HAUSE BILL 859

By: Delegate Cox
Introduced and read first time: February 7, 2022
Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Maryland Arms Protection Act

FOR the purpose of prohibiting the enforcement of certain federal laws relating to firearms, firearm accessories, and firearm ammunition; requiring the Attorney General to defend a resident of the State in certain federal prosecutions; authorizing a resident of the State to file suit against a federal actor or State actor who enforces or aids and abets the enforcement of certain federal law and authorizing a court to award attorney’s fees, court costs, and damages to a prevailing plaintiff; and generally relating to the enforcement of federal firearms laws in the State.

BY adding to

Article – Public Safety

Section 5–701 through 5–705 to be under the new subtitle “Subtitle 7. Maryland Arms Protection Act”

Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

SUBTITLE 7. MARYLAND ARMS PROTECTION ACT.

5–701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “FEDERAL ACTION” MEANS:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
(1) AN EXECUTIVE ORDER ISSUED BY THE PRESIDENT OF THE UNITED STATES;

(2) AN ACT OF CONGRESS;

(3) AN ADMINISTRATIVE RULE OR REGULATION ADOPTED BY A FEDERAL AGENCY;

(4) AN ARBITRARY CLASSIFICATION OF A FIREARM:

   (I) BASED ON ATTRIBUTES THAT DO NOT PERTAIN TO THE PRIMARY COMBUSTION FUNCTION OF THE FIREARM SUCH AS THE NATURAL UNMODIFIED RATE OF FIRE; OR

   (II) DESIGNED TO PROHIBIT POSSESSION OF A FIREARM NONMECHANICALLY NECESSARY ATTRIBUTES, INCLUDING:

          1. BAYONET LUGS;
          2. TELESCOPING STOCKS;
          3. MUZZLE BREAKS;
          4. PISTOL GRIPS; AND
          5. PISTOL BRACES; OR

(5) A CLARIFICATION ISSUED THROUGH AN EXECUTIVE OR LEGISLATIVE AGENCY DESIGNED TO PROHIBIT OWNERSHIP OR POSSESSION OF FIREARMS BASED ON ATTRIBUTES WHICH ARE NONMECHANICALLY NECESSARY OR IN COMMON USE.

(C) "FEDERAL ACTOR" MEANS AN OFFICIAL, AN AGENT, AN EMPLOYEE, A CONTRACTOR, OR ANY OTHER INDIVIDUAL WORKING IN A PROFESSIONAL CAPACITY FOR THE FEDERAL GOVERNMENT.

(D) "FIREARM" HAS THE MEANING STATED IN § 5–101 OF THIS TITLE.

(E) "FIREARM ACCESSORY" MEANS AN ITEM USED IN CONJUNCTION WITH OR AFFIXED TO A FIREARM THAT IS NOT MECHANICALLY NECESSARY TO THE BASIC FUNCTION OF THE FIREARM.
“Registry” means a list established and maintained by a governmental entity denoting ownership, residence, or the storage location of firearms legally owned or stored within the State.

“State actor” means an official, employee, or agent of the State or a political subdivision of the State, including persons under contract with the State.

The General Assembly finds that:

1. The right to keep and bear arms is a fundamental right of an individual necessary for self-defense and the preservation of liberty and may not be infringed;

2. It is the intent of the General Assembly to protect State actors from being directed through federal action to violate their oath of defense and preservation of individual rights secured by the Constitution of the United States;

3. Under the principles of federalism enshrined in the Constitution of the United States, the federal government may not commandeer State actors to participate in the enforcement or facilitation of any federal action or regulatory program that infringes on the right to keep and bear arms;

4. The right to be free from the commandeering hand of the federal government was most notably recognized by the United States Supreme Court in Printz v. United States, 521 U.S. 898 (1997), where the court held that “the Federal Government may neither issue directives requiring the states to address particular problems, nor command the states’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program”; and

5. The anti-commandeering principles recognized by the Supreme Court in Printz v. United States are predicated on the writing of James Madison, who advised in Federalist No. 46 a “refusal to co-operate with the officers of the Union” in response to either unconstitutional Federal measures or constitutional but unpopular Federal measures.
(A) A federal action relating to a firearm, firearm magazine, firearm accessory, or firearm ammunition that is intended to restrict the possession, transfer, or use of a firearm, firearm magazine, firearm accessory, or firearm ammunition is unenforceable by a State actor in the State.

(B) Any federal action effective on or after December 31, 2020, that attempts to register, restrict, or ban the ownership or purchase of a firearm, firearm magazine, firearm accessory, or firearm ammunition or to reclassify the firearm, firearm magazine, firearm accessory, or firearm ammunition which results in the prohibition against or restriction of continued ownership or common use is unenforceable in the State.

(C) The federal government may not create a firearm or firearm accessory registry in the State.

(D) The Attorney General shall defend a resident of the State who is prosecuted by the federal government for the resident’s alleged violation in the State of a federal law that is unenforceable under this subtitle.

5–704.

(A) (1) A federal actor or State actor owes an individual duty to each resident of the State not to violate the resident’s Second Amendment right to bear arms.

(2) This duty established under paragraph (1) of this subsection is for the purpose of establishing a direct action for civil liability if a federal actor or State actor breaches this duty against a State resident.

(B) (1) A federal actor within the State may not violate, or aid or abet a violation of, the Second Amendment right to bear arms of a resident of the State.

(2) A State actor may not violate, or aid or abet a violation of, the Second Amendment right to bear arms of a resident of the State.

(C) An individual affected by a violation of subsection (B) of this section may file suit seeking damages against the federal actor, State
(D) (1) The immunity provisions protecting State and local government personnel under the Local Government Tort Claims Act under Subtitle 3 of the Courts Article or the Maryland Tort Claims Act under Title 12, Subtitle 1 of the State Government Article do not apply to a civil action brought under this subtitle.

(2) Any element of governmental immunity, including qualified immunity, is not a defense to a claim brought under this section.

(E) In an action filed under this subtitle, the court may award a prevailing plaintiff reasonable attorney’s fees, court costs, and damages, including punitive damages.

(F) Beginning on the date of a determination of a violation of this section by a court, a federal actor or State actor is subject to the following:

(1) Termination of employment and any entitlements, except for pension or health care benefits related to retirement, bestowed by the employment;

(2) A bar from State employment in any capacity for a period of at least 10 years; or

(3) A bar from contracting with any State department, agency, or office having contracts with the State or acting as subcontractors for the State.

(G) A person that contracts with the State or submits a bid for consideration to a State bid request may not hire, employ, or subcontract with an individual found liable under this subtitle.

5–705.

(A) (1) An agency, an office, a department, or an entity of the State or a political subdivision of the State may not use federal money or grants received to support or advance a federal provision that is unenforceable under this subtitle.
(2) Federal funds to support or advance a federal provision that is unenforceable under this subtitle received by the State shall be used for the improvement of public hunting lands and shooting ranges owned and maintained by the State.

(B) (1) A political subdivision of the State that has received federal funds to support or advance a federal provision that is unenforceable under this subtitle shall remit the money or grants to the State Treasurer within 10 days of receipt.

(2) Funds received by the State Treasurer under paragraph (1) of this subsection shall be deposited in the General Fund and used for the improvement of public hunting lands and shooting ranges owned and maintained by the State.

(C) If the use of federal money or grants received by the State or a political subdivision of the State is restricted, the federal money or grant shall be returned to the appropriate federal entity.

SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.