# Written Testimony Regarding HB0175

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Hello,

      I am submitting this written testimony to register my strong **OPPOSITION** to HB0175. I believe this bill is an illegal overreach and little more than an attempt to hamper citizens' abilities to procure ammunition and therefore impose an unconstitutional hindrance on the meaningful exercise of their Second Amendment rights.

      HB0175 requires a patently illegal NICS background check on ammunition sales, its record-keeping requirements impose unfair burdens on both vendors and the Maryland State Police while being easily avoided by vendors, and the bill misuses the HQL.

      Below is a non-exhaustive list of reasons HB0175 is illegal:

- Under federal law, 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**. Furthermore, under federal law, only federally licensed firearm licensees (FFLs) and designated Point of Contract State agencies are permitted access to the NICS system.
- Because federal law does not regulate ammunition sales, federal law does not permit any NICS background check for ammunition sales. Indeed, federal regulations are quite explicit that a FFL may not access the NICS system for any purpose other than those sales of firearms subject to the Brady Act. 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**."
- 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).

- As Nevada learned to its chagrin when it tried to force dealers to do NICS checks not authorized by federal law, **the FBI will not permit FBI resources and the NICS system to be commandeered by States**. See Zusi v. Sandoval, No. A-17-762975-W, slip op. at 4 (Nev. Dist. Ct. August 20, 2018) (holding unenforceable a Nevada law that "sought to require the FBI through NICS to perform background checks"), available at http://www.clarkcountycourts.us/judge-issues-order-in-background-check-case-zusi-vs-sandoval/. The FBI is not bound by Maryland law. That means that neither a FFL nor the State Police may, under any circumstances, conduct a NICS check on the sale of ammunition. Period. Full Stop. Requiring a vendor to conduct a NICS check is thus flatly illegal under federal law. **Any dealer conducting such a NICS check on an ammunition sale would risk losing his or her FFL license** without further ado. 28 C.F.R. § 25.11. **The dealers, of course, all know this and thus will refuse to comply with the requirements that would be imposed by this bill**.

- Stated simply, ammunition sales are not governed by any provision in the Brady Act. Federal regulation of ammunition sales was largely repealed by Congress in 1986 with the enactment of the Firearm Owners Protection Act of 1986, Public Law 99-308, 100 Stat. 449 (May 19, 1986). That repeal was based on the realization that regulating ammunition sales was "just a waste of time" and had "**no substantial law enforcement value**."

I respectfully request that you consider the reasoning presented by myself and other concerned citizens and vote in opposition to this bill.

Thank you for your time,
Otto Borden