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February 7, 2023

TO: The Honorable Will Smith Jr.
Chair, Judicial Proceedings Committee

FROM: Anthony G. Brown
Attorney General

RE: SB 113 – Civil Actions – Public Nuisances – Firearm Industry Members
(Gun Industry Accountability Act of 2023) (**Support**)

I write to express my support for enhanced gun safety and look forward to working with Senator Waldstreicher to that end.

If enacted, Senate Bill 113 would permit the Attorney General to bring a public nuisance action against gun manufacturers, distributors, marketers, and retailers who contribute to dangerous conditions by failing to implement reasonable controls in preventing the sale of firearms to straw purchasers, firearm traffickers, individuals prohibited from possessing firearms, or individuals the firearm industry member has reasonable cause to believe intends to use it for a crime or to cause harm to himself or another. The bill would also permit private citizens to bring suits for injury or loss sustained as a result of a failure to implement those reasonable controls. Put simply, SB113 will allow the Office of the Attorney General to defend against improper practices within the firearms industry that threaten the lives and well-being of Maryland residents.

Maryland has the tenth highest gun homicide and assault rate in the United States.¹ Each year, gun violence in Maryland causes approximately 474 deaths and 551 injuries.² This is far too many. To address this issue, the State must target illegal practices within the gun pipeline. For example, under an analog New York statute, New York City has successfully negotiated

¹ THE JOHNS HOPKINS CENTER FOR GUN VIOLENCE SOLUTIONS, *A Year in Review: 2020 Gun Deaths in the U.S.* (Apr. 28, 2022) (available at <https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf>)

² EVERYTOWN FOR GUN SAFETY, *Gun Violence in Maryland* (July 2022) (available at <https://everystat.org/wpcontent/uploads/2019/10/Gun-Violence-in-Maryland-1.pdf>)

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

agreements with four firearm companies, and obtained a preliminary injunction against a fifth, to stop the illegal sale of ghost guns within the city.³

A federal district court recently upheld this New York statute under an exception within the Protection or Lawful Commerce in Arms Act,⁴ which permits “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought[.]”⁵ The federal district court found that federal law does not preclude the application of state statutes specific to the gun industry.⁶ Similarly, SB113 does not interfere with the keeping and bearing of arms by individuals;⁷ instead, it follows the historical tradition of allowing civil actions against those who create a public nuisance through the general conduct of their businesses.⁸

In taking office as the Attorney General, I announced public safety as one of my top priorities. Maryland residents deserve to feel safe in their homes, in their places of worship and work, and in their communities. I look forward to working with Senator Waldstreicher and the General Assembly on legislation that furthers this goal.

³ CITY OF NEW YORK OFFICE OF THE MAYOR, *New York City Supports New York State in Fight Against Gun Violence* (Jan. 18, 2023), <https://www.nyc.gov/office-of-the-mayor/news/039-23/new-york-city-supports-new-york-state-fight-against-gun-violence>.

⁴ 15 U.S.C. §§ 7901-7903

⁵ *Id.* § 7903(5)(A)(iii).

⁶ *See* National Shooting Sports Found. v. James, 2022 WL 1659192, *2-5 (N.D.N.Y. May 25, 2022).

⁷ *See* District of Columbia v. Heller, 554 U.S. 570, 626-27 (2008) (preserving “laws imposing conditions and qualifications on the commercial sale of arms”)

⁸ *See* United States v. Tilotta, 2022 WL 3924282, at *5–6 (S.D. Cal. Aug. 30, 2022) (holding that Second Amendment’s plain text does not protect “commercial sale and transfer of firearms”).