MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

February 17, 2021

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 638 and SB 624

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is an all-volunteer, non-partisan 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 Maryland and of the Bar of the District of Columbia. 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 ("HQL") and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in opposition to HB 638 and SB 624.

These Bills

Covert guns: The bills would ban "COVERT FIREARMS," which are defined as A FIREARM THAT IS CONSTRUCTED IN A SHAPE OR CONFIGURATION THAT A REASONABLE PERSON WOULD NOT IMMEDIATELY RECOGNIZE TO BE A FIREARM." The bills would also ban "UNDETECTABLE FIREARMS," which is defined by reference to an undefined "security exemplar," or by reference to those firearms which cannot be detected by an x-ray machine "COMMONLY USED AT AIRPORTS."

Serial numbers: Next, the bills would enact a whole regulatory system for regulating a "unfinished frame or receiver" which the bills define as "A PRODUCT THAT IS INTENDED OR DESIGNED TO SERVE AS THE FRAME OR RECEIVER, INCLUDING THE LOWER RECEIVER, OF A FIREARM, BUT IS IN AN UNFINISHED STATE OF MANUFACTURE," including a "BLANK CASTING, OR MACHINED BODY THAT REQUIRES MODIFICATION, SUCH AS MACHINING, DRILLING, FILING, OR MOLDING, TO BE USED AS PART OF A FUNCTIONAL FIREARM." The bills provide that after January 1, 2022, a person "MAY NOT POSSESS A FIREARM OR AN UNFINISHED FRAME OR RECEIVER THAT HAS NOT BEEN MARKED" in accordance with the standards specified in the bills. The bills would further provide that, on or after January 1, 2022:

(1) A FIREARM OR AN UNFINISHED FRAME OR RECEIVER SHALL BE MARKED IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION BY A FEDERALLY LICENSED FIREARMS MANUFACTURER BEFORE THE FIREARM OR UNFINISHED FRAME OR RECEIVER IS SOLD, OFFERED FOR SALE, OR TRANSFERRED IN THE STATE;

(2) A FIREARM OR UNFINISHED FRAME OR RECEIVER SHALL BE MARKED IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION BY A FEDERALLY LICENSED FIREARMS IMPORTER BEFORE THE FIREARM OR UNFINISHED FRAME OR RECEIVER IS IMPORTED OR OTHERWISE BROUGHT INTO THE STATE;

(3) A FEDERALLY LICENSED FIREARMS DEALER MAY NOT SELL, OFFER TO SELL, OR TRANSFER A FIREARM OR AN UNFINISHED FRAME OR RECEIVER THAT HAS NOT BEEN MARKED IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION;

(4) A FEDERALLY LICENSED FIREARMS DEALER, FEDERALLY LICENSED FIREARMS MANUFACTURER, AND FEDERALLY LICENSED FIREARMS IMPORTER SHALL MAINTAIN A RECORD LOG OF ANY SALE OR TRANSFER OF A FIREARM OR AN UNFINISHED FRAME OR RECEIVER AS REQUIRED BY FEDERAL LAW AND REGULATION;

A. Homemade Guns Are Rarely Used In Crime And Existing Owners Are Law-Abiding Hobbyists, Not Criminals

These new provisions, if enacted, would burden and penalize a harmless activity that has been perfectly legal under federal and state law for the entire history of the United States, *viz.*, the manufacture of homemade guns for personal use. Under Federal law, a person may legally manufacture a firearm for his own personal use. See 18 U.S.C. § 922(a). However, "it is illegal to transfer such weapons in any way." *Defense Distributed v. United States,* 838 F.3d 451, 454 (5th Cir. 2016). This manufacture "involves starting with an '80% lower receiver,' which is simply an unfinished piece of metal that looks quite a bit like a lower receiver but is not legally considered one and may therefore be bought and sold freely. It requires additional milling and other work to turn into a functional lower receiver." (Id).

Manufacturing an "80% lower" into a "functional lower receiver" is not a trivial process. It takes machine tools, expertise and hours of time. Miscues are common and, when made, essentially convert the "80% lower" into scrap. Individuals who undertake this process are hobbyists. Even after the receiver is successfully made, the owner would still have to purchase the additional parts, such as a barrel, the trigger, slide and all the internal parts to complete the assembly. All these additional parts are expensive. With the cost of the tools to mill the receiver, plus the cost of the parts, a final assembled homemade gun costs **more to make than** it would to actually buy an identical gun from a dealer.

The complexity of this process has been pointed out in court filings by the ATF and the U.S. Department of Justice. For example, in *State of California v. BATF*, No. 20-cv-0761 (N.D. Cal.), the Department of Justice and the ATF explained:

> An unfinished receiver that has not yet had "machining of any kind performed in the area of the trigger/hammer (fire-control) recess (or cavity)," see ATF Firearms Technology Branch Technical Bulletin 14-01 ("Bulletin 14-01"), filed in Calif. Rifle and Pistol Ass'n v. ATF, Case No. 1:14-cv-01211, ECF No. 24 at 285 (E.D. Cal. Jan. 9, 2015),requires that numerous steps be performed simply to yield a receiver, that then in turn must be assembled with other parts into a device that can expel a

projectile by the action of an explosive. These milling and metalworking steps—each of which require skills, tools, and time—include: 1) "milling out of fire-control cavity"; 2) "drilling of selector-lever hole"; 3) "cutting of trigger slot"; 4) "drilling of trigger pin hole; and 5) "drilling of hammer pin hole." Compl. Ex. 9. Importantly, ATF will treat any "indexing"—the inclusion, in the receiver blank, of visual or physical indicators regarding the two-dimensional or three-dimensional parameters of the machining that must be conducted—as rendering the receiver blank a firearm. See Compl. Ex. 12; Ex. 13; Shawn J. Nelson, Unfinished Lower Receivers, 63 U.S. Attorney's Bulletin No. 6 at 44-49 (Nov. 2015) ("Nelson, Unfinished Receivers"), available at: https://go.usa.gov/x7pP3. This prevents the makers of receiver blanks from annotating the blank to instruct the purchaser as to the precise measurements needed, in three dimensions, to "excavate the fire control cavity and drill the holes for the selector pin, the trigger pin, and the hammer pin." Nelson, Unfinished Receivers, at 47. The need to conduct these machining steps from scratch, without indexing, and "carefully" means a working gun cannot be produced "without difficulty." Id. And the work to excavate the cavities and drill holes in a solid, unmachined substrate requires care rather than speed to avoid doing so raggedly or in the wrong area. See id. Therefore, the receiver cannot be completed "without delay," even leaving aside the further assembly with many other parts needed to have a weapon that can expel a bullet by explosive action. A receiver blank therefore may not "readily be converted" into a firearm.

Federal Defendants' Notice Of Motion And Motion To Dismiss Plaintiffs' Complaint For Declaratory And Injunctive Relief, at 16-17 (filed Nov. 30, 2020).

B. These Bills Would Do Nothing To Prevent Or Deter Criminals From Acquiring Guns While Penalizing Existing, Law-Abiding Owners

1. The Bills would not stop criminals.

The bans imposed by these bills would also not stop any person from actually acquiring "80% lowers" or the other parts necessary to manufacture firearms. Such items are not "firearms" under Federal law and thus are not regulated by Federal law. These "80% lowers" and other parts are thus available all over the United States, including over-the-counter, on-line and by mail order. Unfinished frames or receivers would remain available in other states, even if these bills should become law and were perfectly enforced 100% of the time.

Accordingly, nothing in all the bans imposed by this bill would or could actually stop any criminal or disqualified person from acquiring all the hardware necessary to make his own gun, including the 80% lower, simply by driving to another state. A disqualified person or criminal would not be deterred by these bills because such a disqualified person is **already** precluded by Federal law from possessing **any** modern firearm or modern ammunition of **any** type. 18 U.S.C. § 922(g). Actual or constructive possession of a modern firearm or ammunition by a person subject to this firearms disability is a felony, punishable by up to **10** years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2). The same disqualification and similar punishments are also **already** imposed under existing Maryland law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1). Simple actual or constructive possession of a receiver **alone** (an "81% receiver") would be sufficient to constitute a violation of these existing laws, as a receiver **alone** is considered a "firearm"

under both Maryland and Federal law. Making possession "**more** illegal" in these bills simply penalizes innocent, law-abiding hobbyists and gun enthusiasts who have done nothing wrong.

In contrast, if this bill became law, few existing, otherwise law-abiding owners of these homemade guns will know or realize that possession of their existing firearms or unfinished frames has been banned. Actual compliance by existing owners will thus likely be virtually non-existent. In short, these bills are utterly **pointless** as a public safety measure. It would succeed only in penalizing otherwise law-abiding hobbyists. That result is not sound public policy.

2. The ban on undetectable firearms is redundant of Federal law and unnecessary

Similarly, current Federal law also makes it unlawful to "manufacture, import, sell, ship, deliver, possess, transfer, or receive" any firearm that is not "detectable" by a "Security Exemplar" or any "major component" of which does not show up accurately on airport x-ray machines. See 18 U.S.C. § 922(p). A knowing violation of that prohibition is a federal felony, punishable by five years of imprisonment and a fine. See 18 U.S.C. § 924(f). As a practical matter, in order to function as such, a firearm must have a metal barrel and a metal firing pin, at the very least. Both of these items would easily satisfy the requirement of being detectable by a Security Exemplar as firearm component. See Section 922(p)(2). The ammunition for any such firearm would likewise be detectable.

More fundamentally, the idea that a person could produce a usable, undetectable firearm is far-fetched. Indeed, actually firing such a firearm could be extremely dangerous **to the user**. For example, a standard 9mm handgun round generates around 34,080 pounds per square inch of pressure in the chamber upon firing. https://www.gunnuts.net/2009/04/03/9mm-nato-vs-9mm-luger/. No undetectable plastic barrel can safely and reliably stand up to those kinds of pressures. In short, firing an undetectable gun with a plastic barrel is akin to playing Russian roulette by the user. See https://bit.ly/3jOmd2D (an ATF video showing 3-D printed guns exploding when fired). The ban imposed by these bans on undetectable firearms is simply a solution in search of a problem that does not exist in the real world, much less on the streets of Maryland. Groundless fears should not be the basis of public policy, especially where Federal law already imposes a nationwide ban on any such devices.

3. The ban on covert firearms penalizes possession permitted by Federal law

Finally, the bills ban on covert firearms illegalizes weapons that have long been tightly regulated under Federal law. Specifically, as codified in 26 U.S.C. § 5845(e), the National Firearms Act of 1934, "covert" weapons are classified as "any other weapon," a concealable weapon from which a shot can be discharged through the energy of an explosive, other than a pistol or a long gun with a rifled bore. See *Davis v. Erdmann*, 607 F.2d 917, 919 (10th Cir.1979) (implicitly assuming that a combination knife/pistol that could fire a .22 short cartridge was within the definition of any other weapon); *United States v. Ordner*, 554 F.2d 24, 26 & n. 3 (2d Cir.) (a "pen gun," which it described as a device made from the triggering mechanism of a flare gun attached to a machined barrel, was "any other weapon"), *cert. denied*, 434 U.S. 824 (1977); *United States v. Cheramie*, 520 F.2d 325, 333 (5th Cir.1975) (affirming a conviction based on possession of an unregistered pen gun); *Moore v. United States*, 512 F.2d 1255, 1256 (4th Cir.1975) (sawed off shotgun could be any other weapon);

United States v. Coston, 469 F.2d 1153, 1153 (4th Cir.1972) (a flare gun capable of firing shotgun shells was any other weapon). Any person must, **prior to taking receipt or possession** of such a weapon, register the weapon with the ATF, pay a tax and submit to an in depth background conducted by the ATF. See 26 U.S.C. § 5841, 26 U.S.C. § 5811(a), and 27 C.F.R. § 479.101. All responsible persons seeking to possess one of these times must complete the ATF Form 5320.23 with photo attached and provide two FD-258 fingerprint cards in order to initiate the required background check. See ATF Final Rule 41F (Jan. 4, 2016), available at https://www.atf.gov/rules-and-regulations/final-rule-41f-background-checks-responsible-persons-effective-july-13. The mere receipt or possession of an unregistered "any other weapon" is a federal felony. See 26 U.S.C. § 5861(d). That felony is punished with up to ten years in prison and a $10,000 fine. See 26 U.S.C. § 5871. Any such unregistered firearms are subject to forfeiture under 26 U.S.C. § 7302. Again, any such conviction disqualifies that person from ever possessing any modern firearm or modern ammunition for life.

As is apparent, the bans imposed by these bills on "covert firearms" is utterly unnecessary as they are already effectively banned by Federal law. Persons willing to commit a federal felony will not be deterred by these bills. Even worse, the bills inflict harm on the law-abiding as the bills would penalize persons, such as collectors, who have jumped through all the hoops imposed by the ATF and the National Firearms Act of 1934 in order to possess these items. Under these bills, mere possession of a covert firearm is punished without regard to the legality of that possession under Federal law. We can think of no valid public safety rationale that would support that result. At a minimum, the bills should be amended to exempt such persons from the requirements imposed by these bills. See MD Code, Public Safety, § 5-203(a)(2) (banning the possession of short-barreled rifles or shotguns, **unless** "the short-barreled shotgun or short-barreled rifle has been registered with the federal government in accordance with federal law").

C. The Bills Impose Impracticable Requirements

The bills require that existing owners of perfectly legal lower receivers or frames mark these with markings that includes that model, caliber, the "full legal name" of the owner, his city" and that these markings be conspicuously and permanently etched or engraved or cast. The bills specifically require that these markings meet the requirements of 18 U.S.C. § 923(i). Those requirements are both expensive and quite difficult to meet for a large number of frames. First, federal regulations concerning Section 923(i) (incorporated by these bills) require that the markings required by Section 923(i) must be to a minimum death of .003 inches and in a print size no smaller than 1/16 inches and "must be placed in a manner not susceptible of being readily obliterated, altered, or removed." 27 C.F.R. §478.92(a)(1).

Existing manufacturers of polymer frames, such as Glock and Sig Sauer, use a metal plate inserted into the frame or use the internal metal assembly to mark the serial number. Many unfinished polymer receivers that existing owners may possess simply lack such a plate or internal assembly. For those owners, it is nearly impossible to perform all the engraving required by these bills on the frame or receiver. For example, using an ordinary engraving tool could melt the polymer and destroy the frame. The average owner also has no way to be sure that the requirements of Section 923 and Section 478.92(a)(1) are satisfied. For example, if the required information is etched to the depth of .002 inches or if engraved slightly smaller than 1/16 of an inch, the owner would be in be in violation of these bills.

Yet, equipment to perform this sort of extremely precise engraving costs **thousands of dollars** to acquire. Those costs are out of reach of the ordinary person. And without access to such equipment no person can reasonably comply with these requirements.

The requirements of the full legal name and city of the owner are likewise unreasonable. These requirements actually go beyond that specified by federal regulations that implement Section 923. Specifically, federal ATF regulations, 27 C.F.R. 497.92(a)(1)(ii)(C) require, for a domestically made firearm, "your name **(or recognized abbreviation**"). In contrast, these bills require the "full legal name" and that term is normally defined as the first name, middle name and last name. See http://bit.ly/3aWmdJG. People with long names simply are not allowed to abbreviate their names under these bills. The bills also require, along with the full legal name, the name of the owner's city, which likewise may be quite long, such as Chesapeake Beach, Chevy Chase Section 3, and Fairmount Heights. All of these names must be placed on the frame or receiver under these bills. In contrast, federal regulations allow the manufacturer to use a "recognized abbreviation" for a city and allows information to be "engraved, casted, stamped (impressed) or placed on the frame, receiver **or barrel**. See Section 497.92(a)(1)(ii). For example, the Sig Sauer newest Model M-17 pistol engraves the model and serial number on the metal trigger assembly inserted into the polymer frame, but engraves the caliber on the barrel. Such placement, abbreviations and use of the **barrel** are not allowed under these bills.

Under these bills, all of this information must be "engraved, cast, or stamped on the firearm frame or receiver or unfinished frame or receiver" along with the model of firearm as well as the caliber or gauge. There may simply be not enough room on the metal plates supplied with some receivers, such as the Polymer 80, a Glock SS80 and the GST-9. Indeed, if the unfinished receiver is first engraved in the manner required by these bills and is later finished into a completed firearm, the bills would arguably require the owner to go back and add the caliber and model if these items were not previously designated for the unfinished receiver. That could likewise prove quite impracticable if not impossible. Fitting the required information onto the plate becomes **especially** impossible on receivers that are brought into the State from elsewhere after January 1, 2022, as the bills require roughly double the amount of information be engraved on those receivers. See attached illustrated testimony of Andrew Starr Raymond, Co-Owner – Engage Armament LLC, of Rockville, MD.

These extremely technical requirements are both traps for the unwary as well as unnecessary. The apparent purpose of requiring this information is to identify the owner of the homemade firearm, should the firearm be recovered at a scene of a crime. Law enforcement agencies do not need anything other than the owner's name in order to do that. The caliber and model of the gun is simply certainly not necessary for that purpose. If law enforcement has the name of the owner, it will not be a difficult task to track down that person without having the full city name. Certainly, the police will not need the "full legal name," including the full middle name of the owner. In the rare case in which tracing is conducted, such tracing can be accomplished with just the first and last name.

D. The Bills Are Overbroad.

The bills define an "unfinished frame or receiver" to mean "a product that is **intended** or **designed** to serve as the frame or receiver, including the lower receiver, of a firearm, but is in an unfinished state of manufacture." The bills also define "unfinished frame or receiver" as including (but is not limited to) "a blank, casting, or machined body that requires modification, such as machining, drilling, filing, or molding, to be used as part of a functional firearm." These definitions are overbroad and ambiguous.

First, the definitions leave unanswered the question of "intended" by **whom**: Is it the manufacturer or the end user? An example illustrates the point. Under these definitions, the bills could require engraving and impose a ban on possession of a "zero percent receiver" (a solid block of aluminum) sold as such. **See e.g.:**  And that would be true even though the person in mere **possession** of this block of solid aluminum intended to use it as a paper weight or a book end or simply as a means to illustrate the absurdities of Maryland gun laws. The bills would likewise penalize a person who was utterly unaware that the block was originally sold as a "zero percent receiver" to someone, including perhaps someone far up the chain of possession for that particular block of aluminum. In short, the reach of the bills is overbroad. At a minimum, the bills should be amended to clarify the ambiguity. As the Maryland Court of Appeals has stressed, the General Assembly has an "obligation to establish adequate guidelines for enforcement of the law." *Ashton v. Brown*, 339 Md. 70, 88, 660 A.2d 447, 456 (1995).

Stated differently, these bills contain no *mens rea* requirement and thus impose strict liability for simple possession (or constructive possession) without regard to the owner's actual intent. In contrast, Federal law requires that the person **knowingly** possess an undetectable firearm of the type covered by 18 U.S.C. § 922(p). See 18 U.S.C. § 924(f) (imposing punishment for "a person who knowingly violates section 922(p)"). Yet, these bills contain no such *mens rea* requirement. That intent requirement is part and parcel of federal gun control law. See, e.g., *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). This sort of *mens rea* requirement is also part of Maryland law. See, e.g., *Chow v. State*, 393 Md. 431 (2006) (holding that a 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 application process and seven-day waiting period requires that a defendant knows that the activity they are engaging in is illegal).

It is no answer to these concerns that the bill imposes a civil penalty for the first offense, as the fine for the first offense is severe, *viz.,* "**not less** than $1,000 but not exceeding $2,500." Subsequent possession of a block of aluminum would be a second offense and that could result in two years of imprisonment and a $5,000 fine. Yet, such punishments for otherwise innocent possession is completely senseless. These penalties could be imposed **even though** it would take substantial expertise and a very sophisticated milling machine costing in the neighborhood of $30,000 to convert that block of aluminum into an 80% receiver, not to mention the *additional* milling that would be required to convert it into an actual **finished** receiver. Additional assembly of more parts (a barrel, a trigger, a slide and associated springs and parts) would then be necessary to covert that finished receiver into something that could actually fire a round of ammunition. As the Supreme Court stated in *Rehaif*, it is a "basic principle that underlies the criminal law, namely, the importance of showing what Blackstone called 'a vicious will.'" *Rehaif*, 139 S.Ct. at 2196, quoting 4 W. Blackstone, Commentaries on the Laws of England 21 (1769).

E. The Bills Impose Heavy Costs On The Maryland State Police To Conduct Truncated Background Checks And Issue HQLs

This bill amends MD Code Public Safety, § 5-101(r) to specifically designate a "receiver" as defined in these bills, to be a "regulated" firearm under Maryland law. Such a designation will have a huge impact on the Maryland State Police. Under existing Maryland law, MD Code, Public Safety § 5-117,"[a] person must submit a firearm application in accordance with this subtitle before the person purchases, rents, or transfers a regulated firearm." Under MD Code, Public Safety, § 5-118, as implemented by the State Police, such an applicant must fill out a State Police form, called a Form 77R, in order to purchase a regulated firearm and pay a $20 processing fee. The State Police use the information on that form to conduct a background check on the sale of the regulated firearm using the Federal NICS database and various state databases. See MD Code, Public Safety, § 5-124; COMAR 29.03.01.16. See also Maryland State Police Advisory LD-FRU-19-002 (Dec. 18, 2019). Under this statutory scheme, State and Federal Firearms Licensees ("FFLs") **are not allowed** to conduct any background checks for any regulated firearm sold in Maryland, but instead are **required** to rely solely on the State Police to do the background checks and approve the purchase.

This background check system breaks down for receivers that do **not** meet current ATF standards for being a "receiver" under Federal law, such as 80% lowers, that these bills would newly designate as "regulated" firearms. Stated simply, the State Police are legally prohibited from conducting federal NICS checks on the sale of items that are not firearms under Federal law. The NICS system is run by the FBI, as required by the Brady Handgun Violence Prevention Act of 1993, codified at 18 U.S.C. § 922(t). https://www.fbi.gov/services/cjis/nics. The Maryland State Police is a FBI-approved, Point of Contact agency for NICS checks for handgun sales in Maryland. https://www.fbi.gov/file-repository/nics-participation-map.pdf/view. Handguns are, of course, also "regulated" firearms under Section 5-101(r). Thus, for handgun sales by a dealer, the Maryland State Police serve as the sole Point of Contact for purposes of contacting the FBI for a NICS check on a dealer sale of a regulated firearm.

The federal NICS system may be used to institute a background check **only** on actual transfers of firearms **that are regulated by the Brady Act**. Federal regulations are quite explicit on that point. 28 C.F.R. 25.6(a) provides that "FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act. FFLs **are strictly prohibited** from initiating a NICS background check for any other purpose." (Emphasis added). Similarly, the Federal Firearms Licensee Manual issued by the FBI states that an FFL is never authorized to utilize the NICS for employment or other type of non-Brady Act-mandated background checks. See 27 C.F.R. 478.128(c) ("Any * * * licensed dealer * * * who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act * * * under the Act or this part shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.").

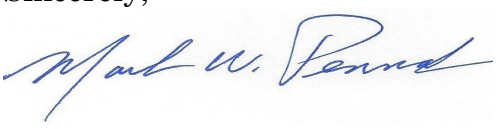
The same rule applies to a State which serves as a Point of Contact for purposes of accessing the NICS system. A State or a FFL that requests a NICS check not authorized by Federal law is subject to a $10,000 fine **and a termination of access to the NICS system**. 28 C.F.R. § 25.11. Termination of such NICS access would, of course, gut the ability of the Maryland State Police to conduct full background checks on sales of any regulated firearm (including handguns). Termination of access would also bar the State Police from doing NICS background checks for the Handgun Qualification License under MD Code, Public Safety § 5-117.1, and issuing a wear and carry permit under MD Code, Public Safety, § 5-306, as otherwise permitted by Federal law. See 28 C.F.R. § 25.6(j).

In short, the FBI and Federal law will not permit FBI resources and the NICS system to be commandeered to do a background check that is not authorized by Federal law. Eighty percent lowers and other unfinished receivers, as defined by these bills, are simply not "receivers" under Federal law and are thus not firearms under Federal law. That means that the State Police may NOT, under any circumstances, conduct a NICS check on the sale of "receivers," as defined by these bills. Thus, by deeming these receivers to be "regulated" firearms under Section 5-101(r), the bills essentially are commanding the State Police to expend considerable resources to conduct a background check that **is limited** to State databases only. The burden on the State Police is made even greater because the bills also amend MD Code, Public Safety, § 5-117.1, to require a person to have Handgun Qualification License, issued by the State Police, to purchase or receive an unfinished receiver. The fiscal impact on the State Police by these bills will be substantial to little point.

CONCLUSION

Given all the problems, detailed above, the bills have obviously not been fully thought out. For all these reasons, we strongly urge an unfavorable report.

Sincerely,



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

ENGAGE ARMAMENT, L.L.C.

701 E. GUDE DRIVE, STE 101, ROCKVILLE, MD 20850 301-838-3151

WRITTEN TESTIMONY OF ANDREW RAYMOND, OWNER OF ENGAGE ARMAMENT LLC, AGAINST HOUSE BILL 638

To Whom It May Concern,

My name is Andrew Raymond, and I am the co-owner of Engage Armament LLC, a federally licensed firearms manufacturer who has been in business for 11 years. I am a lifelong Maryland resident, and my family has been in Maryland on both sides for at least 337 years.

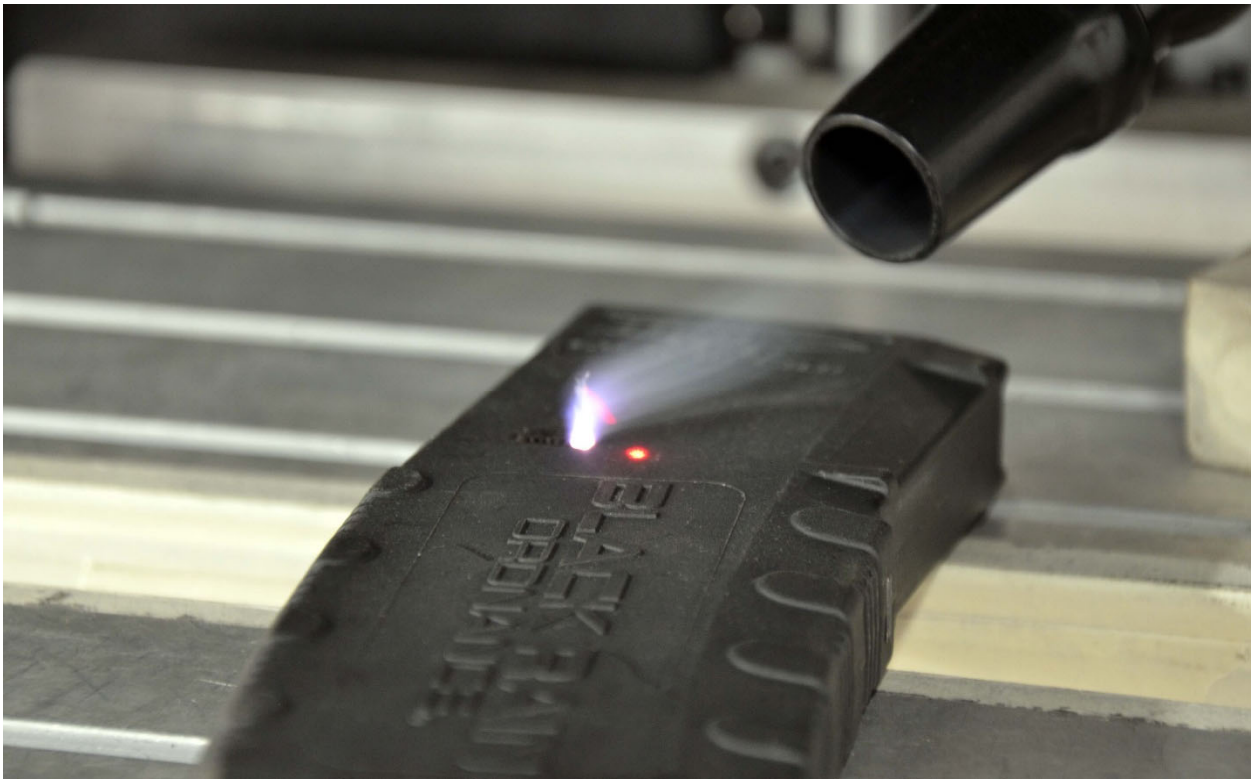
Part of firearm manufacturing is engraving the ATF required information on a firearm. I would say we have become experts on firearm markings over the past years and have invested more than $75,000 in firearm marking equipment to not only comply with the federal regulations but also to have the most advanced equipment to do so. Our main tool is a 60W fiber laser made entirely in the United States.

From both the cost and technical implications, there are a multitude of issues with this bill.

The cost of getting quality equipment to do the job effectively. As mentioned early, we spent quite a bit of money getting quality equipment, but even cheap imported equipment to mark metal will cost at least $7,000 and do a poor job of doing so, especially considering depth and permanency of the engraving.

The cost to the consumer will also increase significantly. For example, presently for NFA engraving we charge $45 which is the basic requirement of name/city/state under the National Firearms Act. This bill requires individuals to have their information engraved along with serial number, model AND after 1st January 2022 the manufacturers and "importers" info. This is substantially more required markings; therefore costs are going to quite high. For example, if I need to mark the info of the person who made the forging, plus my own info, and the gun information that could easily run $90 or more. That is on an item that would normally cost about $50 for an AR forging. I should also mention that I did ask for friends/acquaintances who I knew built their own firearms for a brief rundown of the numbers of items they may have. It appears most people who enjoy this hobby have many items that would fall under this bill. For example, engraving 5 items at $90 per engraving would cost $450. Many of these people are on the younger side, and in our current economy might not be able to afford compliance with the bill.

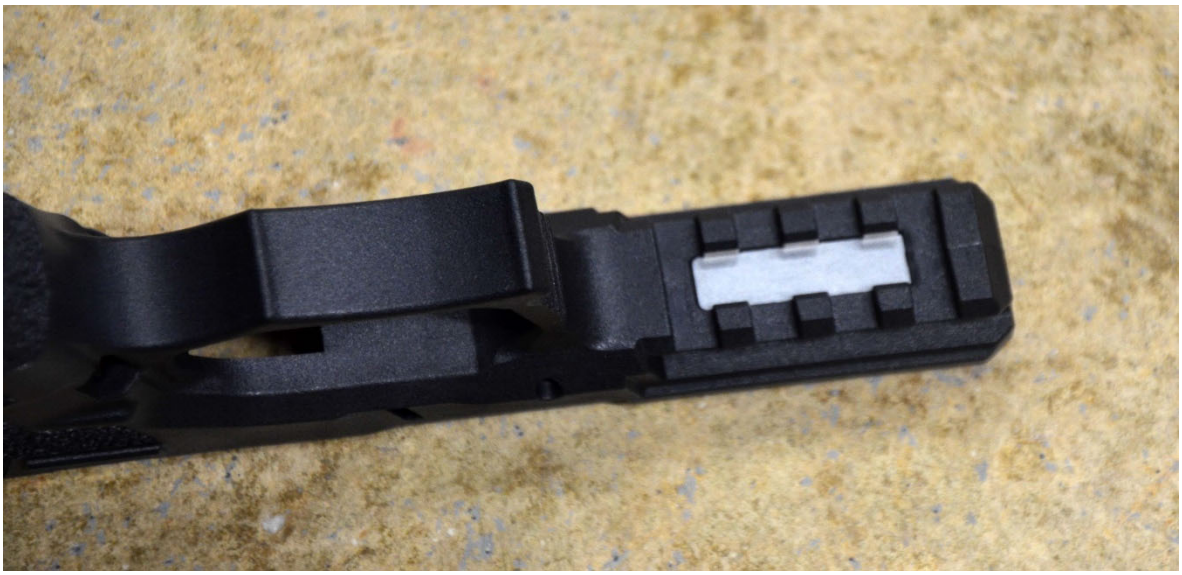
The other issues are technical. The first to be the actual act of marking the "receivers". Generally, these "receivers" are made either out of metal or polymer. Polymer has a great deal of variance to it and engraving settings from one type of polymer will catch another set on fire:



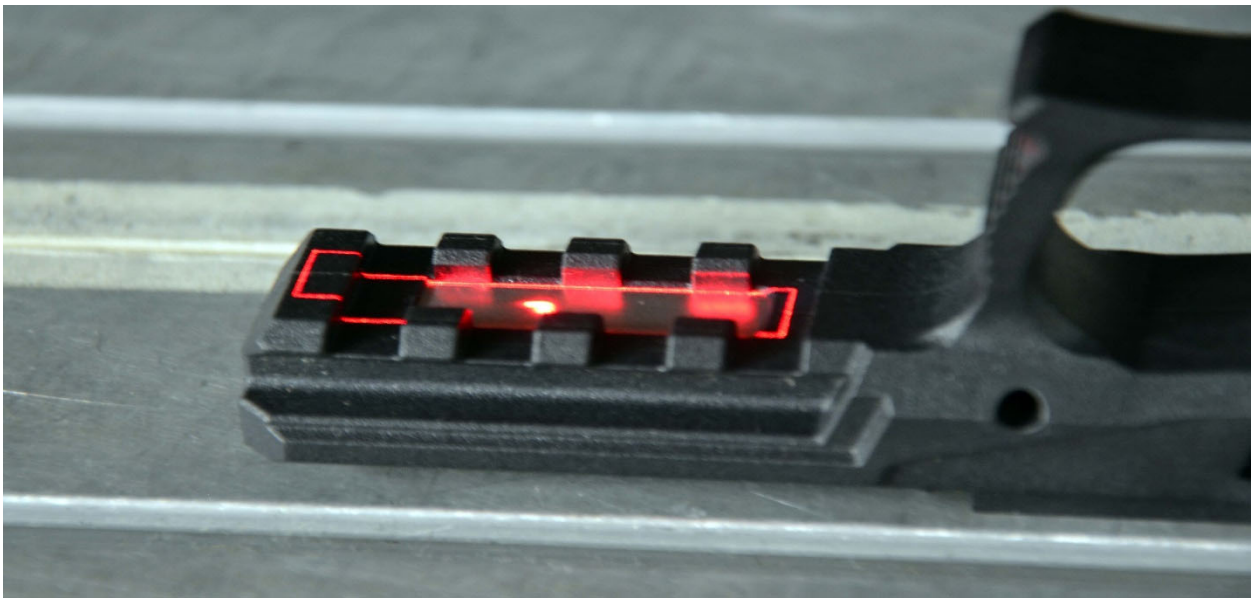
Here you can see a magazine catching fire using the settings from a known German polymer on this unknown polymer. The result is:

This marking is not legible and would not be compliant. Not to mention most people would now consider the product destroyed.

The next technical issue is sizing. While a metal “receiver” has a multitude of places to pollute with engravings, a good percentage of these products are polymer. A good example of the sizing issue would be the Polymer 80 “receivers” which are probably the most common plastic hobby “receivers” we see. These have a small metal piece imbedded in the polymer specifically for engraving purposes:



This small metal piece usually gives us only enough space for a serial number. In fact, to add the requirements from this law would require us to bring the size down to the point where it would not be compliant or readily legible. The below picture is a laser overlay of the space required for compliant sized markings using my personal information:



As you can see, the required engraving cannot fit in the supplied space. Once again, this is using my personal info as required under the law.

We should also consider required markings of original manufacturer and seller/importer into the state. This would double the space requirement and would not be feasible to do. Shrinking the size would not be compliant/legible either. The below is an example of that information at the minimum compliant size:

In order to fit only one set of the required markings my information must be shrunk to .055 which is not compliant. In the below picture, that is the 3rd example:

Another issue is going to be the length of the individual's name. For example, one of our customers is named "Ad****** Ra********** Kr******. His name has 32 characters not including spaces. I have no idea how we can fit that along with city, state, caliber etc. I am also not going to charge standard rates for an engraving of this size and will have to move to a per character rate. I believe this will disproportionately effect persons of color and increase their cost to comply with this law.

Manufacturers/brokers will not be able to effectively fit the required information on all types of these "receivers" in a compliant fashion as there will just not be enough space on a good percentage of these items.

The cost to the customer is also going to go up substantially if people even decide to continue their hobby or be compliant.

While my company stands to gain financially from it, we stand against it not only on principle but also upon the basis of the unfeasible practicality of the requirements. I urge you to fully consider the cost implications, practicality, and the inequity of this bill and issue an unfavorable report.

Sincerely,

Andrew Starr Raymond
Co-Owner – Engage Armament LLC
andy@engagearmament.com