwise provide a firearm to a person that the buyer “knows or has reason to believe is ineligible . . . for whatever reason.” Va. Code Ann. § 18.2-308.2:2(M). Georgia imposes penalties on any person who “knowingly attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm to an individual who is not the actual buyer,” as well as on any person who “willfully and intentionally aids or abets such person.” Ga. Code Ann. § 16-11-113(a). While Georgia’s law focuses on dealers, North Carolina has a similar provision that penalizes any person who “knowingly solicits, persuades, encourages, or entices a licensed dealer or *private seller*” to transfer a firearm under circumstances that the person knows are illegal. N.C. Gen. Stat. Ann. § 14-408.1(b) (emphasis added). Florida imposes penalties only if the buyer “knowingly acquires a firearm . . . intended

⁶ Pennsylvania also requires the buyer of a handgun to affirm, on a form, that he or she is the “actual buyer.” The form explains that a person is not the actual buyer under Pennsylvania law if the buyer is acquiring the firearm on behalf of another person, unless it is a gift for a spouse, parent, child, grandparent, or grandchild. 18 Pa. Cons. Stat. Ann. § 6111(b)(1).

for the use of a person who is prohibited by state or federal law from possessing or receiving a firearm.” Fla. Stat. Ann. § 790.065(12)(d). Lastly, Massachusetts law prohibits using a firearm permit to purchase a firearm “for the unlawful use of another or for resale to or giving to an unlicensed person” without an explicit mens rea requirement. Mass. Gen. Laws ch. 140, § 131E(b).

Two of the states surveyed—Virginia and West Virginia—have laws that target the “actual buyer,” that is, the prohibited person who receives the firearm.⁷ Virginia penalizes any ineligible buyer who solicits another person to purchase a firearm on his or her behalf. Va. Code Ann. § 18.2-308.2:2(N). West Virginia penalizes a person who willfully procures another person to entice a seller to transfer a firearm knowing the transfer is illegal. W. Va. Code Ann. § 61-7-10(e). Although Massachusetts does not have an explicit statute penalizing the actual buyer in a straw purchase, its statutes requiring firearm purchasers and possessors to be validly licensed, discussed above in Part B, would allow the prosecution of an unlicensed buyer. *See* Mass. Gen. Laws ch. 140, § 129C.

Pennsylvania is the only surveyed state with a law targeting the seller in a straw purchase.⁸ Specifically, Pennsylvania penalizes any seller who “knowingly or intentionally sells, delivers, or transfers a firearm under circumstances intended to provide a firearm” to a person ineligible to possess one. 18 Pa. Cons. Stat. Ann. § 6111(g)(2).

South Carolina has no state laws to address straw purchases.

Concealed Carry

Maryland

Maryland requires a person to have a permit “before the person carries, wears, or transports a handgun.” PS § 5-303. The Secretary of the Maryland State Police “shall issue a permit within a reasonable time” to a person who the Secretary finds meets the statutory criteria. PS § 5-306. Those criteria include, as an initial matter, that the person is at least 21 years old (or 18 or older and a member of the military); has not been convicted of (and is not on supervised probation for) certain crimes; is not presently an alcoholic, or addicted to or a habitual user of a controlled dangerous substance other than under legitimate medical direction; does not suffer from a mental disorder with a history of violent behavior; has not been involuntarily admitted for more than 30 consecutive days to a mental health facility; is not subject to a court order

⁷ The federal prohibition on straw purchases also prohibits conspiracy to commit a straw purchase, which might, depending on the facts, allow federal prosecution of the actual buyer. *See* 18 U.S.C. § 932(b).

⁸ Other states have laws targeted at misconduct by gun sellers more generally, for example, prohibitions on knowingly selling a firearm to a prohibited person, *e.g.*, Va. Code Ann. § 18.2-308.2:1, or selling a firearm without the required background check, *e.g.*, Del. Code Ann. tit. 11, §1448A(a).

prohibiting the purchase or possession of firearms; and has successfully completed a firearms training course. *Id.*⁹ House Bill 824 of 2023 modified the requirements for the training course, which now must include 16 hours of *in-person* instruction for a new applicant (8 hours for a renewal), and classroom instruction on a number of topics. PS § 5-306(a-1).

Before issuing a carry permit, the Secretary must also find, based on an investigation, that the person “has not exhibited a propensity for violence or instability that may reasonably render the person’s possession of a handgun a danger to the person or to another.” PS § 5-306(a)(10)(i). For applicants under the age of 30 years, the Secretary must also find that the applicant has not been committed for juvenile detention for longer than a year or been adjudicated delinquent for an act that would be a crime of violence or carry certain penalties if committed by an adult. PS § 5-306(c). If a permit is issued, that permit must be carried “whenever the person carries, wears, or transports a handgun.” PS § 5-308.

Other states

Four of the states surveyed—Georgia, West Virginia, Florida, and Texas—allow people to carry a concealed weapon in public without a license or permit. Georgia allows any “lawful weapons carrier” (defined as any person who is either licensed or merely eligible for a license in Georgia, or licensed in any other state, and not otherwise prohibited by law) to carry a firearm. 2022 Ga. Laws 596, §§ 4-5 (amending Ga. Code Ann. §§ 16-11-125.1(2.1), 16-11-126). Similarly, in West Virginia, any person who is 21 years of age or older and a U.S. citizen or legal resident may carry a concealed deadly weapon unless otherwise prohibited by law. W. Va. Code Ann. § 61-7-7(c). Texas allows anyone who is 21 or older, and who is not prohibited from possessing a firearm under Texas law, to carry a firearm, either concealed or openly in a holster. Tex. Penal Code § 46.02.¹⁰

⁹ Many of these bases for disqualification were added by House Bill 824 of 2023, including: Being on supervised probation; having a history of violent mental disorder or mental health treatment; and being subject to a court order prohibiting purchase or possession of firearms. House Bill 824 also raised the minimum age to obtain a permit from 18 to 21, except for members of the military.

¹⁰ All four of the states that do not require a concealed-carry permit nonetheless issue such permits, presumably because having a permit may be relevant to the permit holder if another state offers reciprocity. All four states are “shall issue” jurisdictions and, although the exact prerequisites vary slightly, all four generally impose an age requirement, a citizenship or legal residency requirement, and a requirement that the person not have certain criminal convictions or pending charges, and not have certain mental health and/or substance abuse issues. *See* Ga. Code Ann. § 16-11-129; W. Va. Code Ann. § 61-7-4a; Fla. Stat. § 790.06; Tex. Gov’t Code § 411.177. West Virginia, Florida, and Texas also require firearms safety training as a prerequisite for a permit, but not for permitless carry. W. Va. Code § 61-7-4(d); Fla. Stat. § 790.06(2)(h); Tex. Gov’t Code § 411.174(a)(7). In Texas, a permit is required to carry a firearm on a college or university campus. Tex. Penal Code § 46.03(a)(1).

Florida is the most recent state in this group to repeal its concealed carry permit requirement, having done so in 2023. Under the new Florida law, any person who would satisfy the requirements for a permit (other than the training requirement) may now carry a concealed firearm in Florida without obtaining a permit. Fla. Stat. § 790.01.

The states that do require a license or permit to carry a concealed weapon in public vary in terms of the qualifications they set, and the level of discretion authorities have when determining whether an applicant meets the qualifications. Notably, Delaware requires good character as a qualification for receiving a concealed carry permit. In Delaware, an applicant must file a certificate from five “respectable citizens” of the county stating that the applicant is of good moral character, has a reputation for peace and good order, and that possession of a concealed deadly weapon is necessary for the protection of the applicant or the applicant’s property. Del. Code Ann. tit. 11, § 1441(a)(2). That qualification—and the others set forth in state law—must be “strictly complied with” before an applicant “may be licensed.” *Id.* § 1441(a). Indeed, the statute provides that “[t]he Court may or may not, in its discretion, approve any application.” *Id.* § 1441(d). The Supreme Court in *Bruen*, however, did not call Delaware’s permitting regime into question, listing it among the “shall issue” states on the ground that it rarely denies permits in practice. 142 S. Ct. at 2123 n.1.¹¹

Three additional states—Virginia, Pennsylvania, and Massachusetts—do not have character requirements but instead allow authorities to deny an application when there is reason to believe the applicant is dangerous. In Virginia, a person is disqualified from obtaining a permit if “the court finds, by a preponderance of the evidence, based on specific acts by the applicant, [that the applicant] is likely to use a weapon unlawfully or negligently to endanger others.” Va. Code Ann. § 18.2-308.09. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement on this matter, if it is “based upon personal knowledge of such individual or of a deputy sheriff, police officer or assistant attorney for the Commonwealth . . . or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.” *Id.* In Pennsylvania, the sheriff “shall not” issue a license to “[a]n individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.” 18 Pa. Cons. Stat. Ann. § 6109. In Massachusetts, a licensing authority “shall deny” an application for a concealed carry permit if there is “reliable, articulable and credible information” that the applicant is “unsuitable,” meaning that they have “exhibited or engaged in behavior that suggests that, if

¹¹ Delaware also requires good cause, that is, an applicant must submit a statement that the applicant desires to carry a concealed deadly weapon “for personal protection or protection of the person’s property, or both,” and submit to a criminal background check. Del. Code Ann. tit. 11, § 1441(a)(1). Again, the *Bruen* Court did not question this aspect of Delaware law. 142 S. Ct. at 2123 n.1.

issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others.” Mass. Gen. Laws ch. 140, § 131(d).

Five of the states surveyed—Virginia, North Carolina, South Carolina, Delaware, and Massachusetts—require firearm safety training in order to receive a concealed carry permit. Three additional states—West Virginia, Florida, and Texas—have training requirements for a permit, but obtaining a permit is optional. In any event, the state laws in this area vary based on the range of courses that qualify and the extent to which the content of those courses is prescribed. In Virginia, the law outlines a variety of courses that would qualify but also allows “any other firearms training that the court deems adequate.” Va. Code Ann. § 18.2-308.02. In North Carolina, applicants must complete an “approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force.” N.C. Gen. Stat. Ann. § 14-415.12. An approved course is one that satisfies the law’s requirements and that is certified or sponsored by the North Carolina Criminal Justice Education and Training Standards Commission, the National Rifle Association, or a law enforcement agency, college, private or public institution or organization, or firearms training school taught by instructors certified by either of the first two entities. *Id.*

South Carolina requires “proof of training” to receive a concealed weapons permit, S.C. Code Ann. § 23-31-215, requiring an applicant to have, “within three years of filing an application, completed a basic or advanced handgun education course offered by a state, county, or municipal law enforcement agency or a nationally recognized organization that promotes gun safety.” S.C. Code Ann. § 23-31-210. The course must include: (i) information on the statutory and case law of the state relating to handguns and to the use of deadly force; (ii) information on handgun use and safety; (iii) information on the proper storage practice for handguns with an emphasis on storage practices that reduces the possibility of accidental injury to a child; (iv) the actual firing of the handgun in the presence of the instructor, provided that a minimum of twenty five rounds must be fired; (v) properly securing a firearm in a holster; (vi) “cocked and locked” carrying of a firearm; (vii) how to respond to a person who attempts to take your firearm from your holster; and (viii) de-escalation techniques and strategies. *Id.* Certain individuals who have completed military basic training and retired law enforcement officers must only provide proof of training on the first element, that is, on the statutory and case law of the state relating to handguns and to the use of deadly force, while other individuals, such as active military and handgun instructors, need only provide documentation of that status to satisfy the requirement. *Id.*

Delaware is similarly prescriptive in terms of course content. In Delaware, training courses must include: (i) instruction regarding knowledge and safe handling of firearms; (ii) instruction

regarding safe storage of firearms and child safety; (iii) instruction regarding knowledge and safe handling of ammunition; (iv) instruction regarding safe storage of ammunition and child safety; (v) instruction regarding safe firearms shooting fundamentals; (vi) live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition; (vii) identification of ways to develop and maintain firearm shooting skills; (viii) instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms; (ix) instruction regarding the laws of the state pertaining to the use of deadly force for self-defense; and (x) instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution. Del. Code Ann. tit. 11, § 1441(a)(3).

In Massachusetts, to obtain a license to carry, an applicant must have a “basic firearms safety certificate.” Mass. Gen. Laws, ch. 140, § 131P. The State Police are responsible for certifying firearms safety instructors and approving the curriculum of firearms safety courses, which must include (a) the safe use, handling and storage of firearms; (b) methods for securing and childproofing firearms; (c) the applicable laws relating to the possession, transportation and storage of firearms; and (d) knowledge of operation, potential dangers and basic competency in the ownership and usage of firearms. *Id.* By regulation, the State Police have approved certain firearm safety courses as meeting the state’s requirements, including the programs offered by the NRA and certain firearms manufacturers. 515 Mass. Code Regs. § 3.05.

Two of the states surveyed—Pennsylvania and Georgia—do not require firearms safety training in order to receive a concealed carry permit.

Table 19: Comparison of State Firearm Laws

	Licensing		Background Checks		Waiting Periods		Straw Purchases ¹				Concealed Carry			
	To Own	To Buy	Point of Contact	Private Sellers	Express Period	Extend Checks	False Info	Straw Purchaser	Actual Buyer	Initial Seller	Permit Required	Character	Evaluate Danger	Safety Training
VA			✓	✓		✓	✓	✓	✓		✓		✓	✓
PA			✓	✓		✓	✓			✓	✓		✓	
GA								✓						
DE			✓	✓		✓	✓	✓			✓	✓		✓
WV									✓					✓ ²
NC							✓	✓	✓		✓			✓
FL			✓		✓	✓	✓	✓						✓ ²
SC											✓			✓
TX							✓							✓ ²
MA	✓	✓		✓ ³		✓ ⁴	✓	✓			✓		✓	✓
MD		✓ ⁵	Partial	✓	✓		✓	✓	✓	✓	✓		✓	✓

Notes

* A gray cell indicates a change in law in 2023.

¹ See also 18 U.S.C. § 932 (federal prohibition on knowingly purchasing or conspiring to purchase a firearm for a prohibited purchaser).

² Applies only to persons who choose to obtain an optional concealed-carry permit.

³ Private sellers must verify that buyer holds a valid license to purchase firearms, but background checks not required for each individual sale.

⁴ Time for background checks extended only for initial application for firearms license, not for purchase of each individual firearm.

⁵ Requirement applies only to specified “regulated firearms,” which includes handguns.

Source: MD OAG

WYOMING SURVEY & ANALYSIS CENTER

Time-to-Crime

In 2020, the average time-to-crime for traced firearms in Maryland was 9.97 years (compared to the national average, 7.01 years).^{viii} In 2021, the average time-to-crime was 8.75 years (compared to the national average, 6.24 years).^{ix} A time-to-crime of less than three years is considered a potential indicator of trafficking.^x

Table 20: Time-To-Crime in Maryland, 2020 & 2021

	Under 3 Months	3 Months to Under 7 Months	7 Months to Under 1 Year	1 Year to Under 2 Years	2 Years to Under 3 Years	3 Years and Over
2020	436	415	302	552	485	4,068
2021	432	484	555	829	424	3,902
Total	868	899	857	1,381	909	7,970

Note: ATF data are provided by calendar year.

Source: ATF

WYOMING SURVEY & ANALYSIS CENTER

Persons Prohibited from Possessing a Firearm

WYSAC asked the LEAs to indicate whether individuals arrested in connection to a firearm crime/crime firearm were previously disqualified from possessing a firearm. Around 42% (n=1,405) of individuals arrested were disqualified from possessing a firearm. The remaining 58% were either not a disqualified person (n=437, 13%), or the possessor’s disqualification status was either unknown or missing (n=1,487, 45%).

Figure 6: Firearm Recovery, by Prohibited Status



Recommendations and Conclusions

- WYSAC recommends requesting or requiring that LEAs collect crime firearm trace data. ATF trace data captures information from manufacturer through distribution to the first retail purchase. All LEAs can request trace data from the ATF with free *eTrace* software or by fax.

Appendix A: Law Enforcement Agencies

Non-Responsive LEAs

1. Baltimore City School Police
2. Bowie State University
3. Brentwood Police Department
4. Cottage City Police Department
5. District Heights Police Department
6. Fairmount Heights Police Department
7. Forest Heights Police Department
8. Frostburg City Police Department
9. Montgomery County Sheriff's Office
10. Morgan State University Police Department
11. Washington Suburban Sanitary Commission
12. Wicomico County Sheriff's Office

Responding Agencies

1. Aberdeen Police Department
2. Allegany County Sheriff's Office
3. Annapolis Police Department
4. Anne Arundel C C Public Safety & Police
5. Anne Arundel County Police Department
6. Anne Arundel County Sheriff's Office
7. Baltimore City Community College
8. Baltimore City Police Department
9. Baltimore County Police Department
10. Baltimore Environmental Police
11. Bel Air Police Department
12. Berlin Police Department
13. Berwyn Heights Police Department
14. Bladensburg Police Department
15. Boonsboro Police Department
16. Bowie Police Department
17. Brunswick Police Department
18. Calvert County Sheriff's Office
19. Cambridge Police Department
20. Capitol Heights Police Department
21. Caroline County Sheriff's Office
22. Carroll County Sheriff's Office
23. Cecil County Sheriff's Office
24. Centreville Police Department
25. Charles County Sheriff's Office
26. Chestertown Police Department
27. Cheverly Police Department
28. Chevy Chase Village Police Department
29. Colmar Manor Police Department
30. Coppin State University of Police Department
31. Crisfield Police Department
32. Crofton Police Department
33. Cumberland Police Department
34. Delmar Police Department
35. Denton Police Department
36. Dorchester County Sheriff's Office
37. Easton Police Department
38. Edmonston Police Department
39. Elkton Police Department
40. Federalsburg Police Department
41. Frederick City Police Department

42. Frederick County Sheriff's Office
43. Frostburg State University Police Department
44. Fruitland Police Department
45. Gaithersburg Police Department
46. Garrett County Sheriff's Office
47. Gibson Island Police Department
48. Glenarden Police Department
49. Greenbelt Police Department
50. Greensboro Police Department
51. Hagerstown Community College
52. Hagerstown Police Department
53. Hampstead Police Department
54. Hancock Police Department
55. Harford County Sheriff's Office
56. Havre de Grace Police Department
57. Howard County Police Department
58. Howard County Sheriff's Office
59. Hurlock Police Department
60. Hyattsville Police Department
61. John's Hopkins Police Department & Public Safety
62. Kent County Sheriff's Office
63. La Plata Police Department
64. Landover Hills Police Department
65. Laurel Police Department
66. Manchester Police Department
67. Maryland Capitol Police Department
68. Maryland Natural Resources Police
69. Maryland State Police
70. Maryland Transit Administration
71. Maryland Transportation Auth. Police
72. Maryland-National Capital Park Police - Montgomery County Division
73. Maryland-National Capital Park Police - Prince George's County Division
74. Montgomery Co. Fire & Explosives Inv. Sect.
75. Montgomery County Police Department
76. Morningside Police Department
77. Mount Airy Police Department
78. Mount Rainier Police Department
79. New Carrollton Police Department
80. North East Police Department
81. Oakland Police Department
82. Ocean City Police Department
83. Ocean Pines Police Department
84. Oxford Police Department
85. Perryville Police Department
86. Pocomoke City Police Department
87. Prince George's County Community College Department of Public Safety
88. Prince George's County Police Department
89. Prince George's County Sheriff's Office
90. Princess Anne Police Department
91. Queen Anne's County Sheriff's Office
92. Ridgely Police Department
93. Rising Sun Police Department
94. Riverdale Park Police
95. Rock Hall Police Department
96. Rockville City Police Department
97. Saint Mary's County Sheriff's Office
98. Saint Michael's Police Department
99. Salisbury City Police Department
100. Salisbury University Police Department
101. Seat Pleasant Police Department
102. Smithsburg Police Department
103. Snow Hill Police Department
104. Somerset County Sheriff's Office
105. Sykesville Police Department
106. Takoma Park Police Department
107. Talbot County Sheriff's Office

- | | |
|-------------------------------------------------------------|--------------------------------------------------------------------|
| 108. Taneytown Police Department | 114. University of MD Eastern Shore
Department of Public Safety |
| 109. Thurmont Police Department | 115. University Park Police Department |
| 110. Towson University Police Department | 116. Upper Marlboro Police Department |
| 111. University of MD Baltimore County
Police Department | 117. Washington County Sheriff's Office |
| 112. University of MD Baltimore Police
Department | 118. Washington Metropolitan Area Transit
Authority |
| 113. University of MD College Park Police | 119. Westminster Police Department |
| | 120. Worcester County Sheriff's Office |

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^v Bureau of Alcohol, Tobacco, Firearms and Explosives. (2022). <https://bit.ly/3SnMOTD>

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^{viii} Bureau of Alcohol, Tobacco, Firearms and Explosives. (2020). <https://bit.ly/3Mnt6aD>

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^x BRADY. (2022). *About: FAQs*. <https://bit.ly/3NkjYmu>

HB947.pdf

Uploaded by: Donna Worthy

Position: UNF

Testimony for HB947

Donna Worthy
President
Worth-A-Shot
Maryland Licensed Firearms Dealer Association

Hello. My name is Donna Worthy. I am the president of Worth-A-Shot Firearms and also the President of the Maryland Licensed Firearms Dealer Association. I am testifying today on behalf of both organizations.

I am strongly opposed to Bill HB947. This bill has very vague language making it impossible for Firearms dealers to stay in business due to the liability assumed as this bill is written.

Firearm Dealers are highly regulated by both the ATF and the Maryland State Police. We go through regular audits with both agency. Firearm Dealers should not be held liable after a legal and lawful purchase took place. It would be impossible to obtain insurance under this bill for us. I personally spoke to multiple insurance companies about obtaining coverage under the bills guidelines and was informed that they would not be willing to provide coverage under these terms. They stated they could not insure us for a possible lawsuit after we had complied fully with the law and done everything legally at the time of purchase. Not being able to obtain insurance, would force firearms dealers out of business.

The MLFDA and myself are strongly opposed to this bill. As written this bill would force gun stores out of business due to no insurance company willing to offer coverage under these terms. We do not believe in holding dealers liable for a criminals illegal acts when we completed a transaction entirely in accordance with both state and federal laws. We are in favor of stronger penalties for criminals who commit illegal acts with firearms but not stronger penalties for law abiding gun dealers who are following all laws in place trying to support their families.

I strongly urge an unfavorable report on this bill.

late testimony

Uploaded by: Evan Avnet

Position: UNF

Tuesday, February 27, 2024

To: Honorable House Representative

From: Evan Avnet, CEO USTASC

2029 Northwood Drive, Salisbury, MD 21801

Re: HB947 - Against

Hello,

About HB947, the bill itself is very unclear in its wording, "(A) A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY OR RECKLESSLY 19 CREATE, MAINTAIN, OR CONTRIBUTE TO HARM TO THE PUBLIC THROUGH THE SALE, 20 MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A 21 FIREARM-RELATED PRODUCT BY ENGAGING IN CONDUCT THAT IS: 22 (1) UNLAWFUL; OR 23 (2) **UNREASONABLE UNDER THE TOTALITY OF THE CIRCUMSTANCES.** 24 (B) A FIREARM INDUSTRY MEMBER SHALL ESTABLISH AND IMPLEMENT 25 **REASONABLE CONTROLS** REGARDING THE SALE, MANUFACTURE, DISTRIBUTION, 26 IMPORTATION, MARKETING, POSSESSION, AND USE OF THE FIREARM INDUSTRY 27 MEMBER'S FIREARM-RELATED PRODUCTS."

Specifically, the federal and state governments already require firearms dealers to complete background checks on all firearms purchasers, including those of long guns. Maryland also goes as far as requiring citizens to obtain an HQL permit to purchase a handgun, requiring that fingerprints be submitted. Moreover, fingerprints and a handgun permit application must be submitted in order for citizens to carry a firearm legally.

The text of "unreasonable under the totality of the circumstances" is far too broad and could define any circumstance under that regard. Moreover, firearms dealers are already required to complete background checks on applicants to purchase a firearm per those as mentioned above. Therefore, it is unclear as to what "reasonable controls" means in the text.

Suppose we are going to make firearms dealers and manufacturers legally responsible for the actions of purchasers who commit crimes with those firearms on their own accord. In that case, we must also make Lowes and Home Depot accountable for those who commit crimes with hammers, crowbars, etc.

I reference you to FBI statistics, "Consider the FBI's data on homicides in the country. From 2015-2019, according to FBI homicide statistics, an average of 315 people were killed annually by rifles. Some subset of those might be considered assault weapons. In comparison, hammers — a tool traditionally used for home improvement — were used in an average of 446 homicides per year." (Tremoglie & Tremoglie, 2023)



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Expanded

Homicide Data Table 8

Murder Victims

by Weapon, 2015–2019

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Weapons	2015	2016	2017	2018	2019
Total	13,847	15,355	15,206	14,446	13,927
Total firearms:	9,143	10,398	11,014	10,445	10,258
Handguns	6,194	6,778	7,052	6,683	6,368
Rifles	215	300	389	305	364
Shotguns	248	247	263	237	200
Other guns	152	172	178	164	45
Firearms, type not stated	2,334	2,901	3,132	3,056	3,281
Knives or cutting instruments	1,533	1,562	1,608	1,542	1,476
Blunt objects (clubs, hammers, etc.)	438	466	474	455	397
Personal weapons (hands, fists, feet, etc.) ¹	651	668	715	712	600
Poison	8	12	15	6	16
Explosives	1	1	0	4	3
Fire	63	78	93	76	81

(Expanded Homicide Data Table 8, n.d.-b)

Respectfully Submitted,

Evan Avnet, CEO USTASC

Reference

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late testimony

Uploaded by: Jake McGuigan

Position: UNF



JAKE MCGUIGAN

Managing Director, Gov't Relations - State Affairs

jmcguigan@nssf.org | 203-426-1320 x238 | nssf.org

400 N. Capitol Street NW, Suite 475, Washington, D.C. 20001

February 26, 2024

The Honorable Luke Clippinger
Chair, House Judiciary Committee
Taylor Office Building
Annapolis, Maryland 21401

HOUSE BILL 947 OPPOSE

Re: House Bill 947 - Public Safety – Firearm Industry Members – Public Nuisance

Dear Chair Clippinger, Vice Chair Bartlett, 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 House Bill 947 (“HB 947”), the so-called “Gun Industry Accountability Act of 2023.” HB 947 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 HB 947

NSSF is strongly opposed to HB 947 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. HB 947 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, HB 947 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 House Bill 947 from the House Judiciary Committee.

Sincerely,



Jake McGuigan

mcguire_unfavorable_hb-0947.pdf

Uploaded by: James McGuire

Position: UNF

26 February 2024

James I. McGuire III
3482 Augusta Drive
Ijamsville, MD 21754

UNFAVORABLE FOR HOUSE BILL 0947

Civil Actions – Public Nuisances – Firearm Industry Members
(Gun Industry Accountability Act of 2024)

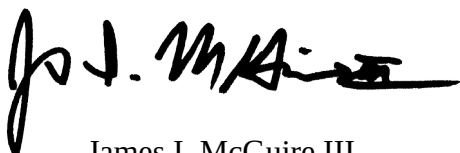
This bill might as well be titled “Gun Industry Oppression Act of 2024.” Let’s take a look at the “reasonable controls” you’re intending to task firearm manufacturers with:

- (G) “REASONABLE CONTROLS” MEANS POLICIES THAT ARE DESIGNED
- (1) TO PREVENT THE SALE OR DISTRIBUTION OF A FIREARM-RELATED PRODUCT TO:
 - (I) A STRAW PURCHASER;
 - (II) A FIREARM TRAFFICKER;
 - (III) A PERSON PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW; AND
 - (IV) A PERSON WHO THE FIREARM INDUSTRY MEMBER HAS REASONABLE CAUSE TO BELIEVE INTENDS TO USE THE FIREARM-RELATED PRODUCT:
 1. TO COMMIT A CRIME; OR
 2. TO CAUSE HARM TO THE PERSON OR ANOTHER PERSON;
 - (2) TO PREVENT THE LOSS OR THEFT OF A FIREARM-RELATED PRODUCT FROM A FIREARM INDUSTRY MEMBER; AND
 - (3) TO ENSURE THAT THE FIREARM INDUSTRY MEMBER COMPLIES WITH ALL PROVISIONS OF STATE AND FEDERAL LAW AND DOES NOT OTHERWISE PROMOTE THE UNLAWFUL SALE, MANUFACTURE, ALTERATION, IMPORTATION, MARKETING, POSSESSION, OR USE OF A FIREARM-RELATED PRODUCT

Hang on a second ... you’re describing all the functions the Legislature and Law Enforcement elements of our government are supposed to be doing. If the manufacturers are supposed to be doing this, what the hell are **you** doing? And what do we need **you** for?

Manufacturers don’t have any authority to enforce the law, perform background checks, or otherwise prevent interstate criminal behavior. You’re attempting to assign them requirements that are impossible to achieve. I s’pose that’s rather the point, isn’t it?

Respectfully submitted,



James I. McGuire III

HB0947_Testimony_2A_Maryland.pdf

Uploaded by: John Josselyn

Position: UNF



2A Maryland

2A@2AMaryland.org

House Bill 0947
Civil Actions – Public Nuisances – Firearm Industry Members
(Gun Industry Accountability Act of 2024)

UNFAVORABLE

This Bill has nothing to do with public safety or crime prevention, or a reduction in the illegal possession and use of firearms in criminal activity. It is an unjustified and blatant economic attack on the legal firearms industry as a whole and by extension those law-abiding citizens who enjoy the legitimate use of firearms.

Violence is behavior, not technology. It is a deep-rooted social problem for which there is no technological solution. Destroying the firearms industry through a barrage of groundless civil actions will not enhance public safety. However, it would spawn a black market manufacturing and distribution industry similar to bootleg alcohol as happened during Prohibition a century ago.

The firearms industry is one of the most heavily regulated industries in the nation. These regulations extend from the manufacturer through the distribution to the licensed dealers and ultimately to the consumers.

To understand the full extent and breadth of this Bill it is necessary to understand how many and varied items are included under the definitions. On page 2, §3-2301 (A) thru (E) define the persons, entities and items which fall within the scope of this Bill. Firearms top the list followed by “firearm accessories” which are broadly defined:

3–2301 (2) “FIREARM” INCLUDES AN ANTIQUE FIREARM AS DEFINED IN §4–201 OF THE CRIMINAL LAW ARTICLE.

Antique firearms are not classified as firearms under Federal law and are thus not eligible for background checks via the Federal NICS system and its use is limited to firearms background checks only. To use NICS for a background check on an antique firearm is a Federal crime.

§3-2301 (C) “FIREARM ACCESSORY” MEANS AN ITEM THAT IS SOLD, MANUFACTURED, DISTRIBUTED, IMPORTED, OR MARKETED TO BE ATTACHED TO A FIREARM.

“Firearm Accessories” as defined under §3-2301 (C) are then included under the definitions of “Firearm Related Product:”

§3-2301 (E) “FIREARM-RELATED PRODUCT” MEANS A FIREARM, AMMUNITION, A COMPONENT OR PART OF A FIREARM, OR A FIREARM ACCESSORY THAT IS:

- (1) SOLD, MANUFACTURED, DISTRIBUTED, OR MARKETED IN THE STATE; OR**
- (2) INTENDED TO BE SOLD, MANUFACTURED, DISTRIBUTED, OR MARKETED IN THE STATE; OR**
- (3) POSSESSED IN THE STATE, IF IT WAS REASONABLY FORESEEABLE THAT POSSESSION WOULD OCCUR IN THE STATE.**

An ever broader net is cast under the definition of “Firearm Industry Member:”

§3-2301 (D) “FIREARM INDUSTRY MEMBER” MEANS A PERSON ENGAGED IN THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A FIREARM-RELATED PRODUCT.

Pictured below is a cable safety lock of the type supplied free of charge by the National Shooting Sports Foundation (NSSF) and available to the public at thousands of police stations across the Nation. The lock depicted was obtained from the Parkville Precinct of the Baltimore County Police Department. Under the provision of HB 947, the following apply to this safety device:

- It is a “Firearm Accessory” because it was designed for use on a firearm or attached to a firearm. **§3-2301 (C)**



- It is a “Firearm-Related Product” under the definitions in **§3-2301 (E)** because it is a “Firearm Accessory” as defined by **§3-2301 (C)**
- Because it is a “Firearm-Related Product” as defined by **§3-2301 (E)**, the following organizations and persons are “**Firearm Industry Members**” per **§3-2301 (D)**:
 - Leapers , Inc. who manufactured the safety lock.
 - The distributor who shipped the safety lock
 - The common carrier who delivered the safety lock, e.g. FedEx, United Parcel Service, United States Postal Service, Amazon, or similar entity
 - The police officer who gave the safety lock to the citizen
 - The Baltimore County Police Department who employed the officer
 - Any citizen who in turn transfers the safety lock to a another person.

The manufacture, distribution, market or sale of the following and similar non-regulated parts defines a person as a **“Firearm Industry Member”** and a potential target for nuisance lawsuits.



Front Sight



Rubber Muzzle Caps



Web Sling for Rifle



Sling Mounting Bracket & Sling Loop



Rubber Lens Covers for Optical Sight



Trigger Guard for Rifle



Sight Mounting Bracket



Rifle Butt Plate – including Screws

Despite all the existing state and federal regulations, HB 0947 creates an array of parallel regulations that must be followed creating a scenario primed for abuse. Anyone who decides that in their “personal opinion,” some member of the industry failed to be clairvoyant and foresee some possible outcome that person is then empowered to file a lawsuit against the “Firearm Industry Member or Members.” Not only empowered but legally required and presumably entitled to assistance from the Attorney General.

§3-2303 (B)(3)(I) PERSON WHO BRINGS AN ACTION UNDER THIS SUBSECTION SHALL NOTIFY THE ATTORNEY GENERAL THAT THE PERSON HAS BROUGHT THE ACTION WITHIN 5 DAYS AFTER FILING THE COMPLAINT.

(II) THE PERSON SHALL PROVIDE THE ATTORNEY GENERAL WITH A COPY OF THE COMPLAINT AND ANY OTHER DOCUMENTS OR PLEADINGS FILED WITH THE COMPLAINT.

The Fiscal and Policy Note confirms the intent of the bill is to include the Attorney General of Maryland in any lawsuit brought, no matter how frivolous. Additionally, the Attorney General becomes a for profit entity in the same manner as thousands of other lawyers seeking to profit from the awards in so-called product liability and negligence lawsuit industry.

“State/Local Fiscal Effect: OAG advises the need for two assistant Attorney Generals and one part-time support staff to file civil actions as contemplated under the bill, with estimated general fund expenditures of \$352,788 in fiscal 2024 (which assumes a hiring date of October 1, 2023), and at least \$423,000 annually thereafter. However, OAG did not provide details regarding how it derived its estimate and, without experience under the bill, the Department of Legislative Services (DLS) advises it is unable to reliably predict the extent to which civil actions may be filed (and the corresponding need for any additional staff). It is likely that a small number of additional actions can be accommodated without hiring new staff; however, to the extent that OAG uses its authority under the bill to pursue more robust enforcement of violations, general fund expenditures increase. For illustrative purposes only, general fund expenditures associated with the hiring of one assistant Attorney General are a minimum of \$120,000 annually. Although the bill takes effect June 1, 2023, it is assumed that any potential expenditures are not incurred until fiscal 2024.

Although the bill may result in additional civil actions filed, the bill is not anticipated to materially impact the workloads of the circuit courts and the District Court.

Because OAG may seek specified relief under the bill, including compensatory and punitive damages and reasonable attorney’s fees and costs, general fund revenues may increase to the extent that such relief is awarded by the courts and allocated to the State. However, DLS is unable

to reliably estimate the magnitude of any potential revenues in advance. This analysis does not account for how (or if) any such awards received by the State may be further directed to other entities.”

The Fiscal and Policy Note further confirms the intent of the bill is to produce a chilling economic effect on any businesses involved in the lawful commerce of legal and in some instances, highly regulated products.

Small Business Effect: *The bill has a potential meaningful effect on small businesses that encounter additional litigation, liability, and potential increased costs for insurance coverage as a result of the bill’s provisions.*

Unlike existing statutes which contain a “mens rea” provision, this Bill permits anyone to bring a lawsuit even when the industry member acted in good faith and compliance with the current statutes. In essence, the legal action is borne of “you are guilty and liable because I say you are guilty.” In keeping with the punitive nature of this Bill, there is no provision protecting the firearms industry by holding the plaintiff liable for damages for frivolous legal actions.

Sections §3-2302 (A) and §3-2303 (C) contain conflicting language. While §3-2302 (A) reflects existing statutes which include a “mens rea” provision, §3-2302 (A) negates the “mens rea” provisions.

§3-2302 (A) A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY (emphasis added) CREATE, MAINTAIN, OR CONTRIBUTE TO HARM TO THE PUBLIC THROUGH THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A FIREARM-RELATED PRODUCT BY ENGAGING IN CONDUCT THAT IS:

§3-2303 (C) A PARTY SEEKING RELIEF UNDER THIS SECTION IS NOT REQUIRED TO PROVE THAT A FIREARM INDUSTRY MEMBER ACTED WITH THE INTENT TO VIOLATE THIS SUBTITLE (emphasis added).

Similar legislation in California has been blocked in U.S. District Court by Judge Andrew Schopler who ruled the legislation was likely unconstitutional.

House Bill 947 is a vindictive Bill directed at the legal firearms industry and everyone involved in the firearms industry. It will have no impact on criminals or criminal behavior.

We strongly urge an unfavorable report on House Bill 947.

John H. Josselyn
2A Maryland

II. HOME FIREARM SAFETY

A. Storing firearms in the home

1. Treat ALL guns as if they are loaded.
2. Always store your firearm unloaded and in a secure location. Consider a locked closet, drawer, or similar storage facility. A small and relatively inexpensive combination lock or key lock safe is ideal for storing firearms and ammunition.
3. Store firearms and ammunition separately.
4. Do not store firearms along with other valuable items such as jewelry. These are prime targets for theft.
5. Never store firearms in the glove compartment or trunk of your automobile.
6. Regardless of the storage method selected, always store firearms and ammunition in a location that is not subject to moisture or temperature extremes.
7. Never store firearms under the pillow or near the bed.
8. Always store firearms in the same safe location.
9. Have a routine when entering your home of securing the firearm and ammunition immediately upon arrival.

B. Making a gun "safe" for storage

1. Commercially manufactured "trigger locks" may be used to prevent the trigger from functioning. Remember that you should always keep the key in your possession.
2. A revolver may be effectively rendered safe by placing a padlock through the top strap so that the cylinder cannot be closed.
3. We must be willing to accept the obligation of firearms safety at all times – at the range, on the street, and at home. It is essential that each and every one of us exercise skill and good judgment when it comes to firearms.
4. The mere existence of laws, rules, and regulations will not prevent accidents. It is only the diligent application of those rules, coupled with an ample measure of common sense that will enhance our ability to handle firearms safely.
5. Be aware that children may think the firearm is a toy gun due to the fact that many modern semi-automatic pistols are made with polymer components.

Types of Storage Devices

Gun Cases: commonly used for transportation and storage

Gun Lockbox: allows for storage of a gun and protection from unauthorized access

Gun Safe: greatest level of security

Lockable Drawer: must not forget to lock, can be forced open

Lockable Gun Rack: allows firearms, especially long guns, to be stored securely and displayed

Cable Locks



Judge: Casinos have no duty to stop compulsive gamblers



The Borgata casino in Atlantic City, New Jersey, and its parent company, MGM Resorts International, were sued by a self-professed compulsive gambler. Wayne Parry/AP 2023

BY WAYNE PARRY ASSOCIATED PRESS

ATLANTIC CITY, N.J. — Atlantic City’s casinos have no legal obligation to stop compulsive gamblers from betting, a judge ruled, dismissing a lawsuit from a self-described problem gambler who accused the Borgata and its parent

Attachment #2_MSP_Firearms_Training_HB0947_2A_Maryland

company, MGM Resorts International, of plying him with offers to gamble despite knowing about his addiction.

U.S. District Court Judge Madeline Cox Arleo dismissed a lawsuit Jan. 31 by Sam Antar against the gambling companies, saying the voluminous rules and regulations governing gambling in New Jersey do not impose a legal duty upon casinos to cut off compulsive gamblers.

New Jersey casino law “pervasively regulates the responsibilities of casinos as they relate to compulsive gamblers, but is notably silent on whether casinos or online gambling platforms may induce people who present with compulsive gambling behavior to patronize their businesses,” the judge wrote in her decision.

She also cited two previous New Jersey cases in which a compulsive gambler and a patron who claimed to have lost money gambling while drunk sued unsuccessfully.

Similar lawsuits have been dismissed in other states.

“The New Jersey Legislature ... has not yet seen fit to require casinos to prevent or stop inducing gambling from those that exhibit problem gambling behavior,” Arleo wrote. “As a matter of law, (the) defendants do not owe a negligence common law duty of care to plaintiffs.”

Antar said the law needs to be changed, adding that he plans to appeal the dismissal of the case.

“This is not just about me; this is about all the people across this country who have this addiction,” he said. “When are we as a country going to address this?”

New Jersey, like other states, has a program in which gamblers can voluntarily exclude themselves from in-person or online betting. The casinos must honor that list and have been fined by regulators for allowing self-excluded gamblers to place bets.

Antar, who has homes in New York and in Long Branch, New Jersey, gambled \$30 million over 100,000 bets during nine months in 2019, according to his lawsuit, which does not specify how much he lost. Antar said he is not certain of the amount, and his lawyer, Matthew Litt, said it was “at least in the six figures.”

His lawsuit made some of the same claims that were raised — and rejected by a judge — in another person’s lawsuit targeting Atlantic City casinos.

In 2008, a federal judge ruled against New York gambler Arelia Taveras, who sued seven Atlantic City casinos that she said had a duty to stop her from gambling. She lost nearly \$1 million over two years, including dayslong gambling binges.

“She spent money on the bona fide chance that she might win more money,” U.S. District Court Judge Renée Bumb wrote in a 2008 ruling. “In short, she gambled. The mere fact that defendants profited from her misfortune, while lamentable, does not establish a cognizable claim in the law.”

Litt, Antar’s lawyer, said his appeal will center on his contention that New Jersey’s Consumer Fraud Act, designed to protect customers from “unconscionable” acts by companies, should apply in this case.

In 2013, Antar was sentenced to 21 months in federal prison for taking \$225,000 in a fraudulent investment scheme. He was convicted and jailed in 2022 on theft-by-deception charges involving nearly \$350,000.

In 2023, he admitted committing federal securities fraud for bilking investors, including friends, stemming from that same case, served four months in jail and was ordered to pay restitution.

Antar is currently free under an intensive supervision program, and says he has been informally counseling young people with gambling problems.

“Who better than me to show them what this can become?” he said.



COURTS

San Diego judge blocks state from enforcing law meant to hold gun industry accountable for gun violence



Attachment #2_MSP_Firearms_Training_HB0947_2A_Maryland

Firearms are displayed at a gun shop. (Andrew Selsky / Associated Press file photo)

Attorney General Rob Bonta’s office is enjoined from enforcing key portion of Firearm Industry Responsibility Act, which allows lawsuits against gun manufacturers and sellers

BY ALEX RIGGINS

A federal judge in San Diego has temporarily blocked California Attorney General Rob Bonta from enforcing a portion of state law that gave Bonta, local governments and private citizens the ability to hold gun companies legally liable for gun violence.

U.S. District Judge Andrew Schopler issued a preliminary injunction late Wednesday afternoon in a 2023 lawsuit brought against Bonta by the National Shooting Sports Foundation, the largest firearms industry trade association.

The California law in question, known as the Firearm Industry Responsibility Act, requires gun companies to take several steps to ensure they implement “reasonable controls” regarding gun safety. One of the key portions of the law requires gun companies to not “manufacture, market, import ... (or sell) a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety in California.”

The law gives Bonta’s office the power to sue gun companies that don’t comply with the law. It also gives local city and county governments and survivors of gun violence the ability to sue non-compliant gun companies.

Schopler’s injunction is narrow in that it bars Bonta’s office, but not local governments or private citizens, from filing such lawsuits while the legal challenge to the law is still pending. And it only pertains to the subsection of the law dealing with “abnormally dangerous” firearms.

Still, the trade group celebrated the injunction as a victory.

“We’re very pleased the court enjoined enforcement of this statute,” Larry Keane, National Shooting Sports Foundation’s general counsel and senior vice president for government and public affairs, told the Union-Tribune on Thursday. “This is undoubtedly a very important and significant decision.”

Bonta's office said in a statement that it was pleased the judge had found that the industry group lacked standing to pursue some of its challenges. As to the portion of law it was enjoined from enforcing, the attorney general's office said, "We disagree with that aspect of the court's ruling and are considering our options for continuing to defend this important law."

The National Shooting Sports Foundation's lawsuit alleges that the Firearm Industry Responsibility Act violates the First Amendment, Second Amendment and other constitutional rights. Schopler did not rule on the constitutionality of the law, but he ruled that the trade group is likely to prevail on the merits of the case, or at the very least had raised serious questions about the merits.

The judge wrote that the National Shooting Sports Foundation's "surest march to victory is under the banner of the dormant Commerce Clause," which essentially bars states from regulating commercial activity that takes place outside that state's borders.

He laid out an example in which a Tennessee gun manufacturer ships "youth-model rifles and AR-style long guns" — which meet California's definition of abnormally dangerous — to an Arizona gun retailer, who then sells those firearms to an Arizona buyer.

"Hours later, a thief steals the firearms and drives into California to commit a gun crime," the judge wrote in his hypothetical scenario. "Although the commercial transactions were conducted entirely out of state — and the lawful participants never set foot in California — the Tennessee manufacturer and Arizona retailer could both be sued under the 'abnormally dangerous' firearm provision."

Wrote Schopler: "Because the 'abnormally dangerous' firearm rule reaches beyond California's borders and directly regulates out-of-state commercial transactions, it likely runs afoul of the dormant Commerce Clause."

Federal law largely shields gun manufacturers and dealers from lawsuits when their products are used in a crime. The California law now being challenged was modeled after a similar New York law aiming to bypass the federal regulations. The National Shooting Sports Foundation is also challenging the New York law.

The California law was also part of a response by Gov. Gavin Newsom to a Texas law that bans most abortions after about six weeks and gives private citizens the ability to sue providers and clinics as a tool to help enforce it. When the U.S. Supreme Court upheld the Texas law in late 2021, Newsom pledged to use that same authority to empower Californians to sue gun makers.

“California will use that authority to protect people’s lives, where Texas used it to put women in harm’s way,” Newsom said in a statement at the time.

State Assemblymember Chris Ward, D-San Diego, co-authored the original legislation. In a statement Thursday, he said it’s a sensible law and expressed frustration that the judge’s ruling would “(allow) gun manufacturers to escape accountability for the horrible harms their products have caused.”

Ward called the ruling erroneous and said it should be appealed.

“The firearms industry is the only of its kind that is exempt from being sued,” Ward said in the statement. “Litigation forced the tobacco industry from marketing to children and made the automobile industry improve its safety standards. Gun manufacturers should not be immune from any and all liability.”

Keane, from the National Shooting Sports Foundation, said his organization would be prepared to challenge any appeal and is seeking to move forward to have the law declared unconstitutional.

Updates

2:34 p.m. Feb. 22, 2024: This story was updated with a statement from Bonta's office.



Alex Riggins

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Attachment #2_MSP_Firearms_Training_HB0947_2A_Maryland

SB0488-hb0947.pdf

Uploaded by: Karla Mooney

Position: UNF

SB0488/HB0947

Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2024)

Karla Mooney
21175 Marigold St
Leonardtown MD 20650
Resident of St. Mary' County Dist. 29C

I am State Director of The DC Project-Women for Gun Rights and the State Leader of the Armed Women of America. I stand in solidarity with the Ladies of both groups, numbering many more than just myself. I am also a professional Multi-disciplined Firearms Instructor and Maryland QHIC.

This is a bill written to take away accountability to the person who committed a crime with a firearm. This is a direct violation of PLACCA. Unless the seller of the firearm was indeed breaking the law by selling to a minor, or a straw purchase or someone visibly intoxicated who then uses the firearm to injure themselves or others – he or she is not breaking any law by selling the firearm.

Much like other bills entered for consideration, this bill is missing the mark. Firearms are a self-defense tool of last resort. Meaning there was no other way to protect yourself or your loved ones for great bodily harm or death. With crime rising in the state, the need for more individuals to be able to protect themselves and their loved ones has also risen. The safety of one's self is certainly a right is it not? I believe it is.

There is a scripture from the bible that speaks to this issue that I would like to remind you of:
Mark:7:20-23

“HE went on: What comes out of a person is what defiles them. For it is from within, out of a person's heart that evil thoughts come-sexual immorality, theft, murder, adultery, greed, malice, deceit, lewdness, envy, slander, arrogance and folly. All these evils come from inside and defile a person.”

Please consider that you are trying to legislate out evil of a person, not a manufacture or retailer. I oppose this bill and ask for an unfavorable report on it.

MSI Testimony on SB 488 and HB 947 PLCAA final rev

Uploaded by: Mark Pennak

Position: UNF



President
Mark W. Pennak

February 28, 2024

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 488 and HB 947

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan, non-profit organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law, federal firearms law, and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home, muzzle loading, as well as a range safety officer. I appear today in opposition to SB 488 and its cross-file HB 947 (collectively referred to herein as “the Bill” or “this Bill”).

The Bill: This Bill defines a new offense of “public nuisance” and is designed to negate the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901, *et seq.* (“PLCAA”). It provides a new duty of care on a “firearm industry member” a term that is defined by the bill to include “A PERSON ENGAGED IN THE SALE, MANUFACTURING, DISTRIBUTION, IMPORTING, OR MARKETING” of any “a “firearm-related product,” a term that is defined to include all firearms and ammunition, including mere “COMPONENTS” of firearms and ammunition.

The Bill provides that “A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY OR RECKLESSLY CREATE, MAINTAIN, OR CONTRIBUTE TO 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.” The bill does not define “components.” Nor does the bill attempt to define “reasonable under the totality of the circumstances.”

The Bill then provides, in a separate provision, that “A FIREARM INDUSTRY MEMBER SHALL ESTABLISH AND IMPLEMENT REASONABLE CONTROLS REGARDING THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, MARKETING, POSSESSION, AND USE OF THE FIREARM INDUSTRY MEMBER’S FIREARM-RELATED PRODUCTS.” The Bill also imposes an additional requirement that “A FIREARM INDUSTRY MEMBER SHALL

ESTABLISH AND IMPLEMENT REASONABLE CONTROLS REGARDING THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, MARKETING, POSSESSION, AND USE OF THE FIREARM INDUSTRY MEMBER'S FIREARM-RELATED PRODUCTS." A violation of either one of these provisions is declared to be "A PUBLIC NUISANCE."

In a separate section, the Bill then creates new causes of action, providing that the Attorney General of the State may bring a suit against any such industry member for any violation of the "public nuisance" created by the Bill. Likewise, the Bill provides that a civil suit may be brought against such industry member by "FOR INJURY OR LOSS SUSTAINED AS A RESULT OF A VIOLATION" of the "nuisance" provisions. The Attorney General "may seek (I) INJUNCTIVE RELIEF. (II) RESTITUTION; (III) COMPENSATORY AND PUNITIVE DAMAGES; (IV) REASONABLE ATTORNEY'S FEES AND COSTS; AND (V) ANY OTHER APPROPRIATE RELIEF." The private plaintiff likewise "may seek and be awarded" the same relief (except for "any other appropriate relief"). Under the Bill, neither the private plaintiff nor the Attorney General need prove that any industry member acted with "any intent to violate" these provisions.

THE BILL IS UNCONSTITUTIONALLY VAGUE.

The Vagueness Standard:

Article 24 of the Maryland Declaration of Rights prohibits the enactment or enforcement of vague legislation. Under Article 24, "[t]he void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001). A statute must provide "legally fixed standards and adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]" and "must eschew arbitrary enforcement in addition to being intelligible to the reasonable person." (Id. at 615). Under this test, a statute must be struck down if it is "so broad as to be susceptible to irrational and selective patterns of enforcement." (Id. at 616). See also *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020). "A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999)). Under this test, a statute must be struck down if it is "so broad as to be susceptible to irrational and selective patterns of enforcement." *Galloway*, 365 Md. at 616, quoting *Bowers v. State*, 283 Md. 115, 122, 389 A.2d 341 (1978). See also *Ashton v. Brown*, 339 Md. 70, 89, 660 A.2d 447 (1995); *In Re Leroy T.*, 285 Md. 508, 403 A.2d 1226 (1979).

The void for vagueness doctrine applies to laws imposing civil penalties as well as to laws imposing criminal penalties. *Madison Park North Apartments, L.P. v. Commissioner of Housing and Community Development*, 211 Md. App. 676, 66 A.3d 93 (2013), *appeal dismissed*, 439 Md. 327, 96 A.3d 143 (2014). See also *Parker v.*

State, 189 Md. App. 474, 985 A.2d 72 (2009) (“the criteria for measuring the validity of a statute under the vagueness doctrine are the same as in a non-First Amendment context: fair warning and adequate guidelines”); *Neutron Products, Inc. v. Department Of The Environment*, 166 Md.App. 549, 609, 890 A.2d 858 (2006) (“Maryland courts have applied the void for vagueness doctrine to civil penalties”) (citing *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 591, 846 A.2d 377, *cert. denied*, 543 U.S. 862 (2004) (applying the void for vagueness analysis to regulations imposing sanctions on physicians).

Federal constitutional law is in accord. See, e.g., *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074, 1079 (4th Cir. 2006) (recognizing that “[a] statute is impermissibly vague if it either (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits or (2) authorizes or even encourages arbitrary and discriminatory enforcement” (internal quotations omitted)). Such a statute need not be vague in all possible applications in order to be void for vagueness under the Due Process Clause. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision’s grasp”). And the rule is well established that the government “cannot find clarity in a wholly ambiguous statute simply by relying on the benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1322 (11th Cir. 2017) (en banc). Such statutes are facially invalid.

The Ban On “Unreasonable” Conduct Is Vague.

This Bill fails under Article 24 in multiple ways. First, the duty of care created by the bill bars conduct that is not only “unlawful,” but also imposes liability on an industry member who “KNOWINGLY OR RECKLESSLY CREATE, MAINTAIN, OR CONTRIBUTE TO 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.”

That standard is hopelessly vague as the bill does not define “UNREASONABLE UNDER THE TOTALITY OF THE CIRCUMSTANCES.” There is simply no feasible way for a dealer or other industry member to know, ahead of time, what conduct is “unreasonable” under this standard. To pass muster under the Due Process Clause, a statute banning “unreasonable” conduct must provide an “objective” and “quantifiable” standard by which reasonableness is measured. See, e.g., *Munn v. City of Ocean Springs, Miss.*, 763 F.3d 437, 440-41 (5th Cir. 2014), citing *Coates v. City of Cincinnati*, 402 U.S. 611, (1971) (explaining that statute criminalizing “annoying” others was “vague” because “no standard of conduct is specified at all”). See also *United States Telecom Ass’n v. FCC*, 825 F.3d 674, 736 (D.C. Cir. 2016) (holding that a prohibition on “unreasonable” conduct gave “sufficient notice to affected entities of the prohibited conduct going forward” **where the regulation “set forth the factors” for enforcement and “included a description of how each factor will be interpreted and applied.”**) (emphasis supplied). This Bill does not even approach affording such notice. If there is no standard, there is no

notice to the “industry member” as to what circumstances may “contribute to harm to the public.” Indeed, in allowing the Bill never even defines that what qualifies as “harm to the public.” The Attorney General and private plaintiffs may not make up unreasonable conduct through ad hoc litigation. Prior notice is required. Under this Bill, conduct that is entirely lawful could nonetheless be deemed “unreasonable” and thus constitute a “public nuisance.” Arbitrary and discriminatory enforcement is virtually guaranteed.

The Term “Reasonable Controls” Is Vague.

The additional requirement that the “industry member” “establish and implement reasonable controls” is likewise vague. The term “reasonable controls” is defined as “policies” that are “designed to (1) TO PREVENT THE SALE OR DISTRIBUTION OF A FIREARM-RELATED PRODUCT TO: (I) A STRAW PURCHASER; (II) A FIREARM TRAFFICKER; III) A PERSON PROHIBITED FROM POSSESSING A FIREARM 1 UNDER STATE OR FEDERAL LAW; AND (IV) A PERSON WHO THE FIREARM INDUSTRY MEMBER HAS REASONABLE CAUSE TO BELIEVE INTENDS TO USE THE FIREARM-RELATED PRODUCT: 1. TO COMMIT A CRIME; OR 2. TO CAUSE HARM TO THE PERSON OR ANOTHER PERSON.” As thus defined every one of these acts are already barred by federal and/or State law. See, e.g., 18 U.S.C. §§ 922(b), (d), (h), (n).). Maryland law goes well beyond federal law, imposing, for example, security requirements on licensed dealers. House Bill 1021, 2022 Session Laws, Ch. 55.

Persons who knowingly participate in in criminal activities may also be charged as aiders and abettors under federal law, 18 U.S.C. § 2, or as accessories under State law. *State v. Hawkins*, 326 Md. 270604 A.2d 489 (1992). If the Bill is intended to provide that industry members need only comply with existing law, then the Bill is ridiculous. One hardly needs a law that commands someone to obey the law. The Bill must thus be intended to impose additional requirements, none of which are specified. There is no standard by which these additional requirements are to be determined. Beyond these pre-existing provisions, there is simply no way for an “industry members” to know what a “reasonable control” would constitute. What additional steps or “controls” must the industry member impose other than those already required by law? The Bill is silent.

This bill thus does not purport to incorporate specific standards, such as set out in MD Code, Commercial Law, § 13-301, a provision that bans the use of “deceptive trade practices,” as specifically defined in that provision. See *American Home Products Corp. v. FTC*, 695 F.2d 681, 710 (3d Cir. 1982) (setting aside an FTC unfair practices order as “excessively vague and overbroad”). The industry member is thus left completely at sea concerning the scope of this provision and its meaning and is thus threatened with potentially enormous litigation burdens and liability. The discretion of the enforcing official or plaintiff is virtually unlimited. Again, there are simply no enforcement “guidelines” as required by Article 24. Courts may “not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *United States v. Stevens*, 559 U.S. 460, 480 (2010). See also *Dubin v. United States*, 599 U.S. 110, 132 (2023) (same); *McDonnell v. United States*, 579

U.S. 550, 576 (2106) (same); *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir. 2011) (same).

Unlike New York legislation from which this Bill was apparently copied (at least in part), N.Y. Gen. Bus. Law §§ 898-b, the vagueness of this Bill is not alleviated by any existing Maryland general “public nuisance” statute or other statutes containing the same language. Compare MD Code, Alcoholic Beverages, § 29-2612 and MD Code, Alcoholic Beverages, § 32-2614 and MD Code, Alcoholic Beverages, § 27-2616 (public nuisance associated with the illegal sale of alcohol); MD Code, Criminal Procedure, § 10-105(a) (allowing expungement of “public nuisance” crimes). See generally *In re Expungement Petition of Meagan H.*, 2022 WL 3153968 (Ct. of Sp. Appeals 2022) (listing public nuisance crimes for discreet and clear misconduct). Indeed, the rule in Maryland is that “[w]hile a private party may seek an injunction against a public nuisance, **it must have an interest in property injured by the nuisance and have suffered damage distinct from that experienced by other citizens.**” *Brady v. Walmart Inc.*, 2022 WL 2987078 at *17 (D. Md 2022) (applying Maryland law) (emphasis added). This Bill would permit a private recovery and injunctive relief for any “harm to the public” and thus dissolves the requirement that the plaintiff must have suffered “damage distinct” from that of other citizens. The Bill thus improperly authorizes suits by persons **who may not sue under controlling “public nuisance” case law.**

Moreover, unlike in New York, where there was long-standing statutory and case law that provided definitions and clarity to the virtually identical language used in the New York gun legislation, there is no comparable body of Maryland law addressing these terms. Compare *NSSF v. James*, 604 F.Supp.3d 48, 65-66 (N.D.N.Y. 2022), *appeal pending*, No. 22-1374 (2d Cir.) (holding that Section 898 was not void for vagueness because it tracked other New York law dating back to 1965 which provided explicit definitions, in the statute or in the case law, for the same terms). The district court in *James* declined to enjoin the New York statute under PLCAA, holding that it was enough under PLCAA predicate statute if the statute “expressly regulates firearms.” (604 F.Supp. at 59-61). The NSSF took an appeal to the United States Court of Appeals for the Second Circuit which heard oral argument on November 3, 2023. While the Second Circuit’s decision has yet to be issued, that argument did not go well for New York. Indeed, this Bill is even more extreme than the New York statute, which declared to be a nuisance only that conduct that “endangers the safety or health of the public,” not merely conduct that “harms the public” in some undefined way. See N.Y. Gen. Bus. Law §§ 898-c, declaring a violation of N.Y. Gen. Bus. Law §§ 898-b.

The Bill’s use of “knowingly or reckless conduct” is not a limit on liability.

The Bill’s requirement that the conduct be “knowingly” or “reckless” is meaningless here. The requirement of “knowingly” means that person knows that the conduct is illegal and does it anyway. See, e.g., *Chow v. State*, 393 Md. 431 (2006) (holding that a knowing violation of a Maryland statute making it unlawful for a person who is not a regulated gun owner to sell, rent, transfer, or purchase any regulated firearm without complying with the application process and seven-day waiting period requires that a defendant knows that the activity they are engaging in is

illegal). See also *Rehaif v. United States*, 139 S.Ct. 2191 (2019) (holding that the “knowingly” requirement on the federal ban on possession of a firearm by an illegal alien required proof that the alien actually knew that he was illegally in the United States).

Here, it is virtually impossible to “knowingly” engage in prohibited conduct where the Bill sanctions **not only** “unlawful” conduct, but also bans utterly undefined “unreasonable” conduct. Again, the Bill does not even set forth any criteria by which “unreasonable” conduct is measured and thus invites arbitrary or discriminatory enforcement. For the same reason, it is equally impossible to be “reckless” about such conduct where the Bill establishes no standards by which “recklessness” can be assessed ahead of time. There are simply no enforcement “guidelines” as required by Article 24. *Compare* MD Code Criminal Law § 2-210 (punishing “death of another as the result of the person's driving, operating, or controlling a vehicle or vessel in a criminally negligent manner” and defining criminally negligent as occurring where “(1) the person should be aware, but fails to perceive, that the person's conduct creates a substantial and unjustifiable risk that such a result will occur; and (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person”), sustained against a vagueness challenge in *Bettie v. State*, 216 Md. App. 667, 682, 88 A.3d 906 (2014). The industry member is left to guess. The potential liability is limitless and there is simply no way to guard against it as no industry member will have prior notice.

The Effect On Maryland Industry Members.

As should be apparent from the foregoing discussion, this Bill creates an impossible business environment for “industry members” in Maryland. Industry members simply have no possible way to anticipate what conduct will cross the line and subject them to ruinous litigation costs and potentially huge judgments. Because of the vagueness of this Bill, there are no steps that the industry members can take to minimize the risk of liability. If the purpose of the bill is to change or cabin industry behavior, then notice must be provided. Otherwise, the bill is just punitive and can only be viewed as designed to put industry members out of business with crippling litigation costs and damage awards, including punitive damages. Because the standard for liability is potentially limitless, there is no way “industry members” will be able to obtain liability insurance to protect themselves.

Smart dealers and other industry members will seek to minimize exposure by moving their operations out of Maryland. That may well be the intent behind this Bill in the demonstratively false belief that such a result will result in fewer guns in Maryland. But that will not happen because Marylanders will merely purchase firearms and ammunition from out-of-State sources. Dealers in neighboring States are just a relatively short drive away. The supply of firearms will not diminish; the location of the sources will simply change, and Maryland will lose tax revenue and jobs. That happened in 2013 when Maryland passed the Firearms Safety Act of 2013. A major Maryland firearms manufacturer, Beretta, moved out of Maryland to Tennessee. See <https://www.nbcwashington.com/news/local/beretta-moves-all-manufacturing-out-of-md-after-state-passes-new-gun-bill/2071229/>.

SECOND AMENDMENT CONCERNS.

Such vagueness is particularly intolerable because this Bill affects the exercise of rights under the Second Amendment to the Constitution. See, e.g., *City of Chicago v. Morales*, 527 U.S. 41, 53 (1999) (striking down a vague ordinance on grounds it affected a liberty interest protected by the Due Process Clause). Specifically, under *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742, 750 (2010), and *NYSRPA v. Bruen*, 142 S.Ct. 2111 (2022), the Second Amendment protects the right of a law-abiding citizen to acquire firearms, including handguns. See *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). That right to acquire a firearm has already been recognized in Maryland in the HQL litigation. See *MSI v. Hogan*, 566 F.Supp. 3d. 404, 424 (D.Md. 2021) (“The requirements for the purchase of a handgun, as set out in the HQL law, undoubtedly burden this core Second Amendment right because they ‘make it considerably more difficult for a person lawfully to acquire and keep a firearm ... for the purpose of self-defense in the home.’”), quoting *Heller v. District of Columbia*, 670 F.3d 1244,1255 (D.C. Cir. 2011). See also *MSI v. Moore*, 86 F.4th 1038, 1043 (4th Cir. 2023), *rehearing granted*, 2024 WL 124290 (4th Cir. Jan. 11, 2024) (holding that the right to acquire firearms was implicit in the right to “keep and bear arms”). Under federal and State law, firearms are principally “acquired” from or through “industry members.” Regulations, like this Bill, that impose potentially huge liability on “industry members” necessarily affect the exercise of Second Amendment rights of Marylanders to acquire firearms for their own self-defense.

Firearm dealers also have an ancillary Second Amendment right to sell firearms to law-abiding citizens. See, e.g., *Teixeira v. County of Alameda*, 873 F.3d 670, 676-78 (9th Cir. 2017) (en banc), *cert. denied*, 138 S.Ct. 1988 (2018). Under this precedent, any law that “meaningfully constrain[s]” a customer from having “access” to a dealer is actionable under the Second Amendment. 873 F.3d at 680. See also *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 216 (4th Cir. 2020) (holding that a firearms dealer had Second Amendment standing to challenge Maryland’s HQL statute and may sue on its own behalf and had third party standing to sue on behalf of its “customers and other similarly situated persons”). Regulation of dealer operations and that of other “industry members” is thus imbued with constitutional concerns.

Such infringements of this right to access to a dealer are open to challenge under the June 2022 decision of the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2126-27 (2022), where the Court established a new text, history, and tradition test for assessing Second Amendment challenges. There is no historical tradition that would support the State-wide imposition of ruinous liability potential on sellers of firearms. See *Pizza di Joey*, 470 Md. at 904 (“a person may assert a facial vagueness challenge if the challenged statute implicates the First Amendment *or another fundamental right*”) (emphasis added). Enforcement prosecutions under this Bill will likely drive many if not most dealers out of business. Any intent or desire to thus regulate dealers to the point of near extinction is constitutionally illegitimate. The Bill is, and is obviously designed to be, extremely punitive.

THE BILL IS CONTRARY TO THE PLCAA.

PLCAA:

As enacted by Congress, the PLCAA expressly provides that a “**qualified civil liability action may not be brought in any Federal or State court.**” 15 U.S.C. § 7902(a). A “qualified liability act” is defined by the PLCAA to mean “a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party....” 15 U.S.C. § 7903(5)(A). This ban on suits expressly covers all “qualified products” which are defined to mean any “firearm” or “ammunition or any “component part of a firearm or ammunition.” 15 U.S.C. § 7903(4). “Congress enacted the PLCAA upon finding that manufacturers and sellers of firearms “are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products ... that function as designed and intended.” *Prescott v. Slide Fire Solutions, LP*, 341 F.Supp.3d 1175, 1187 (D. Nev. 2018), quoting *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009), (quoting 15 U.S.C. § 7901(a)(5)).

PLCAA creates a “predicate exception” to preemption, providing that “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.” 15 U.S.C. § 7903(5)(A)(iii). This reference to “proximate cause” makes clear that Congress intended to ban suits in which harm was caused by “the criminal or unlawful” use of a firearm by another. Congress thus declared that sellers and manufacturers of firearms “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.” 15 U.S.C. § 7901(a)(5). Congress further found that suits based on harm caused by third parties would represent an improper “expansion of liability” that “would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.” 15 U.S.C. § 7901(a)(7). See generally, *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), *cert. denied*, 560 U.S. 924 (2010) (discussing the purposes of the PLCAA); *City of New York v. Beretta*, 524 F.3d 384 (2d Cir. 2008), *cert. denied*, 556 U.S. 1104 (2009) (same).

Congress did create the “predicate exception” to preemption. Such suits are strictly defined to include:

[A]n 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**, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be

kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18.

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

Congress likewise permitted suits for “physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, ***except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.***” 15 U.S.C. § 7903(5)(A)(v) (emphasis added). Other types of suits are similarly permitted, such as suits for breach of warranty or contract (§7903(A)(5)(iv)), or where suit is brought against a transferor convicted of illegally selling a qualified product under 18 U.S.C. § 924(h) (punishing a person who “knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)...”). 15 U.S.C. § 7903(5)(A)(i). Congress likewise permitted suits for “negligent entrustment or negligence per se.” (Section 7903(5)(A)(ii)). Similarly, in Section 7903(5)(A)(v), the PLCAA allows suits for a “defect in design or manufacture,” but provides that “where the discharge of the product was caused by a volitional act that constituted a criminal offense, **then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.**” (Emphasis added).

Proximate causation is central to the preemption posed by PLCAA. Under Section 7901, Congress declared that “[t]he liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law.” See *Iieto*, 565 F.3d at 1135. Thus, by requiring proximate cause in crafting the limited exceptions to the ban, Congress made clear its intent to ban a suit where the harm is **not** the proximate cause of the injury or harm **under the common law**, as construed throughout the United States. See, e.g., *District of Columbia v. Beretta USA, Corp.*, 940 A.2d 163, 171 (2008) (noting that “the predicate exception requires proof that, despite the misuse of the firearm by a third person, ‘the [statutory] violation was a proximate cause of the harm for which relief is sought’”), quoting § 7903(5)(iii); *Soto v. Bushmaster Firearms International, LLC*, 331 Conn. 53, 98, 202 A.3d 262 (2019), *cert. denied*, 140 S.Ct. 513 (2019) (noting that “[p]roving such a causal link at trial may prove to be a Herculean task”).

The Bill Illegally Imposes Liability For Undefined “Unreasonable” Conduct:

This Bill does not satisfy the “predicate exception” requirements of 15 U.S.C. § 7903(5)(A)(iii). Again, that provision allows suits for only “knowing” violations of law. The Supreme Court has held that “in order to establish a ‘willful’ violation of a statute, ‘the Government must prove that the defendant **acted with knowledge that his conduct was unlawful.**” *Bryan v. United States*, 524 U.S. 814, 191-92 (1998), quoting *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994) (emphasis added). The same point applies, *a fortiori*, to the even more demanding requirement of a “knowing violation” For a violation be “knowing” the defendant must “know the facts that make his conduct illegal,” *Staples v. United States*, 511 U.S. 600, 606 (1994). See also *Rehaif v. United States*, 139 S.Ct. 2191 (2019) (holding that the “knowingly” requirement on the federal ban on possession of a firearm by an illegal alien required proof that the alien knew that he was illegally in the United States); *Liparota v. United States*, 471 U.S. 419, 426 & n.9 (1985) (a “knowingly” requirement “requires a showing that the defendant knew his conduct to be unauthorized by statute or regulations”); *U.S. ex rel. Purcell v. MWI Corp.*, 807 F.3d 281, 287–88 (D.C. Cir. 2015) (“Consistent with the need for a knowing violation, the FCA [False Claims Act] does not reach an innocent, good-faith mistake about the meaning of an applicable rule or regulation.”).

This Bill does not satisfy the predicate exception because it is impossible to have a “knowing violation” where the Bill punishes merely “unreasonable” conduct without creating a specific standard for measuring reasonable. Again, as the Supreme Court stated in *Staples*, a violation cannot be “knowing” unless the defendant “know[s] the facts that make his conduct illegal.” 511 U.S. at 606. The knowing violation requirement has thus led a federal district court to invalidate, under PLCAA, a virtually identical New Jersey statute, N.J.S.A. 2C:58-35. See *NSSF v. Platkin*, 2023 WL 1380388 (D.N.J. Jan. 31, 2023). Specifically, the court held:

The knowingly requirement of the predicate exception necessitates the actor **to have a sufficiently concrete duty to have knowingly violated a relevant statute**. It is contrary to the PLCAA to hold an industry member liable who complies with all laws but did not know that it failed to employ ‘reasonable procedures, safeguards, and business practices,’ or has conducted its lawful business in a manner so ‘unreasonable under all the circumstances’ that it can be said to have “contribute[d] to” “a condition which ... contributes to the injury or endangerment of the health, safety, peace, comfort, or convenience of others.

Slip op. at *6 (emphasis added). As this holding makes clear, only those statutes that impose obligations that an industry member can know ahead of time that its conduct would violate can be predicate statutes. Full stop. This Bill is virtually identical to that part of the New Jersey statute and will fail for the same reason.

This Bill imposes no standard for assessing reasonableness and thus effectively imposes a regime **of after-the-fact, regulation by litigation**. Such legislation defeats the preemption envisioned by Congress because it invites the same abusive litigation that led to the enactment of PLCAA. That provision provides that “civil

liability actions” may not be brought in any State or Federal court, 15 U.S.C. § 7902(a), and requires the immediate dismissal of any such suit that had been brought. Id. § 7902(b). The preemption thus runs to the **suit**, not merely to liability because Congress understood that it was the **litigation itself** that was “an abuse of the legal system” and thus a threat to “lawful commerce” in firearms. See 15 U.S.C. § 7901(a)(6) (“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.”); id., § 7901(a)(8) (“The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.”), id., § 7901(b)(6) (among the purposes of PLCAA is “[t]o preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States”). Indeed, much of the abusive litigation that gave rise to the enactment of PLCAA was the misuse of a state’s “public nuisance” laws. See, e.g., *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1130-31 (9th Cir. 2009).

These underlying purposes were recently stressed in *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 2024 WL 227773 at *15 (1st Cir. 2024). There, the First Circuit rejected the plaintiff’s (Mexico) claim that PLCAA did not apply to a suit by a foreign sovereign as well as the plaintiff’s claim that the defendant “knowingly violated” the Federal ban on the sale of machineguns by allowing the sale of semi-automatic firearms (such as an AR-15), which could be converted to fully automatic firearms. The court held that the “knowing possession of a readily convertible semiautomatic weapon does not constitute de facto knowing possession of a ‘machinegun’” and thus the sale of a semi-automatic firearm could not be a “knowing” violation of federal law. Id. at *16. The court stressed that semi-automatic firearms are perfectly legal under federal law. Id. at *15-*16. The court did allow the claim to go forward that the defendants sold firearms to dealers who the defendants allegedly **knew** were **illegally** selling firearms to members of Mexican drug cartels, holding that such sales would satisfy the predicate exception’s requirement for a “knowing violation” of federal law. Id. at *14. It remanded the case, stressing that Mexico still had to prove that claim.

As this decision makes clear, PLCAA bars suits against industry members for sales that are otherwise legal under State and federal law. Yet, this Bill impermissibly imposes liability for “unreasonable” conduct and for failing to impose “reasonable controls and procedures” **in addition** to liability for illegal conduct. It is nonsense to say that an industry member who complies with all the many laws that explicitly state what it may and may not do can nonetheless “know” in real time that its actions were “unreasonable” or that it failed to employ “reasonable controls and

procedures” that “contributed” to a “public harm.” That is especially so where “contributed” and “public harm” are not even defined. Indeed, as discussed below, it is highly doubtful that liability for “contributing” to a harm can satisfy PLCAA’s proximate causation requirement. The suits authorized by undefined “unreasonable” conduct in this Bill are thus flatly preempted by PLCAA.

The Bill Illegally Allows Liability Without Regard to Proximate Causation:

The predicate statute requirement of Section 7903(5)(iii) makes clear that suits are allowed only if and when “the knowing” violation of a State or federal statute “was a proximate cause of the harm for which relief is sought.” As very recently stated by the Supreme Court of New Hampshire, “[o]ne of the PLCAA’s purposes is to shield firearms manufacturers and sellers from liability for injuries ‘solely caused’ by the misuse of firearms by third parties.” *Hardy v. Chester Arms, LLC*, --- A.3d ---, 2024 WL 332134 at *5 (N.H. Jan. 30, 2024), citing 15 U.S.C. § 7901(b)(1), and 15 U.S.C. § 7901(a)(6)-(7). See also *Estados Unidos Mexicanos*, 2024 WL 227773 at *19 (under PLCCA, the plaintiff must show that “its alleged harms are proximately caused by defendants’ actions, and not merely derivative of harms to its citizens”). As discussed below, Maryland has abundant case law on this proximate causation requirement. This Bill ignores the proximate causation requirement in imposing liability for mere “harm to the public.”

In *NSSF*, the district court relied on this point in finding that the PLCAA proximate causation requirement was violated by a New Jersey statute that is virtually identical to this Bill. The court ruled that the New Jersey law “would subject manufacturers, distributors, dealers, and importers of firearms or ammunition products and their trade associations to civil liability for the harm *solely caused by the criminal or unlawful misuse of firearm* or ammunition products by others.” Slip op. at *7 (emphasis added). The court in *NSSF* thus awarded preliminary injunctive relief, finding that the plaintiffs and its members would suffer immediate irreparable injury. As explained above, suits for harm caused by criminal misuse of firearms are flatly barred by PLCAA. And as stressed by the First Circuit in *Estados Unidos Mexicanos*, an actual knowing violation of an existing known requirement is still required under the predicate exception.

We acknowledge of course that the district court decision in *NSSF* was recently vacated on appeal by the Third Circuit, but that court merely held that the particular plaintiffs in that case lacked Article III standing to bring a pre-enforcement challenge. *NSSF v. Platkin*, 80 F.4th 215 (3d Cir. 2023). The Third Circuit did not reach the merits and did not suggest that the district court was incorrect on the merits. Thus, the merits of the New Jersey statute may still be challenged in any enforcement action when the statute is enforced on the same grounds on which the district court ruled. Even assuming *arguendo* that the Third Circuit’s Article III standing decision is correct, this Bill suffers from the same flaws as the New Jersey statute and will likewise fail on the first enforcement attempt. It should also be noted that the Third Circuit’s standing decision is based on Article III considerations in federal court. The standard for standing to bring a pre-enforcement suit in the Maryland courts simply requires that plaintiff be affected or aggrieved in a way different than the general public. That standard for suits in

State courts is much less demanding than Article III requirements, particularly where (as here) the regulation at issue “implicates” the regulated entity’s constitutional rights. See *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 362-64, 235 A.3d 873 (2020) (collecting case law).

Finally, the Bill fails PLCAA’s ban on suits in any court on a cause of action that would impose liability stemming from the misuse of a firearm. Specifically, as noted, the PLCAA flatly bans any suit where the harm results “from the criminal or unlawful misuse of a qualified product by the person or a third party.” While this Bill does not expressly allow such recovery, the Bill does allow liability to be imposed for any “harm to the public” through any sale or practice that is, though perfectly legal, is found to be nonetheless “unreasonable.” “Harm to the public” is utterly undefined but it goes without saying that criminal misuse of a firearm is harmful to the public at large. The obvious intent of the Bill is thus to reach *any* “harm to the public” that may remotely be said to flow from any industry practice, including harm resulting from criminal misuse of firearms. Liability for criminal or third-party misuse violates PLCAA’s proximate causation. In allowing recovery for harm to the public flowing from criminal misuse of a firearm, the Bill violates PLCAA.

Maryland Law Of Proximate Causation Does Not Permit The Imposition Of Liability For The Criminal Misuse Of A Product:

Stated simply, “industry members” do not owe a “duty of care” to the “public” to prevent “harms” that arise from the acts of third parties who may use firearms illegally or improperly. And that is true regardless of whether the conduct resulting in the harm is “unreasonable under the totality of the circumstances.” The common law proximate causation rule in Maryland, like other states, is that a criminal act of a third party is an intervening or superseding cause that prevents liability from being assigned to the defendant as a matter of law. See generally, W.P. Keeton, Prosser and Keeton on the Law of Torts § 44, at 305 (5th ed. 1984); Restatement (Second) of Torts § 448 (1965). That sort of liability is exactly what PLCAA forbids.

Thus, in *Valentine v. On Target, Inc.*, 353 Md. 544, 727 A.2d 947 (1999), the Maryland Court of Appeals (now renamed as the “Supreme Court of Maryland”) expressly rejected the claim brought against a firearms dealer by the estate and survivors of a victim who was shot and killed by an unknown assailant who used a gun stolen from the dealer. The court held that it did not “discern in the common law the existence of a third-party common-law duty that would apply to these facts.” 353 Md. at 553. As stated in *Valentine*, “[o]ne cannot be expected to owe a duty to the world at large to protect it against the actions of third parties, which is why the common law distinguishes different types of relationships when determining if a duty exists.” *Valentine*, 353 Md. at 553, 727 A.2d at 951. The Court of Appeals reached the same result in *Warr v. JMGM Group, LLC*, 433 Md. 170, 71 A.3d 347 (2013), where the court applied *Valentine* to hold that a bar owner owed no duty to third parties or to the public when an intoxicated bar patron caused an accident after leaving the bar.

Both *Valentine* and *Warr* apply the general common law that establishes a bright line rule that this lack of a duty obtains regardless of whether the harm was, in some sense, “foreseeable.” *Valentine*, 353 Md. at 556 (“although the inherent nature of guns suggests that their use may likely result in serious personal injury or death to another this does not create a duty of gun dealers to all persons who may be subject of the harm”); *Warr*, 433 Md. at 183 (“When the harm is caused by a third party, rather than the first person, as is the case here, *our inquiry is not whether the harm was foreseeable, but, rather, whether the person or entity sued had control over the conduct of the third party who caused the harm* by virtue of some special relationship”). (Emphasis added). In short, *Valentine* and *Warr* applied the common law, and the common law in Maryland plainly rejects the Bill’s imposition of liability merely because a lawful (but “unreasonable”) practice resulted in “harm to the public.” See also *Ford v. Edmondson Village Shopping Center Holdings, LLC*, 251 Md.App. 335, 254 A.3d 138 (2021) (discussing *Valentine*). The Bill’s attempt to impose a legal duty on industry members to the public at large without regard to intervening causes is directly contrary to the common law, as these cases make plain. Indeed, imposing liability for the acts of third parties that result in harm to the public is **precisely** the type of suit banned by the PLCAA in Section 7902 and Section 7903(5)(ii).

Because the PLCAA expressly bars actions in any “court,” the State is not free to authorize suits that ignore proximate causation requirements in enacting a “public nuisance” statute directed at the entire firearms industry. As the Supreme Court recently noted, “[t]he Supremacy Clause provides that ‘the Judges in every State shall be bound’ by the Federal Constitution, ‘any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’” *Espinoza v. Montana Depart. of Revenue*, 140 S.Ct. 2246, 2262 (2020). Thus, the Supremacy Clause “creates a rule of decision’ directing state courts that they ‘must not give effect to state laws that conflict with federal law[].’” *Id.*, quoting *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324 (2015). The Bill’s authorization of suits for “harm to the public” without regard to proximate causation and the other provisions of the PLCAA is preempted.

The Bill Is Preempted By PLCAA In Other Ways:

The Bill conflicts with the PLCAA in other ways. First, this bill provides that an industry member is subject to liability if the industry member knowingly or recklessly engages in the MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING of firearm-related products and that conduct that is “unlawful” or merely “unreasonable.” That broad liability is inconsistent with the predicate exception in PLCAA, which allows liability if the “**manufacturer or seller**” (and only these members of the industry) knowingly violated “a State or Federal statute **applicable to the sale or marketing of the product.**” (Emphasis added). This Bill is broader as it imposes liability not only on the “manufacturer or seller” it also imposes liability on any “firearm industry member” who is defined to include any “PERSON ENGAGED IN THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A FIREARM-RELATED PRODUCT.” The PLCAA preempts the Bill’s attempt to regulate more broadly the MARKETING,

DISTRIBUTION, IMPORTATION of these products and by persons who are not a “manufacturer or seller.”

The Bill also impermissibly allows liability for “reckless” conduct. The narrow exceptions carved out by Section 7903(5)(A)(iii) require a “knowing” violation of a record keeping requirement or a “knowing” violation of a State or Federal statute “applicable to the sale or marketing of the product.” As explained, that means that the actor must engage in conduct that the actor knew was illegal. In contrast, this bill imposes liability where the industry member “recklessly” engaged in conduct. Nothing in these provisions of the PLCAA permits liability for “reckless” conduct. “Recklessness” is a deliberate indifference to the risk of harm, while “knowingly” requires that the actor knows that the conduct is illegal. See *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 58-60 (2007) (noting that “knowing violations are sensibly understood as a more serious subcategory of willful ones” and that “action falling within the knowing subcategory **does not** simultaneously fall within the reckless alternative”) (emphasis added).

In the predicate exception, Congress required a “knowing” violation of a specific kind of statute (*viz.*, a statute “applicable to the sale or marketing of the product”), not merely a “reckless” violation of such a statute. Any liability under the bill for “reckless” conduct is thus preempted. “Reckless” behavior and “knowing” behavior are simply not the same. See also *United States ex rel. Schutte v. SuperValu Inc.*, 3598 U.S. 739, 749-55 (2022) (distinguishing “willfully” and “knowingly” as different statutory terms and noting that a requirement of “knowingly” focuses “on what the defendant knew” subjectively “not to what an objectively reasonable person may have known or believed”).

Third, as noted above, this Bill also imposes liability for conduct that is merely “UNREASONABLE.” As explained above, because this element is undefined and incredibly vague, it is impossible to “know” whether a particular conduct is illegal under this amorphous standard and thus “knowingly” violate it. In any event, the PLCAA also sharply limits a state’s authority to impose liability for third party conduct for “unreasonable” conduct. Section 7903(5)(A)(iii)(II), allows suits where the “the manufacturer or seller” knew or had “reasonable cause to believe that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition **under subsection (g) or (n) of section 922 of Title 18.**” (Emphasis added). Subsection (g) bans possession of a modern firearm or modern ammunition by a prohibited person and subsection (n) bans such possession by a person under indictment for a crime punishable by more than one year.

This provision of the PLCAA requires that the violation involve these **two sections** of the U.S. Code. Only this subsection of PLCAA allows “a reasonable cause to believe” standard. Otherwise, a “knowing violation” is required by the predicate exception of PLCAA. This exception to preemption in the PLCAA is thus far narrower in scope than the potentially massive liabilities for “UNREASONABLE” conduct. The liability imposed by this Bill goes far beyond any such sales in violation of subsection (g) and (n), as it imposes liability for **any** knowingly “unreasonable” conduct. As the district court’s decision in *NSSF* makes clear, it is quite impossible to be “knowingly” “unreasonable” where “unreasonable” is never defined by

reference to any standard, either objective or subjective. That provision of the Bill and the Bill's application to all firearms industry members are thus preempted. Another exception to the preemption ban involving "reasonableness" is set out in Section 7903(5)(A)(v), which allows suits where the harm "resulting directly from a defect **in design or manufacture of the product**, when used as intended or in a **reasonably foreseeable** manner." (Emphasis added). The liability allowed by this Bill is not limited to harm caused by a defect in "design or manufacture."

Section 7903(5)(A)(ii) allows actions against "a seller" (and only a "seller") for "negligent entrustment or negligence per se." Since this provision is limited to a "seller" it does not authorize any suit against any other type of "industry member," like this Bill does. Moreover, the term "negligent entrustment" is defined by Section 79003(5)(B) as meaning "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." This definition is a limitation on the exception and the exception thus reaches only conduct where the product is both "likely" to be used and **is in fact** used in a manner involving an "unreasonable risk of physical injury." It does not allow suits for any "UNREASONABLE" conduct as this bill does. This additional liability imposed by the Bill goes beyond that allowed by the PLCAA and is thus preempted.

Indeed, Maryland's law of negligent entrustment is still narrower as, under Maryland law, "the doctrine of negligent entrustment is generally limited to those situations in which the chattel is under the control of the supplier at the time of the accident" and that "without the right to permit or prohibit use of the chattel at the time of the accident, an individual cannot be liable for negligent entrustment." *Broadwater v. Dorsey*, 344 Md. 548, 558, 688 A.2d 436 (1997). That is the common law and, as explained above, Maryland is not free to abrogate the common law to expand liability to escape preemption under the PLCAA. In this regard, the PLCAA does not create any cause of action and incorporates the common law on what constitutes "negligent entrustment," as limited by the PLCAA. See Section 7903(5)(C) (providing "no provision of this [statute] shall be construed to create a public or private cause of action"). That means no suit for negligent entrustment would be available under Maryland common law unless the "industry member" had the right to control the use of the "qualified product" **at the time of the incident** that caused the harm of which the plaintiff complains. Even then, under the PLCAA, the use must cause cognizable **harm** to a person, not merely be "unlawful" or "unreasonable" and cause "harm to the public" (whatever that means). Suits, such as those by the Attorney General authorized in the Bill, are not permissible under this section of the PLCAA in the absence of any harm to an individual. This Bill allows such suits for "harm to the public," a term that is, again, wholly nebulous, and undefined.

The PLCAA's carve out for suits alleging "negligence per se" is even narrower. It is well established at common law that such negligence requires a violation of a specific statute, that the person alleging the negligence is within the class of persons sought to be protected, and that the harm suffered is of a kind which the statute was intended, in general, to prevent. *Polakoff v. Turner*, 385 Md. 467, 479, 869 A.2d

837 (2005). Thus, “a violation of a statute or regulation would, at most, establish evidence of ordinary negligence, not gross negligence or negligence per se.” *Johnson v. Lee*, 2019 WL 3283301 at *6 (Md Ct.Sp.App. 2019). See also *Absolon v. DolloHITE*, 376 Md. 547, 557, 831 A.2d 6 (2003). Nothing in this Bill would satisfy the “negligence per se” exception to the preemption imposed by the PLCAA.

THE BILL’S ATTEMPT TO REGULATE INTERSTATE COMMERCE VIOLATES THE COMMERCE CLAUSE AND DUE PROCESS CLAUSE.

Last, but hardly least, this Bill violates the Commerce Clause **and** the Due Process Clause. The Constitution vests in Congress the “Power” to “regulate Commerce ... among the several States.” U.S. Const. art. I, §8, cl. 3. “Although the [Commerce] Clause is framed as a positive grant of power to Congress,” the Supreme Court has “long held that this Clause also prohibits state laws that unduly restrict interstate commerce.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S.Ct. 2449, 2459 (2019).

By its terms, the Bill applies to “firearm related product,” regardless of where the product is made or distributed. It likewise applies to any “industry member” without regard to where that industry member is located. The Bill thus indisputably applies to conduct taking place in other States. On its face, that is a violation of the Commerce Clause. See, e.g., *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (A state may not enact or enforce legislation that “directly controls commerce occurring wholly outside the boundaries of a State”). As stated in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986), “[w]hen a state statute directly regulates or discriminates against interstate commerce ... [courts] generally [strike] down the statute without further inquiry.” See also *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511 (1935).

While a State may generally enact local legislation that does not discriminate against interstate commerce, *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (plurality opinion), six members of the Supreme Court continue to agree that the Commerce Clause does not allow a State to disproportionately burden interstate commerce under the test articulated in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). See *National Pork Producers*, 598 U.S. at 391-92 (Sotomayor, J., and Kagan, J., concurring), *id.*, 598 U.S. at 394-95 (Roberts, C.J., Alito, J., Kavanaugh, J., and Jackson, J., concurring in part and dissenting in part), *id.*, 598 U.S. at 407 n.3 (Kavanaugh, J., concurring in part dissenting in part) (noting a split on this point). *Pike* holds that “[w]here the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld *unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.*” 397 U.S. at 142 (emphasis added). Application of that test, in turn, will depend on “whether it [the State interest] could be promoted as well with a lesser impact on interstate activities.” *Id.* *Pike* remains good law.

National Pork Producers illustrates the proper analysis. The Court held in that case that California may enact legislation that banned the sale of pork in the State if the pigs were raised in the humane conditions specified the statute as long as the

statute did not facially or in fact discriminate against interstate commerce. However, the Court stressed that its decision was limited to circumstances where the out-of-state company “choose” to sell within the state. 598 U.S. at 376 n.1 (plurality opinion). The California statute at issue in *National Pork Producers* only purported to regulate sales taking place *in California*, not conduct occurring elsewhere. The prohibited conduct, the sale, was expressly tied to California and the ban on sales did not discriminate against out of state producers.

In *NSSF v. Bonta*, --- F.Supp.3d ---, 2024 WL 710892 at *6 (S.D. Calif. Feb. 21, 2024), the district court applied these dormant Commerce Clause principles to strike down California’s attempt to ban the sale, manufacture, importing or marketing supposedly “abnormally dangerous firearms,” because the bans directly regulated conduct taking place wholly outside of California. The court found it insufficient that the statute required a likelihood of an “unreasonable risk of harm . . . in California or “it was reasonably foreseeable that” such an item would be possessed in California. *Id.* at *7. In so holding, the court rejected the State’s reliance on *National Pork Producers*, holding that *National Pork Producers* “did not disturb the constitutional bar on state laws that ‘directly regulate[] out-of-state transactions by those with no connection to the State.’” (Quoting *National Pork Producers*, 598 U.S. at 376 n.1).

Under this Bill, a manufacturer or dealer, or distributor that does not engage in any commerce in Maryland still could be sued in Maryland by the Attorney General or private party for manufacturing, selling, or marketing products in other states in an “unreasonable” way (whatever that means) or for failing to impose “reasonable controls” (whatever that means) if the conduct merely “contribute[s]” “to harm to the public” (whatever that means). Indeed, nothing in the Bill requires that the “harm to the public” even occur **in Maryland**. Rather, this Bill purports to reach nationwide to every seller, manufacturer, distributor, importer, or marketer of a “firearm related product” merely if it was “reasonably foreseeable that **possession** would occur in the State.” Such “possession” need not be even linked to the “harm to the public.” As *NSSF v. Bonta* correctly holds, a mere “foreseeable possession” link is insufficient under *National Pork Producers*.

The Commerce Clause does not permit a single State to regulate an entire industry, nationwide, just because it is “foreseeable” that a person in Maryland may come into possession of an item after the item is placed into the stream of commerce elsewhere. Here, the Bill expressly states that the regulation allowed by this Bill would be available if mere possession was “reasonably foreseeable,” the very term found insufficient in California’s statute at issue in *NSSF v. Bonta*. This Bill will fail for the same reasons that California’s law failed in *NSSF v. Bonta*. Here, whatever legitimate interest this State has in preventing “harm to the public” in Maryland can be accomplished by expressly regulating specific conduct *taking place in Maryland* in such a way that a potential defendant has full notice of what is prohibited. This Bill is not even remotely so limited.

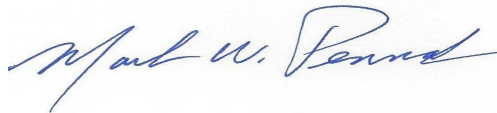
Indeed, mere foreseeability of possession is not even sufficient under the Due Process Clause for a State to exercise “long arm jurisdiction” over an out of state corporation or person. See, e.g., *Asahi Metal Industry Co., Ltd. v. Superior Court of*

California, Solano County, 480 U.S. 102 110 (1987) (“The ‘substantial connection,’ * * *, between the defendant and the forum State necessary for a finding of minimum contacts **must** come about by an action of the defendant **purposefully directed toward the forum State.**”). (Emphasis added). See also *Daimler AG v. Bauman*, 571 U.S. 117, 132-33 (2014). This Bill thus vastly exceeds the State’s authority under the Due Process Clause as well as under the Commerce Clause.

CONCLUSION:

By any measure this Bill vastly overreaches. It impermissibly directly regulates conduct wholly taking place outside of Maryland as well as disproportionately burdens interstate commerce under *Pike*. The Bill impermissibly exceeds the limits on the State’s long- arm statute under the Due Process Clause by allowing enforcement proceedings against out of state actors who do not engage in conduct directed at Maryland. It creates vague standards that provide no notice and that fail to provide enforcement guidelines, thus inviting abusive, arbitrary, and discriminatory enforcement proceedings in violation of the Maryland and federal constitutions. And, as explained above, it does all these things in flagrant disregard of the text and purposes of PLCAA which was enacted for the very purpose of protecting the firearms industry from the very type of abusive suits authorized by this Bill. This Bill will not survive judicial review. Respectfully, enacting a Bill suffering from so many flaws is senseless. We urge an unfavorable report.

Sincerely,



Mark W. Pennak
President, Maryland Shall Issue, Inc.
mpennak@marylandshallissue.org

HB 947 Testimony 26FEB2024.pdf

Uploaded by: Mark Schneider

Position: UNF

HB947

My name is Mark Schneider I am the Vice President of the Maryland Licensed Firearm Dealers Association.

Our organization takes issue with this bill. The presumption that licensed firearms dealers harm the public through the legal sale of highly regulated and constitutionally protected products is untrue.

Our Organization opposes HB 947 as it threatens our members' ability to stay in business. Data does not support the claim that Maryland Licensed Firearms Dealers are the source of the reckless and illegal actions of criminals.

We are a highly regulated industry abiding by both federal and state statutes governing the sale of our products. Licensed dealers do not sell firearms to the criminal market. As you know there are severe criminal and civil penalties for doing so.

Vague Terms such as “reasonable controls” and “unreasonable under the totality of the circumstances” are not defined or clearly explained and are thus unacceptable terms.

Due to the vague terms in this Bill it would open every licensed dealer to frivolous, punitive litigation and would make it impossible to obtain the insurance we need to stay in business.

Licensed Dealers should not be held liable for the legal and lawful sale of firearms to law abiding citizens. Those who commit illegal acts with firearms should. We support stricter penalties for those who illegally use firearms.

I Request an Unfavorable Report

2024-HB0947-UNFavUNCONSTITUTIONAL.pdf

Uploaded by: Nelda Fink

Position: UNF

HB0947 – UNFAVORABLE UNCONSTITUTIONAL

Nelda Fink

MD District 32

I don't even know what to say. To put this kind of liability on the industry is simply unconscionable. Just like some of the other witnesses for HB935 this will put such an undue expense on the manufacturers and dealers that the people will go outside Maryland to purchase their firearms.

Liability shifting like this will result in the manufacturers and dealers purchasing more liability insurance to cover it. This insurance will be expensive because lawsuits are expensive! Like HB935 that cost will be passed onto the consumer and this cost will not be a once and done cost. It will be continuous. It is very similar to a tax on the manufacturers. But is under the guise of liability insurance premiums.

As you witnessed in testimony of HB935 the manufacturers will exit the state of Maryland and that turned out to be millions of dollars of tax revenue lost by the State, along with the sales tax by the consumer will result in more tax revenue loss.

This bill turns out to be an yet another infringement of rights by creating an excessive burden for people to own and carry firearms taking away their basic right to protect themselves. *McCullough V Maryland* established that “the power to tax [or make excessively expensive] is the power to control.”

This is UNCONSTITUTIONAL!

100% OPPOSE this bill.

Thank you.

Nelda Fink

I am sharing 'Witness Testimony 2024 b' with you.p

Uploaded by: Randall Morris

Position: UNF

To whom it may concern

Re: HB947

My name is Randall Morris and I am a Maryland Qualified Handgun Instructor, a NRA Certified Pistol Instructor and a NRA Certified Range Safety Officer

I find this bill highly unfavorable, against federal law and unconstitutional.

Sincerely,
Randall Morris

HB 0947 public testamony v2.pdf

Uploaded by: Randolph Sena

Position: UNF

February 13, 2024

Randolph Sena

Hughesville Maryland 20637

To: Maryland, General Assembly:

Subject: opposed to HOUSE BILL 947 Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2024)

Randolph Sena resident Charles County, retired veteran, and an inspector general, I am opposed to HB 947.

This legislation directly impacts citizens exercising their Second Amendment through this broad and overreaching legislation. Making the Gun Industry Accountable for the foreseeability of individual's unlawful behavior is ingenuous. Under these premises all legislators are responsible for the foreseeability of individual's unlawful behavior by creating Laws.

As applied in HB 947 legislators are knowingly creating a specifically designed legislation to make exercising a citizens Second Amendment right inaccessible. This is a prime example of building legislation to systemically infringe on a constitutionally enshrined civil right. It builds a scapegoat for legislators to justify infringing on the citizens Second Amendment right.

As legislators you should not have any motivation to create or enact unconstitutional laws. Your oath of office mandates your support and defense of the US Constitution. HB 947 is a tacit violation the US Constitution, Second Amendment and supporting this legislation a breach of your oath of office.

In closing I will remind you "That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism." – Maryland declaration of rights statute §44."

The rights of people under any conditions Shall prevail.

I respectfully request you return an UNFAVORABLE report on HB 947.

HB0947 Testimony.pdf

Uploaded by: Richard Rosa

Position: UNF

This bill is intended to circumvent federal protections for the lawful commerce of firearms and opens the floodgates to a barrage of frivolous lawsuits seeking the force firearms manufacturers and dealers out of business by holding firearms manufacturers for the unlawful acts of criminals.

This statement resides in the bill:

A PARTY SEEKING RELIEF UNDER THIS SECTION IS NOT REQUIRED TO PROVE THAT A FIREARM INDUSTRY MEMBER ACTED WITH THE INTENT TO VIOLATE THIS SUBTITLE.

So there is no burden of proof, and the firearm industry member is automatically guilty? This is unconstitutional.

What's next, will there be similar bills for knife and baseball bat manufacturers? That's the wrong path. Criminals kill people. Inanimate objects do not.

Please oppose HB0947

hb0947_kasuba_UNFAVORABLE.pdf

Uploaded by: Thomas Kasuba

Position: UNF

Please **UNFAVORABLE** HB947
Civil Actions – Public Nuisances – Firearm Industry Members
(Gun Industry Accountability Act of 2024)

Does one think of Bass Pro in the Arundel Mills mall when you say "Firearm Industry Member" because they WILL be included with this bill. Let's play "change the noun" and switch the merchandise from "firearm" to ANY other item and anyone with a conscience will viscerally feel that this bill is just plain wrong. There really has to be some limit to the stigmatizing of honest citizens and perfectly legitimate industries; they are NOT the bad guys. I find the name of this bill incredibly offensive and utterly uncalled for. "Accountability"? Accountable for making an honest living actually making/selling a sporting goods product? "Public nuisance"; I guess many people, myself included, aren't considered part of the "public" since they find nothing annoying about the firearms industry. Driving businesses out of business through such wanton vilification will certainly not solve whatever problem this bill purports to solve.

Thomas J. Kasuba (registered Democrat)
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February 15, 2024