

February 25, 2021

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

**HOUSE BILL 175  
OPPOSE**

**Re: House Bill 175 - Public Safety – Ammunition – Sales and Transfers**

Dear Chair Clippinger, Vice Chair Atterbeary, and Members of the Judiciary Committee:

On behalf of the National Shooting Sports Foundation, and our industry members located throughout the state of Maryland, I submit these comments in opposition to House Bill 175 (“HB 175”). HB 175 would require a federal firearm licensed dealer or ammunition vendor to conduct a background check at the point of sale on anyone wishing to purchase ammunition, in addition to requiring certain records be maintained and made available to the Secretary of State Police.

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 has a membership of more than 9,000 manufacturers, distributors, retailers, shooting ranges, and outdoor media publishers. Our manufacturer members make the firearms used by law-abiding Maryland sportsmen, the U.S. military and law enforcement agencies throughout Maryland.

**UTILIZING THE FBI’S NICS SYSTEM**

As drafted, HB 175 is unworkable because it would require an “ammunition vendor” or federal firearms licensee (“FFL”) to conduct a background check using the Federal Bureau of Investigation’s (“FBI”) National Instant Criminal Background Check System (NICS). The FBI’s NICS system was created through the Brady Act and requires FFLs to conduct a background check through the NICS system prior to transferring a firearm. However, federal law prohibits FFLs from using NICS for any purpose other than the transfer of a firearm. NICS cannot be used to conduct a background check at the point of sale for ammunition transfers. It is a violation of federal law for NICS to be used to conduct a background check at the point of sale for ammunition transfers. Additionally, non-FFLs, referred to as “ammunition vendors” in HB 175 are not authorized by federal law to contact NICS for background check information.

According to the FBI, there were almost 40 million background checks conducted in 2020, with over 8.4 million of those being first-time gun buyers. Even if it were legally possible to access NICS for ammunition-related background checks, firearm and ammunition demand is currently

at an all-time high. Any mandate for ammunition background checks would overload NICS beyond its capacity to function properly. It would cause significant delays for both firearm and ammunition purchase in a system that is supposed to be “instant.” NICS would not have the resources to investigate in a timely manner delayed firearm transfers, let alone delayed ammunition purchases. This would very likely result in more firearms and ammunition being transferred after three business days, as provided for under federal law.

### **OTHER STATES TRIED – BUT THERE’S CAUSE FOR CONCERN**

The ammunition background check proposal has been tried and proven faulty in California. Voters in the Golden State voted to pass Prop 63 in November of 2016. Beginning July 2019, Prop 63 required persons seeking to purchase or transfer ammunition to undergo an eligibility check, and be approved by the California Department of Justice, prior to the sale or transfer. California uses their own state system to conduct these checks. However, the California ammunition background check requirement was costly, onerous, and the system was riddled with errors, causing otherwise law-abiding citizens to be denied when trying to purchase ammunition. Following the law’s implementation, there was a legal challenge in the form of *Kim Rhode v. Becerra*. United States District Judge Roger T. Benitez granted a motion for preliminary injunction April 23, 2020. In his 120-page order, Judge Benitez detailed several issues with the requirement for ammunition background checks:

*“First, criminals, tyrants, and terrorists don’t do background checks. The background check experiment defies common sense while unduly and severely burdening the Second Amendment rights of every responsible, gun-owning citizen desiring to lawfully buy ammunition. Second, the implementing regulations systematically prohibit or deter an untold number of law-abiding California citizen-residents from undergoing the required background checks. Third, in the seven months since implementation, the standard background check rejected citizen-residents who are not prohibited persons approximately 16.4 % of the time. Fourth, the ammunition anti-importation laws directly violate the federal dormant Commerce Clause.”*

Similarly, New York passed Governor Andrew Cuomo’s Safe Act in 2013, and tucked inside the bill was a requirement to build a database to track ammunition purchases in real time. The database would have been idyllic if the technology existed, but it simply did not, and New York would have had to build it from scratch. In 2015, a memorandum was signed by then-Director of State Operations Jim Malatras and former Senate Republican Leader John Flanagan to stipulate that the database could not be implemented until the database was in fact ready. Furthermore, the memorandum stipulated that no money will be allocated to fund the database, ultimately killing the requirement for background checks for ammunition. In a [press release](#) issued by then-New York state Senator Catharine Young, it was noted that the system would have cost taxpayers upwards of \$100 million.

### **OTHER CONCERNS WITH HB 175**

While NSSF has major concerns with the background check requirements included in HB 175, the bill also creates other issues relating to those acquiring ammunition for lawful purposes. There are times when a single member of a private hunting club will purchase ammunition for its entire membership, and it is unclear whether HB 175 would allow for this common practice to

continue. Additionally, it is unclear whether a Maryland resident would be allowed to purchase ammunition outside of the state.

Laws that require a background check for ammunition purchases are a burden, amount to a taxation on the Second Amendment. Criminals typically acquire their firearm through illegal means, and it is extremely likely that they get their ammunition through the same means. Regulations like the ones set forth in HB 175 create hurdles, unnecessarily tax access to ammunition, and puts undue liability on FFLs for recordkeeping and compliance protocols. HB 175 will have no impact on decreasing criminal activity but will certainly serve as an additional burden on law-abiding gun owners and small businesses.

It is for these reasons the National Shooting Sports Foundation strongly opposes House Bill 175 and we would respectfully request an unfavorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "Trevor W. Santos". The signature is fluid and cursive, with a large initial "T" and "S".

Trevor W. Santos