

INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030



NRA

February 7, 2023

Chairman William C. Smith Jr.

90 State Circle

Annapolis, Maryland, 21401

Dear Chairman Smith:

On behalf of our members in Maryland, I would like to communicate our strong opposition to Senate Bill SB113.

SB 113 provides,

(A) A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY 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:

- (1) UNLAWFUL; OR
- (2) **UNREASONABLE** UNDER THE TOTALITY OF THE CIRCUMSTANCES

(B) A FIREARM INDUSTRY MEMBER SHALL ESTABLISH AND IMPLEMENT **REASONABLE CONTROLS** REGARDING THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, MARKETING, POSSESSION, AND USE OF THE FIREARM INDUSTRY MEMBER'S FIREARM-RELATED PRODUCTS.

Under this bill members of the firearm industry would be required to implement "reasonable controls" and not act in an "unreasonable" manner or face a civil liability.

Neither of these terms is adequately defined as to allow for firearm industry members to understand what is expected of them. Only "reasonable controls" is defined at all, and the legislation provides no guidance.

(G) "REASONABLE CONTROLS" MEANS POLICIES THAT ARE DESIGNED:

(1) TO PREVENT THE SALE OR DISTRIBUTION OF A FIREARM-RELATED PRODUCT
TO:

- (I) A STRAW PURCHASER
- (II) A FIREARM TRAFFICKER;
- (III) A PERSON PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW; AND
- (IV) A PERSON WHO THE FIREARM INDUSTRY MEMBER HAS REASONABLE CAUSE TO BELIEVE INTENDS TO USE THE FIREARM-RELATED PRODUCT:
 1. TO COMMIT A CRIME; OR
 2. TO CAUSE HARM TO THE PERSON OR ANOTHER PERSON;

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(2) TO PREVENT THE LOSS OR THEFT OF A FIREARM-RELATED PRODUCT FROM A FIREARM INDUSTRY MEMBER; AND

(3) TO ENSURE THAT THE FIREARM INDUSTRY MEMBER COMPLIES WITH ALL PROVISIONS OF STATE AND FEDERAL LAW AND DOES NOT OTHERWISE PROMOTE THE UNLAWFUL SALE, MANUFACTURE, IMPORTATION, MARKETING, POSSESSION, OR USE OF A FIREARM-RELATED PRODUCT.

Note the highlighted language. Whatever these “reasonable controls” are, they are in addition to the immense regulatory compliance that state and federal law already require.

Of course, Maryland could try to enact further policies regulating how gun dealers operate. But trying to get firearm industry members to implement whatever “reasonable controls” means is not the point of this legislation.

The point of this legislation is to create an impossibly vague standard for firearm industry member conduct. Then, plaintiffs can drag the firearm industry member into court through the PLCAA exception by claiming the industry member did not comply with the unknowable “reasonable controls” requirement. At minimum the industry member will be harmed by the legal fees until the situation is resolved and at worst they’ll be bankrupted by bogus damages.

In a complete perversion of tort law, SB 113 even makes clear the following:

(D) NOTWITHSTANDING ANY INTERVENING ACTIONS, INCLUDING A CRIMINAL ACTION BY A THIRD PARTY, THE CONDUCT OF A FIREARM INDUSTRY MEMBER IS A PROXIMATE CAUSE OF HARM TO THE PUBLIC IF THE HARM IS A REASONABLY FORESEEABLE EFFECT OF THE CONDUCT

For the foregoing reasons NRA opposes Senate Bill 86.

Sincerely,

D.J. Spiker
Maryland State Director
NRA-ILA

CC: Senator Jeff Waldstreicher
Senator Jill P. Carter
Senator William G. Folden
Senator Mary-Dulany James

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Senator Mike McKay
Senator C. Anthony Muse
Senator Charles E. Sydnor III
Senator Chris West