



March 15, 2022

## WRITTEN TESTIMONY OF MICHAEL BURKE, CPP IN OPPOSITION TO SB 773

I write as a subject matter expert on Physical Security, as recognized by the preeminent Security Industry standards set by ASIS International. The Certified Protection Professional (CPP<sup>®</sup>) is considered the “gold standard” certification for security management professionals and demonstrates my knowledge and competency in seven key domains of security. This credential is globally recognized as the standard of excellence for security management professionals.

My background includes over 30 years of military service with the US Army and Maryland National Guard as a Military Police officer, Drill Instructor, and Counterintelligence Agent; as well as over 20 years as a Criminal Investigator/Special Agent with numerous Federal law enforcement agencies. 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 pistol instructor. I appear today as a voter and member of numerous other 2nd Amendment advocacy organizations 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 is counterintuitive, poorly phrased, and unlikely to obtain the desired goal**

The sponsor appears to believe that a "Vault" is necessary for public safety. It is not. The very best vaults available on the commercial market are only capable of preventing unauthorized access to their contents for a period of 15-20 minutes, at the maximum, against forced entry by mechanical means, or against explosives, or against penetration by locksmiths or persons who may obtain the combination by theft, deception, fraud or coercion.

As a security expert, I ask the Committee and the Senate to take note that police stations across all 23 Counties and Baltimore City do not have "vaults" in the various precinct stations, offices, training facilities – or police officers and Sheriff's Deputies homes. Yet nearly every law enforcement facility, and over 150,000 armed officers, agents, Corrections Officers (to include retirees) store and keep their issued firearms and personal firearms AT HOME across Maryland. The General Assembly does not require law enforcement to install a "Vault" in each precinct, office, vehicle, or residence where firearms are stored.

Even if this bill were passed, it's fairly common knowledge that any vault, safe, or lock-box can be opened by anyone with malicious intent and rather common household tools.

Vaults and safes can be broken into most easily by obtaining the keys or combination from the lawful owner, employees, friends or associates with knowledge of the means of access. More modern vaults and safes utilize electronic locks and switches which can be "hacked" by anyone with time and easily available "hacking" software. Locking mechanisms can be defeated by drilling, grinding, a hammer and chisel, or more powerful industrial tools.

**The Bill Will Likely Put Many Dealers Out of Business**

Imposing this new and superfluous requirement will cost the State money. Lost tax revenue from sales that will be diverted to neighboring states will not be replaced.

Lost income tax from laid-off workers will not be replaced. Lost amusement tax revenues from closed ranges and other facilities will not be replaced.

To repeat points made by **Mark Pennak**, President of MSI, 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 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.

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. Written 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”).

I am a Member of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. My associates and I seek to educate the community, including the Maryland General Assembly, about the right of self-protection, the safe handling of firearms, and the responsibility that goes with possessing and/or carrying a firearm in public.

I urge an unfavorable report on this bill.

Sincerely;

Michael Burke, CPP  
Certified Fire and Explosives Investigator  
Sergeant First Class, US Army (Retired)  
Senior Special Agent (Retired)