



**2A Maryland**

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## **Senate Bill 0113**

### **Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2023)**

#### **UNFAVORABLE**

This Bill has nothing to do with public safety or crime prevention, or a reduction in the illegal possession and use of firearms in criminal activity. It is an unjustified and blatant economic attack on the legal firearms industry as a whole and by extension those law-abiding citizens who enjoy the legitimate use of firearms.

Violence is behavior, not technology. It is a deep-rooted social problem for which there is no technological solution. Destroying the firearms industry through a barrage of groundless civil actions will not enhance public safety. However, it would spawn a black market manufacturing and distribution industry similar to bootleg alcohol as happened during Prohibition a century ago.

**"For every complex problem there is an answer that is clear, simple, and wrong."**

– H. L. Mencken

**"Those who cannot remember the past are condemned to repeat it."**

– George Santayana, *The Life of Reason*, 1905.

The firearms industry is one of the most heavily regulated industries in the nation. These regulations extend from the manufacturer through the distribution to the licensed dealers and ultimately to the consumers.

To understand the full extent and breadth of this Bill it is necessary to understand how many and varied items are included under the definitions. On page 2, §3-2301 (A) thru (E) define the persons, entities and items which fall within the scope of this Bill. Firearms top the list followed by "firearm accessories" which are broadly defined:

**3–2301 (2) "FIREARM" INCLUDES AN ANTIQUE FIREARM AS DEFINED IN §4–201 OF THE CRIMINAL LAW ARTICLE.**

Antique firearms are not classified as firearms under Federal law and are thus not eligible for background checks via the Federal NICS system and its use is limited to firearms background checks only. To use NICS for a background check on an antique firearm is a Federal crime.

**§3-2301 (C) "FIREARM ACCESSORY" MEANS AN ITEM THAT IS SOLD, MANUFACTURED, DISTRIBUTED, IMPORTED, OR MARKETED TO BE ATTACHED TO A FIREARM.**

"Firearm Accessories" as defined under §3-2301 (C) are then included under the definitions of "Firearm Related Product:"

**§3-2301 (E) "FIREARM-RELATED PRODUCT" MEANS A FIREARM, AMMUNITION, A COMPONENT OR PART OF A FIREARM, OR A FIREARM ACCESSORY THAT IS:**

- (1) SOLD, MANUFACTURED, DISTRIBUTED, OR MARKETED IN THE STATE; OR**
- (2) INTENDED TO BE SOLD, MANUFACTURED, DISTRIBUTED, OR MARKETED IN THE STATE; OR**
- (3) POSSESSED IN THE STATE, IF IT WAS REASONABLY FORESEEABLE THAT POSSESSION WOULD OCCUR IN THE STATE.**

An ever broader net is cast under the definition of "Firearm Industry Member:"

**§3-2301 (D) "FIREARM INDUSTRY MEMBER" MEANS A PERSON ENGAGED IN THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A FIREARM-RELATED PRODUCT.**

Pictured below is a cable safety lock of the type supplied free of charge by the National Shooting Sports Foundation (NSSF) and available to the public at thousands of police stations across the Nation. The lock depicted was obtained from the Parkville Precinct of the Baltimore County Police Department. Under the provision of SB 113, the following apply to this safety device:



- It is a "Firearm Accessory" because it was designed for use on a firearm or attached to a firearm. **§3-2301 (C)**
- It is a "Firearm-Related Product" under the definitions in **§3-2301 (E)** because it is a "Firearm Accessory" as defined by **§3-2301 (C)**
- Because it is a "Firearm-Related Product" as defined by **§3-2301 (E)**, the following organizations and persons are "Firearm Industry Members" per **§3-2301 (D)**:
  - Leapers , Inc. who manufactured the safety lock.
  - The distributor who shipped the safety lock
  - The common carrier who delivered the safety lock, e.g. FedEx, United Parcel Service, United States Postal Service, Amazon, or similar entity
  - The police officer who gave the safety lock to the citizen
  - The Baltimore County Police Department who employed the officer
  - Any citizen who in turn transfers the safety lock to a another person.

The manufacture, distribution, market or sale of the following and similar non-regulated parts defines a person as a **“Firearm Industry Member”** and a potential target for nuisance lawsuits.



**Front Sight**



**Rubber Muzzle Caps**



**Web Sling for Rifle**



**Sling Mounting Bracket & Sling Loop**



**Rubber Lens Covers for Optical Sight**



**Trigger Guard for Rifle**



**Sight Mounting Bracket**



**Rifle Butt Plate – including Screws**

Despite all the existing state and federal regulations, SB 0113 creates an array of parallel regulations that must be followed creating a scenario primed for abuse. Anyone who decides that in their personal opinion, some member of the industry failed to be clairvoyant and foresee some possible outcome that person is then empowered to file a lawsuit against the “Firearm Industry Member or Members.” Not only empowered but legally required and presumably entitled to assistance from the Attorney General.

**§3-2303 (B)(3)(I) PERSON WHO BRINGS AN ACTION UNDER THIS SUBSECTION SHALL NOTIFY THE ATTORNEY GENERAL THAT THE PERSON HAS BROUGHT THE ACTION WITHIN 5 DAYS AFTER FILING THE COMPLAINT.**

**(II) THE PERSON SHALL PROVIDE THE ATTORNEY GENERAL WITH A COPY OF THE COMPLAINT AND ANY OTHER DOCUMENTS OR PLEADINGS FILED WITH THE COMPLAINT.**

The Fiscal and Policy Note confirms the intent of the bill is to include the Attorney General of Maryland in any lawsuit brought, no matter how frivolous. Additionally, the Attorney General becomes a for profit entity in the same manner as thousands of other lawyers seeking to profit from the awards in so-called product liability and negligence lawsuit industry.

***State/Local Fiscal Effect:** OAG advises the need for two assistant Attorney Generals and one part-time support staff to file civil actions as contemplated under the bill, with estimated general fund expenditures of \$352,788 in fiscal 2024 (which assumes a hiring date of October 1, 2023), and at least \$423,000 annually thereafter. However, OAG did not provide details regarding how it derived its estimate and, without experience under the bill, the Department of Legislative Services (DLS) advises it is unable to reliably predict the extent to which civil actions may be filed (and the corresponding need for any additional staff). It is likely that a small number of additional actions can be accommodated without hiring new staff; however, to the extent that OAG uses its authority under the bill to pursue more robust enforcement of violations, general fund expenditures increase. For illustrative purposes only, general fund expenditures associated with the hiring of one assistant Attorney General are a minimum of \$120,000 annually. Although the bill takes effect June 1, 2023, it is assumed that any potential expenditures are not incurred until fiscal 2024.*

*Although the bill may result in additional civil actions filed, the bill is not anticipated to materially impact the workloads of the circuit courts and the District Court.*

*Because OAG may seek specified relief under the bill, including compensatory and punitive damages and reasonable attorney’s fees and costs, general fund revenues may increase to the extent that such relief is awarded by the courts and allocated to the State. However, DLS is unable*

*to reliably estimate the magnitude of any potential revenues in advance. This analysis does not account for how (or if) any such awards received by the State may be further directed to other entities.*

The Fiscal and Policy Note further confirms the intent of the bill is to produce a chilling economic effect on any businesses involved in the lawful commerce of legal and in some instances, highly regulated products.

***Small Business Effect:*** *The bill has a potential meaningful effect on small businesses that encounter additional litigation, liability, and potential increased costs for insurance coverage as a result of the bill's provisions.*

Unlike existing statutes which contain a “mens rea” provision, this Bill permits anyone to bring a lawsuit even when the industry member acted in good faith and compliance with the current statutes. In essence, the legal action is borne of “you are guilty and liable because I say you are guilty.” In keeping with the punitive nature of this Bill, there is no provision protecting the firearms industry by holding the plaintiff liable for damages for frivolous legal actions.

Sections §3-2302 (A) and §3-2303 (C) contain conflicting language. While §3-2302 (A) reflects existing statutes, §3-2302 (A) negates the “mens rea” provisions.

**§3-2302 (A) A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY (emphasis added) OR RECKLESSLY CREATE, MAINTAIN, OR CONTRIBUTE TO HARM TO THE PUBLIC THROUGH THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A FIREARM-RELATED PRODUCT BY ENGAGING IN CONDUCT THAT IS:**

**§3-2303 (C) A PARTY SEEKING RELIEF UNDER THIS SECTION IS NOT REQUIRED TO PROVE THAT A FIREARM INDUSTRY MEMBER ACTED WITH THE INTENT TO VIOLATE THIS SUBTITLE (emphasis added).**

SB 113 is a vindictive Bill directed at everything and everyone except the criminals.

We strongly urge an unfavorable report.

John H. Josselyn, Director  
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