SENATE BILL 873

By: Senators Waldstreicher and Smith
Introduced and read first time: February 7, 2022
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning
Public Safety – Firearm Industry Members – Public Nuisance

FOR the purpose of prohibiting a certain firearm industry member from knowingly or recklessly engaging in certain conduct in the State that endangers the safety or health of the public; requiring a firearm industry member to establish and use certain reasonable controls and procedures to prevent a certain product from being possessed, used, marketed, or sold unlawfully in the State; establishing that a violation of this Act is a public nuisance; authorizing the Attorney General to investigate a violation or possible violation of this Act; authorizing certain parties to bring a certain action against a firearm industry member under certain circumstances; and generally relating to firearm industry members.

BY adding to
Article – Public Safety
Section 5–701 through 5–704 to be under the new subtitle “Subtitle 7. Firearm Industry Members”
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

Preamble

WHEREAS, Since 2005, a federal law called the Protection of Lawful Commerce in Arms Act (PLCAA) has shielded firearm manufacturers and dealers from being held liable when crimes have been committed with their products; and

WHEREAS, PLCAA blocks litigation that could incentivize firearm manufacturers to design their products more safely and compel firearm manufacturers to stop selling to dealers who fuel the criminal market, have poor safety practices or training, or are not willing to use basic security measures; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
WHEREAS, Firearm manufacturers received nearly two million pieces of data about firearms recovered at crime scenes or in criminal investigations between 2010 and 2019; however, with all of this information there is no incentive for the firearm manufacturers to stop supplying dealers who cater to the criminal market because of PLCAA; and

WHEREAS, PLCAA shields firearm dealers who have taken few steps to secure their premises when their guns are stolen and then used in a crime; and

WHEREAS, Since PLCAA was enacted, between 2006 and 2019, 484,000 Americans have been killed with firearms and hundreds of thousands injured due to the illegal or unreasonable sale, manufacture, distribution, importing, or marketing of firearms and the firearm industry’s failure to implement reasonable safety measures; and

WHEREAS, Not only does the illegal use of firearms constitute a public nuisance, but the effects of such a nuisance also contribute to the public health crisis of firearm violence in Maryland; and

WHEREAS, The firearm industry should be held liable and accountable for the public nuisance caused by the firearm violence; now, therefore,

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

Article – Public Safety

SUBTITLE 7. FIREARM INDUSTRY MEMBERS.

5–701.

(A) In this subtitle the following words have the meanings indicated.

(B) (1) “Deceptive act or practice” means a material representation, omission, act, or practice that misleads or is likely to mislead a reasonable consumer under the totality of the circumstances.

(2) “Deceptive act or practice” includes false advertising.

(C) “False advertising” means using any advertisement, including a label, that is misleading in a material respect.

(D) “Firearm industry member” means a person engaged in the sale, manufacturing, distribution, importing, or marketing of a qualified product.
(E) “QUALIFIED PRODUCT” MEANS:

(1) A FIREARM, AS DEFINED IN 18 U.S.C. § 921(A)(3)(A) AND (B);
(2) AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C. § 921(A)(16);
(3) AMMUNITION, AS DEFINED IN 18 U.S.C. § 921(A)(17)(A); OR
(4) A COMPONENT PART OF A FIREARM OR AMMUNITION.

(F) “REASONABLE CONTROLS AND PROCEDURES” MEANS POLICIES THAT INCLUDE SCREENING AND SECURITY MEASURES TO:

(1) PREVENT THE THEFT OF A QUALIFIED PRODUCT BY OR SALE OF A QUALIFIED PRODUCT TO:

   (I) A STRAW PURCHASER;
   (II) A TRAFFICKER;
   (III) A PERSON PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW; OR
   (IV) A PERSON AT RISK OF INJURING THE PERSON OR OTHERS;
   OR

(2) PREVENT DECEPTIVE ACTS OR PRACTICES.

5–702.

(A) A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY OR RECKLESSLY ENGAGE IN CONDUCT THAT:

(1) IS UNLAWFUL; OR
(2) UNDER THE TOTALITY OF THE CIRCUMSTANCES:

   (I) IS UNREASONABLE; AND
   (II) CREATES, MAINTAINS, OR CONTRIBUTES TO A CONDITION IN THE STATE THAT ENDANGERS THE HEALTH AND SAFETY OF THE PUBLIC THROUGH
THE SALE, MANUFACTURING, IMPORTING, OR MARKETING OF A QUALIFIED PRODUCT.

(B) A FIREARM INDUSTRY MEMBER THAT MANUFACTURES, MARKETS, IMPORTS, OR OFFERS FOR WHOLESALE OR RETAIL SALE A QUALIFIED PRODUCT IN THE STATE SHALL ESTABLISH AND USE REASONABLE CONTROLS AND PROCEDURES TO PREVENT A QUALIFIED PRODUCT FROM BEING POSSESSED, USED, MARKETED, OR SOLD UNLAWFULLY IN THE STATE.

5–703.

(A) A VIOLATION OF § 5–702 OF THIS SUBTITLE THAT RESULTS IN HARM TO THE PUBLIC IS A PUBLIC NUISANCE.

(B) THE CONDUCT OF A FIREARM INDUSTRY MEMBER UNDER § 5–702 OF THIS SUBTITLE SHALL CONSTITUTE A PROXIMATE CAUSE OF THE PUBLIC NUISANCE IF THE ENDANGERMENT OF THE HEALTH AND SAFETY OF THE PUBLIC WAS A REASONABLY FORESEEABLE EFFECT OF THE CONDUCT, NOTWITHSTANDING ANY INTERVENING ACTIONS, INCLUDING CRIMINAL ACTIONS BY THIRD PARTIES.

(C) INTENT TO CAUSE HARM TO THE PUBLIC BY A FIREARM INDUSTRY MEMBER IS NOT AN ELEMENT OF A VIOLATION OF THIS SUBTITLE.

5–704.

(A) IF THE ATTORNEY GENERAL SUSPECTS THAT A FIREARM INDUSTRY MEMBER HAS VIOLATED OR WILL IMMINENTLY VIOLATE § 5–702 OF THIS SUBTITLE, OR IF THE ATTORNEY GENERAL BELIEVES IT IS IN THE PUBLIC INTEREST THAT AN INVESTIGATION SHOULD BE MADE TO ASCERTAIN WHETHER A FIREARM INDUSTRY MEMBER HAS VIOLATED OR WILL IMMINENTLY VIOLATE § 5–702 OF THIS SUBTITLE, THE ATTORNEY GENERAL MAY:

(1) REQUIRE THE FIREARM INDUSTRY MEMBER TO FILE A WRITTEN STATEMENT OR REPORT UNDER OATH CONCERNING THE FACTS AND CIRCUMSTANCES OF THE VIOLATION OR POSSIBLE VIOLATION AS THE ATTORNEY GENERAL CONSIDERS NECESSARY;

(2) EXAMINE UNDER OATH THE FIREARM INDUSTRY MEMBER CONCERNING THE VIOLATION OR POSSIBLE VIOLATION;

(3) EXAMINE ANY RECORD, OBJECT, BOOK, DOCUMENT, ACCOUNT, OR PAPER RELATING TO THE VIOLATION OR POSSIBLE VIOLATION AS THE ATTORNEY GENERAL CONSIDERS NECESSARY; AND
(4) In accordance with an order of the Court of Appeals, impound and retain in the Attorney General’s possession any record, book, document, account, object, or paper that is produced under this subsection until the completion of all proceedings in connection with the impounded items.

(B) (1) If the Attorney General determines that there has been a violation under this subtitle, the following parties may bring an action against the firearm industry member for injunctive relief or to recover for damages, or both, in the Court of Appeals or in a federal court sitting in the State:

(I) The Attorney General on behalf of the State;

(II) A city corporation counsel on behalf of the locality; or

(III) A person that suffered damage as a result of the violation.

(2) The court may award compensatory and punitive damages to a prevailing plaintiff under this subsection.

(3) The prevailing party in any such proceeding is entitled to an award for court costs, reasonable attorney’s fees, and any other relief the court considers proper.

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 June 1, 2022.