



March 15, 2022

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 773

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4) all-volunteer, non-partisan, non-profit 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 SB 773.

The Bill:

The bill would create a new Section 5-110.1 in the Public Safety Article of the Maryland Code that would impose new vault storage requirements on all Maryland licensed dealers. Specifically, the bill states:

(A) BEFORE THE SECRETARY ISSUES A DEALER’S LICENSE TO AN APPLICANT, THE APPLICANT SHALL PROVIDE EVIDENCE SATISFACTORY TO THE SECRETARY THAT THE APPLICANT’S PROPOSED PLACE OF BUSINESS HAS A VAULT THAT IS SECURED TO THE FLOOR AND THAT CAN HOLD ALL OF THE REGULATED FIREARMS TO BE OFFERED FOR SALE.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, WHEN A LICENSEE’S PLACE OF BUSINESS IS CLOSED, THE LICENSEE SHALL STORE ALL REGULATED FIREARMS FOR SALE IN A VAULT DESCRIBED IN SUBSECTION (A) OF THIS SECTION.

(2) A PERSON WHO HOLDS A DEALER’S LICENSE ON OR BEFORE OCTOBER 1, 2022, SHALL COMPLY WITH THIS SUBSECTION ON OR BEFORE JULY 1, 2023.

The bill also provides:

THE SECRETARY MAY DENY A DEALER'S LICENSE TO AN APPLICANT OR SUSPEND OR REVOKE A DEALER'S LICENSE IF THE APPLICANT OR LICENSEE FAILS TO COMPLY WITH § 5-110.1 OF THIS SUBTITLE.

The Bill Will Likely Put Many Dealers Out of Business

Firearms dealers are already among the most heavily regulated businesses in the United States. This State imposes very strict regulation of regulated firearms dealers, requiring that these dealers obtain a state-issued firearms license and submit to inspections on a regular basis by the Maryland State Police. See, e.g., MD Code Public Safety §5-110, §5-114, §5-115, §5-145. Additional regulatory burdens on dealers were imposed with the enactment of SB 281, the Firearms Safety Act of 2013, including amending MD Code, Public Safety, § 5-145 to impose additional record keeping requirements. In addition to state regulation, all these dealers are also federal licensees and are thus heavily regulated by the ATF, a component of the U.S. Department of Justice. The ATF likewise imposes substantial requirements concerning business operations of FFLs. See 18 U.S.C. § 923; 27 C.F.R. Part 478.

Dealers who sell firearms at retail or who are gunsmiths are typically Class 01 dealers and the overwhelming majority of these types of dealers are small businessmen and women. These dealers are engaged in the business of “selling, renting or transferring firearms at wholesale or retail, or repairing firearms.” MD Code, Public Safety, 5-101(d) (defining “dealer”). See also MD Code, Public Safety, 5-101(e) (defining “dealer’s license” to mean “a State regulated firearms dealer’s license”). This bill would directly be applicable to all such Class 01 dealers of which there are over 500 in Maryland. But this bill is not limited to Class 01 dealers. It would also apply to **all** dealers who have been issued a Maryland dealer’s license by the Maryland State Police. That coverage could easily include a Class 07 manufacturer as well, as it is common for a manufacturer to be both a Class 01 dealer and a Class 07 manufacturer and thus have Maryland dealer’s license.

This bill would thus impose these costs on the literally thousands of regulated firearms that may be in the manufacturer’s inventory. The costs imposed by these new requirements will be devastating to their businesses. The requirement, imposed by this bill, that the dealer **STORE ALL REGULATED FIREARMS FOR SALE IN A VAULT** outside of business hours is hopelessly expensive. For some dealers with moderately large inventories, it would take multiple man-hours to accomplish such a task every night, even assuming that they had a suitable storage facility. More likely, these dealers would be required to procure a very expensive vault to accomplish such storage. For example, the cost of just **one** relatively low quality safe with a capacity from 42-100 guns is over \$13,200 and it is not even clear that such a safe would be deemed a sufficient “vault” under this bill. See <https://bit.ly/3H8LTRm>. Many dealers,

of course, have inventories of regulated firearms well exceeding 100 guns. The up-front costs of obtaining such storage would be huge for a small business.

For example, one dealer, Engage Armament in Rockville is both a Class 01 dealer and a Class 07 manufacturer, and is a licensed Maryland dealer. Engage has 2,077 firearms on site, including 1,746 regulated firearms. See attached Engage Testimony. Engage estimates that it would have to increase the size of its existing vault (which would cost an estimated \$40,000 to build today) by 4 times to comply with the overnight storage vault requirement. Engage simply cannot fit a vault of that size at its current location and cannot afford the costs that would be necessary to expand and construct such a vault. Bear in mind, that this inventory may easily include unfinished firearms. The mere “frame or receiver” is considered to be a firearm under Maryland law, MD Code, Public Safety, § 5-101(h), and thus those incomplete “firearms” would have to be stored in a vault as well.

For such larger dealers, the burden imposed by the storage requirement should be apparent. One can only imagine the cost of storing every regulated firearms in a vault every night and then the additional cost of retrieving these firearms every morning. One need only visit the large Bass Pro Shops store in Hanover, Maryland, and view the number of regulated firearms on display to grasp the magnitude of these storage requirements. Bass Pro Shops is a big business, but even big businesses have to be competitive and cost-conscious. Bass Pro Shops might well decide to respond to costs that would be inflicted under this bill (if enacted) by moving some of its stores out of Maryland or not expand in the State and build elsewhere. The Bass Pro Shop in Hanover could just move a few miles up Interstate 95 into Pennsylvania and be free of these requirements. A small business is even less able to absorb these costs and thus will likely either move to another state or go out of business entirely.

The higher costs imposed on Maryland dealers will also likely make it difficult for Maryland dealers to compete with out-of-state dealers. It is perfectly legal for law-abiding citizens of Maryland to purchase and take possession of long guns in other states, where dealers are not subjected to these costly requirements. Specifically, ever since 1986, with the enactment of PL 99–308, 100 Stat. 449 (May 19, 1986), residents of one state may purchase long guns in any other state “if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States.” 18 U.S.C. § 922(b)(3). Similarly, MD Code, Public Safety, § 5-204, provides that a resident of Maryland who is eligible to purchase a long gun in Maryland may purchase a long gun in an “adjacent” state, defined to include Delaware, Pennsylvania, Virginia or West Virginia. These states do not lack for dealers near the Maryland line. More than half of all manufactured firearms are long guns. <https://www.statista.com/statistics/215540/number-of-total-firearms-manufactured-in-the-us-by-firearm-category/>.

Marylanders may also purchase regulated firearms (handguns) from out-of-state dealers by having the handgun shipped to a Maryland dealer after purchase. In such cases, the Maryland dealer can and does charge a transfer fee for doing the paperwork, but that fee will not even approach the profit that a dealer may enjoy from making the sale itself. Out-of-state dealers will be able to substantially undercut the prices that Maryland dealers would have to charge in order to pass along the costs imposed by this bill. Market forces alone will ensure that fewer and fewer Maryland dealers will survive over time. That result is so obvious and natural it must be presumed to be intended. See, e.g., *State Farm Fire & Casualty Co. v. Estate of Hehlman*, 589 F.3d 105, 114 (3d Cir. 2009) (“An actor is presumed to intend the natural and expected results of his actions.”). Such presumptions are not uncommon in the law. See MD Code, Public Safety, § 5-142(b) (presuming from the mere fact of possession of a firearm with an obliterated serial number that the defendant obliterated the serial number); MD Code, Criminal Law, § 4-203(a)(2) (establishing “a rebuttable presumption” that a person who wears, carries, or transports a handgun in a vehicle does so “knowingly”).

The Bill Is Vague

The bill is also vague, as it does not define the meaning of A VAULT. This term is susceptible to a multitude of meanings. Again, the attached testimony of Engage Armament is on point. Engage notes that the term “VAULT” is not defined and it is simply impossible to know what sort of construction would be deemed sufficient. As Engage Armament states, “[s]ince no guidance is offered in the law, we have no way to know whether we are in compliance and how such compliance would be interpreted until, of course, our license is taken as per this law.” 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). This bill fails that test. Defining the terms used in a statute, especially one that threatens people’s livelihood, should be the rule. Simple fairness demands nothing less.

The Bill Raises Constitutional Issues Under the Second Amendment

This impact on dealers also has constitutional implications. Law-abiding citizens have a Second Amendment right to acquire or purchase firearms under *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742, 768 (2010). The Second Amendment also confers “ancillary rights necessary to the realization of the core right,” including the ancillary right to sell firearms to law-abiding citizens. *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc). See also *Richmond Newspapers v. Virginia*, 448 U.S. 555, 579–80 (1980) (“[F]undamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined.”). That right to acquire firearms necessarily implies a right to sell firearms because the right to acquire would be meaningless in the absence of sellers. Thus, *Teixeira* and other

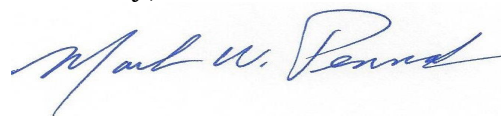
courts have recognized that “[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense.” *Teixeira*, 873 F.3d at 682. See also *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) (“If there were somehow a categorical exception for [commercial] restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*.”).

Plainly, under these principles, the State may not make it illegal for a dealer to sell firearms. Nor may the State accomplish the same result by making it so burdensome to sell firearms that few businesses would engage in such sales. See, e.g., *Fairbank v. United States*, 181 U.S. 283 (1901) (noting “the great principle that what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result.”); *Lebron v. Secretary*, 710 F.3d 1202, 1217 (11th Cir. 2013) (“where an individual’s federal constitutional rights are at stake, the state cannot accomplish indirectly that which it has been constitutionally prohibited from doing directly”).

The risk of that untenable result is quite real. As noted, dealers are limited in the extent to which they are able to pass along to their customers the costs imposed by this bill, as higher prices alone will drive down sales. A simple failure to adequately lock up a single regulated firearm at night could be sufficient to revoke the dealer’s license under this bill and thereby putting him or her out of business. The bill imposes no “knowingly” or intent requirement so the revocation could be imposed regardless of whether it was the result of an oversight or mistake. Many smaller FFLs will cease doing business rather than make the investments required by this bill, only to face later ruin should they make a mistake. The bill’s underlying intent to eliminate dealers is apparent and that intent is constitutionally illegitimate. See, e.g., *Grossbaum v. Indianapolis-Marion Co. Bldg. Authority*, 100 F.3d 1287, 1294 (7th Cir. 1996) (“courts will investigate motive when precedent, text, and prudential considerations suggest it necessary in order to give full effect to the constitutional provision at issue”).

We urge an unfavorable report.

Sincerely,



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



**WRITTEN TESTIMONY OF ANDREW RAYMOND, OWNER OF ENGAGE ARMAMENT LLC, AGAINST
SENATE BILL 773**

10 FEB 2022

To Whom It May Concern,

My name is Andrew Raymond and I am the owner of Engage Armament LLC. We are a type 10 FFL (manufacturer) located in Rockville MD. We have manufacturing both handguns and rifles for almost 12 years now, but we also do custom coatings, engraving, gunsmithing, and retail sales.

The above referenced bill has numerous issues and ambiguities which would negatively affect not just our business but all firearm dealers/manufacturers in the state.

One of the most glaring issues is this section:

(a) (1) The Secretary shall suspend a dealer's license if the licensee:

(vii) has knowingly or willfully manufactured, offered to sell, or sold a handgun not on the handgun roster in violation of § 5-406 of this title; or

As a manufacturer, we make several models and variants, some of which may require approval from the MD handgun roster to be sold in MD. It would appear from the above referenced part of the law, that it would now be prohibited for us to manufacture a new model for submission to the MD handgun roster board. This portion of the law basically says "You need to submit a sample to the MD roster board for MD compliance, however it is illegal for you to actually manufacture the required sample". It would also appear to be illegal to manufacture a not yet approved handgun model that was solely intended for a market outside of Maryland.

Another major issue is going to be the ambiguity of this law and its possible cost. The law does not define a vault. It does not specify materials, burglar/fire resistance. Its only guidance is that is must be bolted to the floor. The committee should consider the following:

-From a technical perspective, are my walls not "bolted" to the floor?

-If I bolt a series of safes into the floors is that considered a vault as per the law?

-Are my armor roll down doors enough?

Engage Armament LLC

701 E. Gude Drive, Suite 101
Rockville, Maryland 20850



301.838.3151
Fax 301.560.8130
www.EngageArmament.com



-Would a simple fence which is bolted to the floor suffice?

-Would a square room constructed entirely of dry wall (but bolted to the floor) suffice? How about sheet metal or wood or newspaper?

-Can it be built on a wood floor which could be easily defeated by coming in from below?

-Is there a required height to the walls? It appears I could just bolt some metal beams to my floor and call it a vault.

As a firearm manufacturer, these regulatory ambiguities where enforcement may be required are dangerous. Since no guidance is offered in the law, we have no way to know whether we are in compliance and how such compliance would be interpreted until, of course, our license is taken as per this law.

From a practical standpoint we have done our best with the money we have to make our actual store a vault. We selected a location where you cannot ram a vehicle through and have reinforced walls and security throughout knowing that we are a target. We do have a "vault" which in 2012 cost us approx \$12,000 to build and only required one reinforced wall and a door. To rebuild that simple vault with ceiling and 4 walls today might cost \$40,000. A quick internet search of vault and bunkers show costs ranging from \$20,000 up to \$60,000 for something reasonable.

As of today, we have 1746 regulated firearms (2077 total) in our inventory. Our current vault measures 8x15ft and stores approx 400 of them. It seems we would need something 4 times that size to follow this law. I don't know how much just the construction of a vault that size would cost, but I do know I cannot afford it. We also simply cannot fit it in our current location, so now we would have to lease an adjoining space or an entirely new location PLUS the "vault" build out. Again, we do not have the money for this.

All of this just puts unreasonable burden on law abiding firearm dealers who are already stretched with regulations. I probably could construct the vault from stacked copies of federal and state firearm regulations.

I would suggest making a theft or burglary of a firearm from an FFL or MD regulated firearms dealer a separate, state level felony with substantial mandatory minimum. Also, the Maryland State Police certainly also has security experts in its ranks, and could use firearm/dealer application fees to finance free security consultations with FFLs to better inform them of their security weaknesses and best security practices.

I urge an unfavorable report.

Engage Armament LLC

701 E. Gude Drive, Suite 101
Rockville, Maryland 20850



301.838.3151
Fax 301.560.8130
www.EngageArmament.com