

2024-02-16 SB 488 (Support).pdf

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Position: FAV

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

February 13, 2024

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401

Re: SB 488—Gun Industry Accountability Act of 2024

Dear Chair Smith:

The Office of the Attorney General supports Senate Bill 488, the Gun Industry Accountability Act of 2024 (“SB 488”).

SB 488 would provide citizens, as well as this Office, with an important tool for holding the gun industry accountable for its contributions to the crisis of gun violence in our communities. A federal statute—enacted to protect the gun industry—generally bars suits against industry members arising from the unlawful misuse of a firearm. But the statute contains an exception for suits arising out of the violation of a state or federal statute applicable to the sale or marketing of firearms and ammunition. SB 488 would enable use of that exception by (1) requiring firearms industry members to implement reasonable controls to prevent guns and ammunition from falling into the wrong hands; (2) requiring firearms industry members to refrain from knowingly contributing to public harm through unreasonable or unlawful conduct; and (3) allowing both the public and the Attorney General to enforce the statute against violators. I urge the Committee to favorably report SB 488 so that the firearms industry can be held accountable for its conduct, and so that it can be incentivized to prevent the deadly misuse of its products.

All of us are familiar with the tragic costs of Maryland’s epidemic of gun violence. On average, guns kill nearly 800 people each year in our state, with Baltimore City particularly hard-

hit.¹ Much of the blame lies with the gun industry, which has done far too little to keep guns and ammunition out of the hands of those who are not allowed to have them or who would use them to do harm. According to Brady: United Against Gun Violence, “only 5% of gun dealers are responsible for 90% of recovered crime guns.”² In 2022 alone, federal firearms licensees reported the loss or theft of some 17,000 firearms.³ And the gun industry has a history of marketing its products to young people and those most prone to commit acts of violence.⁴

Federal law, however, creates impediments to holding the firearms industry accountable. The Protection of Lawful Commerce in Arms Act (“PLCAA”), enacted in 2005, prohibits any “qualified civil liability action” from being brought in federal or state court.⁵ The term “qualified civil liability action” is defined to mean “a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association . . . resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.”⁶ And “qualified product” includes firearms, ammunition, and component parts thereof.⁷ Thus, as a general matter, when guns and ammunition are used to commit acts of violence, their manufacturers and sellers are immune from suit, regardless of how blameworthy their conduct may have been.

PLCAA’s definition of “qualified civil liability action” contains exceptions, though. For instance, “an action for breach of contract or warranty in connection with the purchase of the product” is not included.⁸ Nor is “an action brought against a seller for negligent entrustment or negligence per se.”⁹ And, most important for present purposes, the definition of “qualified civil liability action” excepts “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.”¹⁰

¹ Everytown for Gun Safety, *At a Glance—Maryland*, <https://www.everytown.org/state/maryland/>.

² Brady: United Against Gun Violence, *Combating Crime Guns Initiative*, <https://brady-static.s3.amazonaws.com/crimegunsinitiative.pdf>. A “crime gun” is defined as “a gun that has been recovered by law enforcement after being used in a crime, suspected of being used in a crime, or the possession of the gun itself may have been a crime.” *Id.*

³ Bureau of Alcohol, Tobacco, Firearms and Explosives, *Federal Firearms Licensee Theft/Loss Report—2022*, <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2022>.

⁴ See, e.g., Rick Rojas et al., *Sandy Hook Families Settle with Gunmaker for \$73 Million over Massacre*, N.Y. Times, Feb. 15, 2022, <https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html>.

⁵ 15 U.S.C. § 7902(a).

⁶ *Id.* § 7903(5)(A).

⁷ *Id.* § 7903(4).

⁸ *Id.* § 7903(5)(A)(iv).

⁹ *Id.* § 7903(5)(A)(ii).

This exception has come to known as the “predicate exception,” and it holds great promise for holding the gun industry accountable. Under the predicate exception, if a gun manufacturer or seller violates a state or federal statute governing the sale or marketing of guns and ammunition—a “predicate statute”—a suit to redress the resulting harm is not barred by PLCAA. PLCAA itself provides examples of suits that would fall within the predicate exception: suits arising out of a defendant’s noncompliance with federal or state recordkeeping requirements, suits arising out of certain false statements of fact material to the legality of firearms and ammunition transactions, and suits arising out of certain efforts to provide firearms or ammunition to people statutorily prohibited from possessing them.¹¹

SB 488 would add a predicate statute to Maryland law, enabling firearm manufacturers, sellers, and marketers to be sued for their irresponsible conduct without running afoul of PLCAA. The bill would create two obligations for firearms industry members (defined to include manufacturers and sellers, as well as others involved in the firearms trade). First, it would prohibit them from knowingly creating, maintaining, or contributing to public harm by engaging in conduct that is unlawful or unreasonable. Second, it would require them to establish and implement reasonable controls regarding the sale, manufacture, distribution, importation, marketing, possession, and use of firearm-related products. And the bill would enable citizens to enforce these obligations, by suing for injury or loss resulting from their violation.

The bill would allow for wider-scale enforcement, too: It would define violations as a public nuisance, and it would authorize the Attorney General to sue firearms industry members for their creation of that public nuisance. Should SB 488 become law, I intend to make full use of this authority to hold the firearms industry to account for its behavior.

Enacting SB 488 would place Maryland alongside other states that have put in place predicate legislation to hold the firearms industry accountable: In the last two years, California,¹² Colorado,¹³ Delaware,¹⁴ Hawaii,¹⁵ Illinois,¹⁶ New Jersey,¹⁷ New York,¹⁸ and Washington¹⁹ have all enacted legislation meant to enable citizens or Attorneys General to sue bad actors in the firearm industry in a manner consistent with PLCAA. Although the details vary, these states generally require, at a minimum, that firearms industry members implement reasonable controls in marketing, selling, and distributing firearms. Some states impose additional or more specific obligations as well. All of these states allow their Attorneys General to enforce the law by suing

¹⁰ *Id.* § 7903(5)(A)(iii).

¹¹ *Id.* § 7903(5)(A)(iii)(I), (II).

¹² Cal. Civ. Code §§ 3273.50 to .55.

¹³ Colo. Rev. Stat. § 6-27-101 to -106.

¹⁴ Del. Code tit. 10, § 3930.

¹⁵ Hawaii Rev. Stat. § 134-A to -D.

¹⁶ 815 Ill. Comp. Stat. 505/2BBBB.

¹⁷ N.J. Stat. Ann. §§ 2C:58-34 to -36.

¹⁸ N.Y. Gen. Bus. Law § 898-A to -E.

¹⁹ Wash. Rev. Code Ann. 7.48.330.

violators. To date, none of these states' statutes has been successfully challenged in court, and at least one has been expressly upheld.²⁰

SB 488 would provide Marylanders harmed by gun violence with a way to recover for their injuries or for family members' loss of life, when those harms flow from a manufacturer or seller's failure to do what the statute requires. For instance, if a seller fails to secure a firearm against theft, and it is subsequently stolen and used to kill, the seller may be liable. Similarly, if a seller fails to take reasonable precautions against firearm sales to convicted felons, and a convicted felon purchases a firearm and uses it to kill, the seller may be liable.

At the same time, SB 488 also would provide firearms industry members with important incentives to act responsibly. The prospect of civil liability will give gun manufacturers and sellers ample reason to establish and implement controls designed to keep firearms out of the wrong hands. On that score, the statute provides industry members with guidance: It defines "reasonable controls" as policies designed to (1) prevent the sale or distribution of firearm-related products to straw purchasers, traffickers, people prohibited from possessing firearms, and certain people apt to use firearms to cause harm or commit crimes; (2) prevent loss or theft of firearm-related products; and (3) ensure that members comply with state and federal law and do not otherwise promote certain unlawful firearm-related conduct. I expect that, guided by that framework, firearms industry members will be able to devise and implement reasonable controls that comply with the statute. And if they do not, I will use the statute's enforcement mechanisms to compel them to change their behavior.

Once again, I support passage of this important legislation, and I look forward to the Committee's questions.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown".

Anthony G. Brown

²⁰ See *National Shooting Sports Found., Inc. v. James*, 604 F. Supp. 3d 48 (N.D.N.Y. 2022), appeal pending, No. 22-1374 (2d Cir.).

SB0488_Gun_Industry_Accountability_Act_2024_MLC_FA

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0488
Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

Bill Sponsors: Senator Waldstreicher and Lee

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Aileen Alex, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0488 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

Our members believe firmly in common sense gun legislation, as do most gun owners and the majority of residents in Maryland. We have a lot of solid, common-sense laws on the books, but like many states, continue to see deaths from random shootings by people who should never, ever have been able to purchase a gun.

This legislation should be re-named to the "About Time Gun Owners Were Required to Act Responsibly Act of 2024". This legislation does not make the job of gun owners more difficult. It instead makes them act responsibly, by not putting profits over lives. It allows the Attorney General, or an individual, to sue them for negligence under the public nuisance statute.

Our members think this legislation is long overdue and should be passed as quickly as possible. We support this bill and recommend a **FAVORABLE** report in committee.

Webster Testimony MD gun dealer accountability 2-1

Uploaded by: Daniel Webster

Position: FAV

Testimony in Support of SB 0488
Maryland Senate – Judicial Proceedings Committee
February 16, 2024

Daniel W. Webster, Sc.D., M.P.H.

Thank you for the opportunity to testify in support of SB 0488. I am a professor at Johns Hopkins University's Bloomberg School of Public Health and Distinguished Scholar for the Johns Hopkins Center for Gun Violence Solutions. My testimony is offered by me individually, and it does not represent the official position of Johns Hopkins University. I have conducted research on state gun laws for over 30 years and communicated with many law enforcement officials charged with keeping the public safe from gun violence.

A study of ATF gun trafficking investigations found that **illegal or grossly negligent practices by retail firearm dealers accounted for more guns diverted into the illegal market than any other single trafficking channel.**¹ A very small percentage of firearm retailers sell the majority guns recovered from criminals.² Research shows that the disproportionate share of guns diverted for criminal use by this small fraction of gun dealers **cannot be explained solely by differences in sales volume, customer demographics, or local crime rates.**³ My colleagues and I conducted an anonymous survey of individuals on parole or probation in Baltimore and found that 24% of those who had experience in the underground gun market indicated that they knew of gun shops in Maryland where it was easy to get a gun without a background check or record keeping.⁴

In 2021, more than 10,000 firearms were reported as stolen or lost from federally licensed firearms dealers. 33 Maryland dealers accounted for 153 of these lost or stolen firearms.⁵ **These numbers may be a gross undercount of the number of firearms that employees or the dealers themselves take from inventories and sell off the books to traffickers and criminals. ATF compliance inspections commonly reveal many firearms for which dealers cannot account.**

Weak federal laws and resource constraints hamper the ATF's ability to ensure gun dealers comply with gun laws.^{6,7} There are egregious examples of scofflaw gun dealers whose guns were commonly linked to violent crime for many years before federal action was taken.^{8,9} **Maryland's laws governing firearm dealers are stronger than those in many state; but SB 0488 will, in my opinion, enhance the state's ability to prevent guns from being diverted for use in crime.** My research has shown that **states with strong regulation and oversight of firearms dealers with have lower rates of firearms being diverted for criminal use than other states.**¹⁰

I have led two studies showing that lawsuits against retail gun dealers led to significant reductions guns diverted for criminal use in three major cities.¹¹ One examined the effects of firearms dealers being sued by New York City for practices that contributed to firearm trafficking. **Twenty-four dealers settled their lawsuit by agreeing to adopt a series of policies to prevent illegal sales and theft including measures included in SB 0488 such as requiring security cameras and strong inventory control measures. We found an 82% decrease in the probability that guns sold by these gun dealers were subsequently recovered by NYPD after the dealers implemented these new measures.**¹²

¹ Braga AA, Wintemute GJ, Pierce GL, Cook PJ, Ridgeway G. Interpreting the empirical evidence on illegal gun market dynamics. *Journal of Urban Health* 2012; DOI 10.1007/s11524-012-9681-y.

² Bureau of Alcohol, Tobacco and Firearms (ATF). *Crime Gun Trace Reports (2000): The Youth Gun Interdiction Initiative*. Washington, DC: U.S. Department of the Treasury, 2002.

³ Wintemute GJ, Cook PJ, Wright MA. Risk factors among handgun retailers for frequent and disproportionate sales of guns used in violent and firearm related crimes. *Injury Prevention* 2005; 11:357-363.

⁴ Crifasi CK, Buggs SAL, Booty MD, Webster DW, Sherman SG. Baltimore's Underground Gun Market: availability of and access to guns. *Violence and Gender* 2020. <https://doi.org/10.1089/vio.2019.0054>

⁵ Bureau of Alcohol, Tobacco, Firearms and Explosives. *Federal Firearms Licensee Theft/Loss Report – 2021*. <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>

⁶ Inspector General of the United States Department of Justice. *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*. Report I-2004-2005. Washington, DC, July 2004.

⁷ Braga AA, Gagliardi PL. "Enforcing Federal Laws Against Firearms Traffickers: Raising Operational Effectiveness by Lowering Enforcement Obstacles," pages 143-156 in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, Daniel W. Webster and Jon S. Vernick, Eds. Baltimore: Johns Hopkins University Press, 2013.

⁸ Brady Center to Prevent Gun Violence. *Death Valley: Profile of a Rouge Gun Dealer: Valley Gun Baltimore, Maryland*. Washington, DC, June 2006.

⁹ *The Washington Post*. "The Dance of Revocation." December 14, 2010.

¹⁰ Webster DW, Vernick JS, Bulzacchelli MT. Effects of state-level firearm seller accountability policies on firearms trafficking. *Journal of Urban Health* 2009; 86:525-537.

¹¹ Webster DW, Vernick JS, Bulzacchelli MT. Effects of a gun dealer's change in sales practices on the supply of guns to criminals. *Journal of Urban Health* 2006; 83:778-787.

¹² Webster DW, Vernick JS. "Spurring Responsible Firearms Sales Practices through Litigation: The Impact of New York City's Lawsuits Against Gun Dealers on Interstate Gun Trafficking," p. 123-32. Webster DW, Vernick JS, Eds. *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*. Baltimore, MD: Johns Hopkins University Press, 2013.

Denise Reid SB488 Testimony.pdf

Uploaded by: Denise Reid

Position: FAV

Chairman Smith, Vice Chair Waldstreicher and members of this esteemed committee.

My name is Chaplain Denise Reid. I reside in beautiful Baltimore City, Maryland. Senator Antonio Hayes is my State Senator in District 40.

I'm honored to be a volunteer since 2016 and Survivor Membership Co-Lead since 2018 with the Maryland Chapter of Moms Demand Action.

Truly, I'm a resilient and courageous survivor of heinous gun atrocities.

Today, I implore passionately and resolutely for a favorable report for Senate Bill 488.

I and my family have felt firsthand, the results of the gun industry's deadly and irresponsible practices. The gun industry has the information and tools to innovate and take action to prevent gun trafficking, but PLCAA has eliminated legal incentives for that industry to make firearms safer or to engage in responsible sales practices.

With tears in my eyes, my beloved family has been traumatized by senseless gun violence for well over 50 years.

Over six (6) loved ones were killed, including my uncle Jerome before I was born in 1964.

In the early to mid 1980's gun violence struck and severed our family chain. My 16 year old cousin, my 23 year old uncle and my 2 little cousins' mothers were all shot in the head.

On October 18, 2006 my heart was shattered. I received a heart wrenching call that my only and precious son Tavon was shot. That dreaded bullet pierced his spine, my baby was paralyzed from the neck down. After fighting 2 1/2 years just to breathe, God called Tavon to heaven, April 1, 2009.

October 2020 my phone rang. My brother David was on the line. He said, frantically, that his oldest son, my nephew David, was killed. My heart dropped. Two days later my heart was ripped in pain. Someone killed the girlfriend of David's youngest son. She was ambushed

By God's grace, undoubtedly He has sustained me. From the early 1990's to 2019... My mother, nephew, sister and numerous cousins were shot and survived horrific shootings. Like so much of the everyday gun violence in Baltimore City, some of these shootings were committed with illegal guns--guns sold by traffickers and obtained by people who shouldn't have had them

Currently, PLCAA blocks legal claims that could compel gunmakers to take action to keep their guns out of the hands of traffickers and people who shouldn't have them, including by refusing to sell to retailers who they know are fueling the criminal market, having poor safety practices or training, or are turning a blind eye to straw purchasers.

The Declaration of Independence clearly expressed 250 years ago that everybody has the right to Life, Liberty and the pursuit of happiness. This also means the right to life and to pursue your dreams.

These are our basic fundamental human rights, and a person shall not be deprived of their life. Anyone who's illegal and dangerous conduct deprives someone of their life should face accountability for their misconduct. The people they hurt and their families deserve access to justice. PLCAA denies them that. Passing SB 488 would help set that right.

My precious daughter & grandson were devastated on April 1, 2009 when their (brother & father) respectively died. My daughter Jaazaniah said Mommy, I don't remember my big brother Tavon. She was 3 years old when he died.

Thank you for your invaluable time.

Yacovissi Testimony_SB 488 Industry Accountability

Uploaded by: Jennifer Yacovissi

Position: FAV

Testimony:

Good morning. Chairman Smith, Vice-Chair Waldstreicher and members of the committee, my name is Jennifer Bort Yacovissi.

I live in Crownsville in District 33, Senator Gile's District. I am a volunteer with the Anne Arundel Local Group of the Maryland Chapter of Moms Demand Action.

I am here in support of SB 488 and I ask for a favorable report.

I'm also a gun violence survivor.

Everyone here in Annapolis knows of the Capitol Gazette massacre in June 2018. Well, I grew up with John McNamara; I have no memory of a time when I didn't know him. We spent every day of every summer of our childhood together. I went to his wedding; he went to mine. I last saw John five days before he and four of his coworkers were murdered by an angry man with a vendetta and easy access to guns.

The gun manufacturers want it that way. Their objective is to sell as many guns as possible, and, because of the Protection of Lawful Commerce in Arms Act, they do so with impunity, without needing to concern themselves with whose hands the guns go into. And we know the result: gun violence gets worse, gun companies get richer, and the rest of us are left to pick up the pieces.

Since PLCAA passed in 2005, not a single gun manufacturer accused of negligence has gone to trial. The gun industry's broad immunity from legal accountability must be repealed. Some members of this general assembly have told the media that attempting to hold gun manufacturers to account is ridiculous. It's not ridiculous; no other industry in the US enjoys this level of immunity.

Remember that we were never able to hold the tobacco industry accountable, until we were. We were never able to hold the opioid manufacturers accountable, until we were. It is long past the time for us to hold the gun industry accountable too.

Thank you for your time.

Final CIF testimony SB 488 2-12-24.pdf

Uploaded by: Jim Lieberman

Position: FAV



**TESTIMONY OF THE CRITICAL ISSUES FORUM: ADVOCACY
FOR SOCIAL JUSTICE OF MONTGOMERY COUNTY, MARYLAND
ON FEBRUARY 16, 2024
BEFORE THE SENATE JUDICIAL PROCEDURES COMMITTEE
IN SUPPORT OF SB 488 (The Gun Industry Accountability Act of 2024)**

Honorable Chair William C. Smith, Vice-Chair Jeff Waldstreicher, and
Members of the Senate Judicial Proceedings Committee:

The Critical Issues Forum: Advocacy for Social Justice (CIF), provides this testimony in support of SB 488, the Gun Industry Accountability Act of 2024. SB 488 is designed to deter gun industry members operating in Maryland from engaging in irresponsible practices that actively contribute to the epidemic of gun violence and hold those who engage in such practices accountable for their actions.

CIF is a coalition of three synagogues, Temple Beth Ami, Kol Shalom, and Adat Shalom that include over 1,750 households and three denominations of Judaism: Reform, Conservative, and Reconstructionist. CIF serves as a vehicle for our congregations to speak out on policy issues, such as gun violence prevention, that relate to our shared values, including the Jewish traditions that emphasizes the sanctity and primary value of human life.

In 2005, President Bush signed into law the Protection of Lawful Commerce in Arms Act (PLCAA),¹ which provides immunity for firearm industry members from civil actions seeking damages or other relief “resulting from the criminal or unlawful misuse” of their products by a

¹ Pub.L. No. 109- 92, 119 Stat. 2095 (codified at 15 U.S.C. §§ 7901- 03).

plaintiff or a third party.² Congress enacted PLCAA to “protect . . . firearm companies that operate *lawfully* . . . under the numerous federal and state laws regulating their operations.”³

Consistent with that purpose, PLCAA exempts from the prohibition state laws authorizing “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.”⁴ This exemption insures PLCAA “does not insulate firearm companies from their unlawful behavior.”⁵ In short, PLCAA allows States to enact laws designed to deter gun industry members from engaging in irresponsible practices that actively contribute to the increasing gun violence facing individual States and, where necessary, to hold those who engage in such practices accountable for their actions.

SB 488 is such a law. It is a narrowly tailored bill, which creates a right to file a civil action by the Attorney General or a member of the public⁶ against a firearm industry member that “knowingly” caused “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.”⁷

The “[u]nreasonable under the totality of the circumstances” language is consistent with both the “knowingly” requirement of SB 488 and PLCAA. Specifically, an example in the “knowingly violated” section of PLCAA authorizes state laws where the person acted “*having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm*”⁸ Thus, the authorization in SB 488 of a civil action based on conduct that is “[u]nreasonable under the totality of the circumstances” clearly falls within PLCCA’s exemption.

² 15 U.S.C. §§7902(a), 7903(5)(A).

³ *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, No. 22-1823, slip op. at 26 (1st Cir. 2024).

⁴ 15 U.S.C. § 7903(5)(A)(iii).

⁵ *Estados*, slip op. at 31.

⁶ §3-2303

⁷ §3-2302(A).

⁸ 15 U.S.C. § 7903(5)(A)(iii)(II)(emphasis added).

SB 488 further requires that a firearm industry member establish reasonable controls, which it specifically defines as policies that:

- prevent the sale or distribution of a firearm-related product to (a) a straw purchaser, (b) a firearm trafficker, (c) a person prohibited from possessing a firearm under state or federal law, and (d) a person who it has reasonable cause to believe will use the firearm to commit a crime or harm a person;
- prevent the loss or theft of a firearm-related product; and
- ensure that the member complies with all Federal and State laws and does not promote the unlawful sale, manufacture, alteration, importation, marketing, possession, or use of a fire-arm related product.⁹

Clearly each of these “controls” is reasonable and intended to prevent conduct that is unlawful or unreasonable under the totality of the circumstances. None imposes a significant burden on law abiding firearm industry members. And none of the “controls” impinge on anyone’s Second Amendment rights.

The gun industry cannot seriously contend that the requirements of SB 488 are unduly burdensome. It, after all, provides a level of accountability that is significantly lower than that imposed by Maryland’s tort law on any other industry doing business in the state. But just as the accountability under that tort law has benefitted society, SB 488 will hopefully reduce gun violence caused by improper activities by the firearm industry.

As shown in an amicus brief filed by 18 Attorneys General,¹⁰ empirical evidence demonstrates the need for, and effectiveness of, laws such as SB 488. For example, a 2017 report determined that a quarter of all firearms recovered at crime scenes in Chicago between 2013 and 2016 were purchased at just ten dealers.¹¹ Similarly, a California study showed that 12 percent of gun dealers were responsible for selling 86 percent of the firearms recovered from the scene of violent firearm related offenses

⁹ §§3-2302(B) and 3-2301(G).

¹⁰ https://www.marylandattorneygeneral.gov/news/documents/011722_Amici_in_Support_of_New_York.pdf. This lawsuit involved a challenge to a New York statute similar to SB 488.

¹¹ City Of Chicago, Gun Trace Report 2017, at 4, bit.ly/3ltoLS2.

committed in the State between 1996 and 2000.¹² Finally, the Bureau of Alcohol, Tobacco, Firearms and Explosives reported that 14 percent of federally licensed gun dealers sold all of the firearms recovered in gun crimes nationwide in 1998.¹³

It is also well-documented that gun dealers contribute to the harm caused by firearms entering the illegal market when they engage in unlawful or irresponsible business practices, such as by selling firearms to known straw purchasers or to individuals who do not provide appropriate documentation.¹⁴ Studies reveal that most dealers are confronted with individuals whom they believe may be a straw purchaser. One study concluded that one in five dealers would sell a firearm to an individual whom they suspected was purchasing it on behalf of someone else, including for those who may not legally be allowed to buy it.¹⁵ One consequence of this conduct in the aggregate is that a large number of firearms enter the illegal market; indeed, by some estimates, nearly half of all guns that are trafficked on the secondary market began as straw purchases.¹⁶ But studies show that when gun dealers either are held accountable for their sales to straw purchasers or choose to engage in more responsible business practices that prevent such sales, there is a significant decrease in the flow of firearms into the illegal market.¹⁷

Studies also show that some gun dealers do not record sales in the manner required under state and federal law. According to one report, there were

¹² Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use* 12 (2007), bit.ly/3G6uMkO.

¹³ *Id.*

¹⁴ E.g., Philip J. Cook et al., *Some Source of Crime Guns in Chicago: Dirty Dealers, Straw Purchasers, and Illegal Traffickers*, 104 *J. Of Crim. L. & Criminology* 717, 723 (2015); Rachana Bhowmik, *Aiming for Accountability: How City Lawsuits Can Help Reform an Irresponsible Gun Industry*, 11 *J.L. & POL'Y* 67, 108-09 (2002).

¹⁵ Garen J. Wintemute, *Firearm Retailers' Willingness to Participate in an Illegal Gun Purchase*, 87 *J. URBAN HEALTH* 865, 870 (2010), bit.ly/3QCeSUn.

¹⁶ Garen J. Wintemute, *Frequency of and responses to illegal activity related to commerce in firearms: findings from the Firearms Licensee Survey*, *BMJ Inj. Prevention*, Mar. 11, 2013, at 6, bit.ly/3WQgOL1.

¹⁷ See, e.g., Daniel W. Webster et al., *Effects of Undercover Police Stings of Gun Dealers on the Supply of New Guns to Criminals*, 12 *INJ. PREVENTION* 225, 225-230 (2006); Daniel W. Webster et al., *Effects of a Gun Dealer's Change in Sales Practices on the Supply of Guns to Criminals*, 83 *J. Of Urban Health* 778, 778-87 (2006).

no records of the requisite federal forms for five percent of firearms recovered at crime scenes, even though those firearms were traced to a specific seller, suggesting that the sales were “off the books.”¹⁸

Significantly, the states of Delaware, New York, New Jersey, California, Hawaii, Washington, Illinois, and Colorado have taken advantage of the exemption in PLCAA and have enacted legislation similar to SB 488.¹⁹ The New York law has been upheld by the United States District Court for the Northern District of New York.²⁰ While the plaintiffs have appealed that decision, the Attorney General of Maryland, along with 17 other Attorneys General have filed an amicus brief in support of the District Court decision, asserting that the New York law is a valid exercise of the authority granted to the States by the Act.²¹

SB 488 is similarly a valid exercise of that authority. Importantly, it will not interfere with gun dealers who follow the rules. It is properly aimed at those who do not. It is, in short, a much needed tool to help combat the illegal sale of firearms in Maryland that contributes to the epidemic of gun violence.

CIF urges this committee to produce a favorable report on SB 488.

¹⁸ Cook, *supra* note 7, at 744-45.

¹⁹ Del Code tit. 10 §3930; New York General Business Law §§ 898-a-e; N.J. Stat. Ann. §2C:58-35; 2022 Cal. Legis. Serv. Ch. 98 (A.B. 1594).

²⁰ *National Shooting Sports Foundation, Inc. v. James*, No. 1:21-cv-1348 (MAD/CFH) (N.D. N.Y. May 25, 2022)

²¹ See, *supra* note 3.

2024 SB488_HB947 testimony (PLCAA)-2.pdf

Uploaded by: Karen Herren

Position: FAV



Testimony in **Support** of
Civil Actions - Public Nuisances -
Firearm Industry Members
(Gun Industry Accountability Act of 2023)

SB488/HB947
Executive Director Karen Herren
Marylanders to Prevent Gun Violence

February 16, 2024

Dear Chair Smith, Vice-Chair Waldstreicher, and distinguished members of the committee,

Marylanders to Prevent Gun Violence (MPGV) is a statewide organization dedicated to reducing gun deaths and injuries throughout the state of Maryland. We urge the committee for a **FAVORABLE** report on **Senate Bill 488** to create a State cause of action permissible under the Protection of Lawful Commerce in Arms Act (“PLCAA”)¹.

BACKGROUND

Civil liability is effectively used in the United States as an important check on irresponsible and harmful industry behaviors. When legislators have been unwilling or unable to enact laws regulating a dangerous industry, the possibility of civil litigation has helped to incentivize industries to take reasonable steps to prevent their products or business practices from causing foreseeable risks to human life and well-being. Traditionally, this means that victims harmed by wrongful conduct, or public officials on the people’s behalf, can seek fair justice and accountability in the courts by filing lawsuits seeking monetary compensation or other court-ordered relief when industries have negligently or recklessly caused harm or failed to take reasonable steps to prevent foreseeable harm. However, in 2005, President Bush signed the Protection of Lawful Commerce in Arms Act (“PLCAA”) which gave the gun industry enormous exemptions from liability and accountability within the justice system. PLCAA has granted the gun industry unprecedented immunity from this system of justice and accountability. In

¹ 15 U.S.C. § 7901-7903

addition to shielding the gun industry, these legal immunities also provide an unfair business advantage to irresponsible firearm industry members over more responsible competitors who take stronger precautions to protect human life and well-being.

PLCAA AND EXCEPTIONS

PLCAA provides general immunity from lawsuits to federally licensed manufacturers, federally licensed firearm dealers and importers, and entities engaged in the business of selling ammunition at the wholesale or retail level. PLCAA prohibits plaintiffs from bringing “qualified civil liability actions” against these industry defendants. “Qualified civil liability actions” are civil or administrative proceedings for damages or other relief brought by any person including a governmental entity, “resulting from the criminal or unlawful misuse” of firearms, ammunition, or firearm or ammunition component parts by the plaintiff or a third party. There are 6 exceptions to the general industry immunity under 15 U.S.C. § 7903(5)(A):

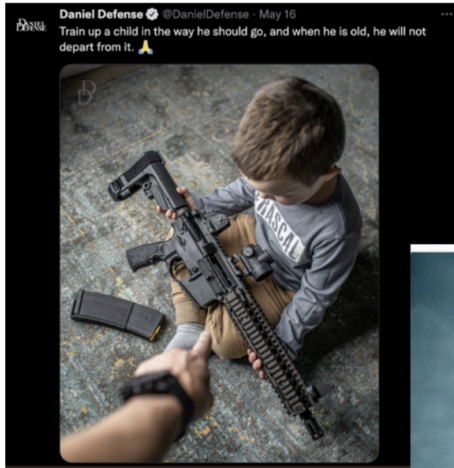
- An action brought against someone convicted of “knowingly transfer[ing] a firearm, knowing that such firearm will be used to commit a crime of violence” by someone directly harmed by such unlawful conduct;
- An action brought against a seller (or importer) for negligent entrustment or negligence per se;
- **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, if the violation was a proximate cause of the harm for which relief is sought.**
- An action for breach of contract or warranty in connection with the purchase of the product;
- An action for death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or
- An action commenced by the Attorney General to enforce the Gun Control Act or the National Firearms Act.

PLCAA provides firearm industry defendants with broad immunity from many common law tort actions, but also provides exceptions, including what has been called the “predicate exception,” which authorizes plaintiffs to bring civil actions against a firearm industry defendant who has knowingly violated a statute applicable to the sale or marketing of a firearm or other qualified product, if the violation was a proximate cause of the plaintiffs’ harm.

CONCLUSION

Senate Bill 488 seeks to codify into Maryland law a firearm industry standard of conduct under the predicate exception clarifying the obligations and prohibitions that are unquestionably and specifically applicable to the sale and marketing of firearms and to provide redress to victims when the industry fails to uphold that standard. MPGCV urges a FAVORABLE report on **SB488**.

Gun Industry Marketing has given us a national nightmare.



JR-15™ GET EM ONE LIKE YOURS
 .22 Long Rifle

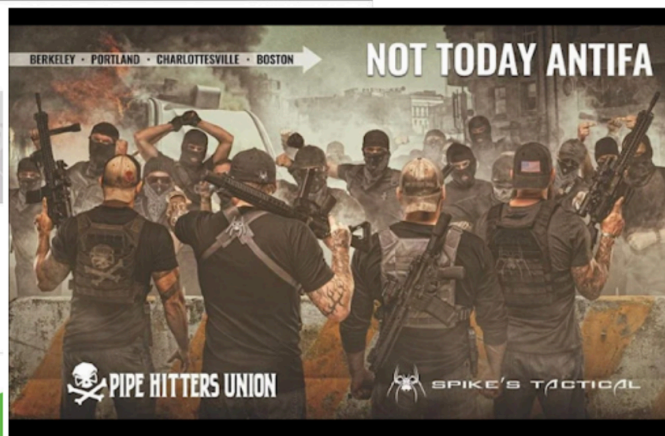
**SMALLER
 SAFER
 LIGHTER**
 PATENTED SAFETY
 MADE IN USA

Our goal was to develop a shooting platform that was not only sized correctly, and safe, but also looks, feels, and operates just like Mom and Dad's gun. Safety was at the forefront of our thought process that we developed and patented a tamper resistant safety that puts the adult in control of the firearm safety switch. The Weel and School Tool Team brought their collective experience in the firearms business, specifically the AR platform, to the table to launch the JR-15. We are so excited to start capturing the imagination of the next generation to enter the shooting sports.

SPECIFICATIONS

SIZE:	30.75"
WEIGHT:	APPROX 2.85
SAFETY:	PATENTED TAMPER RESISTANT
LOWER:	POWNER
UPPER:	POWNER
RAIL:	STANDARD PICATINNY RAIL WITH M-LOK FOR ALL STANDARD ACCESSORIES
TRIGGER:	MPH MIL-SPEC
BARREL:	16"
SIGHT:	NO SIGHT INCLUDED
MAGAZINE:	100, 150, 190, with WEEL'S M-LOK

WEEL TACTICAL



SB 488 - MoCo_Boucher_FAV (GA 24).pdf

Uploaded by: Kathleen Boucher

Position: FAV



Montgomery County

Office of Intergovernmental Relations

ROCKVILLE: 240-777-6550

ANNAPOLIS: 240-777-8270

SB 488

DATE: February 16, 2024

SPONSOR: Senators Waldstreicher and Smith

ASSIGNED TO: Judicial Proceedings

CONTACT PERSON: Kathleen Boucher (Kathleen.boucher@montgomerycountymd.gov)

POSITION: Support

Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2024)

This bill allows the Attorney General and members of the public to sue a “firearm industry member” (i.e., manufacturer, distributor, dealer, marketer, or importer) when they knowingly create a “public nuisance” by engaging in conduct that is unlawful or unreasonable under the totality of circumstances. The Attorney General may seek injunctive relief, restitution, compensatory and punitive damages, reasonable attorney’s fees and costs, and any other appropriate relief. A member of the public may seek compensatory and punitive damages for injury or loss as well as injunctive relief and reasonable attorney’s fees and costs,

The bill requires firearm industry members to establish “reasonable controls” regarding firearm-related products (i.e., firearms, component parts, and ammunition) to protect against public harm. The term “reasonable controls” is defined to mean policies that are designed to: (1) prevent the sale or distribution of a firearm-related product to a straw purchaser, firearm trafficker, or any person prohibited from possessing a firearm-related product under federal or State law or for whom the manufacturer or distributor has reasonable cause to believe intends to use the product to commit a crime or cause harm to self or others; (2) prevent the loss or theft of firearm-related products; and (3) ensure compliance with State and federal law.

The County supports this bill and respectfully requests that the Senate Judicial Proceedings Committee give the bill a favorable report with any amendments necessary to ensure its legal validity. Gun violence throughout our country continues unabated and regulation of these deadly instruments is woefully inadequate. It is critically important the Attorney General and individuals harmed by gun violence have a clear path for holding the firearms industry accountable for practices that pose a risk to public health and safety.

Support - SB 488 Civil Actions- Public Nuisances -

Uploaded by: Ken Shilling

Position: FAV



Unitarian Universalist Legislative Ministry of Maryland

Testimony in Support of - SB 488- Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

TO: Senator William Smith, Chair Judicial Proceedings
FROM: Ken Shilling, Unitarian Universalist Legislative Ministry of Maryland
Gun Violence Prevention Lead Advocate
DATE: February 16, 2024

As a Unitarian Universalist, I know that conscience will not be quieted by anything less than truth and justice. The gun industry should be held accountable for dangerous products and irresponsible business practices. In pursuit of justice, I ask you to support **SB 488 - Gun Industry Accountability Act**.

Gun manufacturers have failed to include safety features that could prevent unauthorized access to firearms. The industry is irresponsible for not applying childproofing technologies that can prevent unintentional shootings by children.

It is reprehensible that gun marketing is aimed to appeal to children. We have laws that prohibit selling alcohol or tobacco to minors. There is no justification to design and market a child-sized assault weapon—the JR-15—to children.¹ Children do not have the training nor the mature judgment needed to handle an assault weapon.

There are some bad actors in the gun industry who have poor safety or training practices. They do not follow basic security measures. Some commit intentional criminal acts. We believe that they should be held accountable for dangerous and irresponsible business practices that harm people and endanger public safety. Unfortunately, these bad actors aren't being held to the same standards to which we hold any other citizen.

SB 784 prohibits the firearm industry from creating or contributing to a public nuisance through irresponsible and dangerous business practices. It requires the firearm industry to establish and implement certain reasonable controls which prevent guns from falling into the hands of criminals or individuals unfit to possess a firearm.

Responsible business practices are necessary—but not sufficient.

Reasonable controls are necessary—but not sufficient.

We must acknowledge that justice denied is an injustice to those who have been harmed. We need to ensure justice for those harmed by irresponsible and dangerous business practices, or unsafe products.

SB 488 aims to protect public safety and promote accountability within the gun industry. Those harmed should be able to make their case in courts in order to hold the firearm industry accountable to protect public safety.

This is American justice.

We urge a favorable report. Vote for Senate Bill 488.

Ken Shilling

Ken Shilling, Gun Violence Prevention Lead Advocate

¹ <https://www.medpagetoday.com/opinion/second-opinions/106206>

The JR-15 Rifle Places Children's Safety in the Crosshairs

by Apurva Bhatt, MD September 6, 2023

SB488 FAV Testimony Maryland Assoc for Justice 2.1

Uploaded by: Kevin Sullivan

Position: FAV



2024 LEGISLATIVE TESTIMONY

SB 488

CIVIL ACTIONS - PUBLIC NUISANCES - FIREARM INDUSTRY MEMBERS FAVORABLE

Good morning, Chairman Smith, Vice Chairman Waldstreicher and members of the committee. My name is Kevin Sullivan. I am an attorney at Salsbury Sullivan, LLC in Baltimore. I am here on behalf of the Maryland Association of Justice to speak in favor of Senate Bill 488.

This bill aims to hold the sellers of firearms responsible for selling a firearm to someone who should not possess one. That seems like common sense.

If we are going to entrust a company to sell a dangerous weapon – the most dangerous weapon – to members of the public, we should insist that they do so in a responsible way.

I currently represent the family of Jake Mace in a federal lawsuit against Walmart. Jake was a Walmart employee experiencing an acute mental health crisis. He was hospitalized several times after expressing suicidal intentions. Jake's managers at Walmart knew of his hospitalizations and suicidal intentions. A week before his death, Jake sent a text message to a Walmart co-worker explaining his plan to purchase a gun to kill himself. The co-worker forwarded that text message to Jake's manager and pleaded with the manager to put Jake on a blacklist so he could not buy a firearm at Walmart. The manager said he would "take care of it." But nothing was done. A week later, Walmart sold Jake a gun. He used it to take his life in the parking lot. Jake was married with a young son and another one on the way when he died.

Senate Bill 488 would help ensure that something like that will not happen to another family.

The proposed law also provides for punitive damages. This is important because, in Maryland, there is cap on the amount of damages one can recover in a wrongful death case and unfortunately the cap reduces the value of cases to the point where big companies like Walmart are not incentivized to make changes. But, if punitive damages were available, that is the type of law that will make large companies take notice and make substantive changes.



2024 LEGISLATIVE TESTIMONY SB 488

CIVIL ACTIONS - PUBLIC NUISANCES - FIREARM INDUSTRY MEMBERS FAVORABLE

And the types of changes we are talking about— instituting reasonable controls— should be ones we can all get behind.

Gun violence is real. The experts all agree that firearms are the most effective means of ending a life. As the father of three daughters in Maryland public schools this is not lost on me. One of my biggest fears is an active shooter at a school. We must do everything in our power to reduce the risk of that.

Senate Bill 488 will not eliminate gun violence, but it will help to assure that guns are not placed into the hands of individuals who should not have them, and it will hold companies accountable for the irresponsible sale of firearms.

For all of these reasons, I urge the committee to submit a favorable report on SB 488.

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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info@mdforjustice.com

mdforjustice.com

sb488- firearms, civil actions JPR- 2-16-2024.pdf

Uploaded by: Lee Hudson

Position: FAV



Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony prepared for the
Judicial Proceedings Committee
on
Senate Bill 488
February 16, 2024
Position: **Favorable**

Mr. Chairman and members of the Committee, thank you for this opportunity to testify for public safety as a human right. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America, a faith community with three judicatories across our State.

Our community has stated support for adequate weapons regulation as an essential for public security and safety. At this point the American public has substantially come into agreement with most of our community's commitments on the subject, according to polling data.

It is also reliably reported that the primary reason the American landscape is a free-fire zone is that, uniquely among commercial product sold to the public, firearms have been exempted from legislated safety standards and regulation. We do not do to weapons what we do to appliances, vehicles, and other implements. This is on purpose: here is that narrative from the Giffords.org webpage—

The Protection of Lawful Commerce in Arms Act and Child Safety Lock Act of 2005 ("PLCAA" and "CSLA") provided the gun industry with immunity from most tort liability. The PLCAA prohibited a "qualified civil liability action" from being brought in any state or federal court and required immediate dismissal of any such action upon the date the PLCAA was enacted (October 26, 2005). The strategy that birthed the American free-fire zone removed manufacturers from any possibility of civil accountability for their products. Again, this is so exceptional as to be without example; or warrant.

Senate Bill 488 re-authorizes members of the Maryland public to initiate civil actions when a manufacturer's product causes harm. It is apparent that juries are becoming receptive to this right, despite all else. Certainly, the members of this Committee know that the harm being caused by the product is the most extreme there can possibly be.

We implore a favorable report.

Lee Hudson

SB550 Written Testimony

Uploaded by: Lindsay Ward

Position: FAV



Support: SB 550 Children- Labor Trafficking

2/24/2024

Maryland Senate
Judiciary Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Dear Honorable Chair, Vice-Chair and Members of the Committee:

On behalf of the pediatric nurse practitioners (PNPs) and fellow pediatric-focused advanced practice registered nurses (APRNs) of the National Association of Pediatric Nurse Practitioners (NAPNAP) Chesapeake Chapter, I am writing to express our support of **SB 550 Children- Labor Trafficking**.

This bill would add children experiencing labor trafficking to be covered by the Safe Harbor Regional Navigator Grant Program which would connect victims of child labor trafficking to resources and other services.

For these reasons the Maryland Chesapeake Chapter of NAPNAP extends their support to **SB 550 Children- Labor Trafficking and requests a favorable report**.

The pediatric advanced practice nurses of your state are grateful to you for your attention to these crucial issues. The members of Chesapeake Chapter of the National Association of Pediatric Nurse Practitioners memberships includes over 200 primary and acute care pediatric nurse practitioners who are committed to improving the health and advocating for Maryland's pediatric patients. If we can be of any further assistance, or if you have any questions, please do not hesitate to contact the Chesapeake Chapter President, Lindsay J. Ward at 410-507-3642 or at lindsayjward@hotmail.com.

Sincerely,

A handwritten signature in black ink that reads "Lindsay J. Ward". The signature is written in a cursive, flowing style.

Lindsay J. Ward CRNP, RN, IBCLC, MSN, BSN
Certified Registered Nurse Practitioner- Pediatric Primary Care
International Board-Certified Lactation Consultant
National Association of Pediatric Nurse Practitioners (NAPNAP)
Chesapeake Chapter President

Eugenia Ogordova



Evgenia Ogordova-DNP
National Association of Pediatric Nurse Practitioners (NAPNP)
Chesapeake Chapter Legislative Chair

Civil Actions - Public Nuisances - Firearm Industr

Uploaded by: Madelyn Cobb

Position: FAV



Wednesday, February 14th, 2024

RE: Support for House Bill 947: Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

Dear Chairman Clippingern

On behalf of the March for Our Lives, a courageous youth-led movement dedicated to promoting civic engagement, education, and direct action by youth to eliminate the epidemic of gun violence, I write this letter to register our support for HB 947. This measure would allow lawsuits against members of the gun industry who act recklessly and participate in unethical practices thus harming public safety.

On average, 743 people die by guns, and 1,363 people are wounded at the hands of firearms per year in Maryland. The Protection of Lawful Commerce in Arms Act has protected the gun industry for 17 years. Not allowing us to hold the gun industry accountable for causing public harm, the state has enabled them to continue to play this dangerous role. This bill allows legal action to be taken by the Attorney General by bringing a civil action against a firearm industry member. Regarding taking action that would knowingly violate this legislation if passed by "creating, maintaining, or contributing to a public nuisance through the sale, manufacture, distribution, importation, or marketing of a firearm-related product under certain circumstances."

At March For Our Lives, we recognize that gun manufacturers' and sellers' lack of concern for public safety has led to countless unnecessary deaths. If any other industry were causing this amount of harm, they would be held legally accountable. It is time the gun industry is held to the same standards.

For these reasons, we proudly express our support for HB 947 and urge passage of this important legislation.

Sincerely,

Madelyn Cobb

Madelyn Cobb
Policy & Government Affairs Manager
March for Our Lives

Elena Perez

Elena Perez
Senior Policy Associate
March for Our Lives

Testimony of Montgomery County Young Democrats Bef

Uploaded by: Michael DeLong

Position: FAV



Testimony of Montgomery County Young Democrats Before Senate Judicial Proceedings Committee in Support of SB 488–Public Nuisances-Gun Industry Accountability Act of 2024

February 16th, 2024

Chair Smith, Vice Chair Waldstreicher, members of the Committee:

The Montgomery County Young Democrats (MCYD) urge your support and a favorable recommendation for SB 488, the Gun Industry Accountability Act of 2024. This bill will help hold the gun industry, including manufacturers and retailers, legally liable for the misuse of guns and help prevent reckless harm caused by their products.

MCYD is a group of young Democrats ages 14-35 who work to make Montgomery County and Maryland better places to live, elect Democrats to office, advocate for various issues, and get young people involved in politics and advocacy. We have unfortunately grown up in the shadow of gun violence, hearing about numerous mass shootings and a steady drumbeat of injuries and deaths.

Gun violence is a horrifying blight on our society, killing tens of thousands of people every year. During the pandemic the gun murder rate rose sharply. [In 2021, 48,830 people died from gun-related injuries](#). Yet, the gun industry is shielded from civil litigation that would hold them accountable for the misuse of their products by the Protection of Lawful Commerce in Arms Act (PLCAA), which effectively blocks most lawsuits against them and thwarts countless victims from obtaining justice.

Other industries have been forced by civil litigation to adopt safer practices because these lawsuits have exposed issues, shaped public opinion, and influenced bills and laws. Lawsuits against the automobile industry resulted in seat belts, airbags, and safer cars that are less likely to crumple in accidents. Lawsuits against the tobacco industry resulted in limits on tobacco advertising, warning labels on tobacco products, and massive payments to people who suffered conditions derived from smoking. Furthermore, lawsuits are currently underway against opioid manufacturers to hold them accountable for overprescribing these pills, ruining countless lives, and causing the deaths of many Americans.

It is time for similar accountability for the gun industry. Gun marketing is dangerously irresponsible, often directed toward children and teenagers. Families affected by gun violence frequently try to sue gun manufacturers and retailers, but the PLCCA has enabled most of the lawsuits to be dismissed.

The Gun Industry Accountability Act of 2024 establishes clear avenues for justice in cases involving harm caused to the public by the gun industry. Specifically, it would hold individuals and entities accountable in the following cases:

- Members of the gun industry would be banned from knowingly or recklessly causing harm to the public. This would include manufacturing, marketing, distributing, importing, or selling gun-related products in ways that are unlawful or unreasonable, considering the entire context.
- Gun retailers and manufacturers would be required to implement reasonable controls about the manufacture, marketing, and sale of guns. These controls are designed to prevent guns from falling into the hands of criminals and other individuals unfit to possess guns.

If either of these standards are violated, both the State of Maryland and private citizens would have the right to take legal action. SB 488 provides victims of gun violence with pathways to justice for irresponsible and dangerous industry practices, which currently go unchecked. Allowing legal action against the gun industry will drive the worst offenders out of business and spur other businesses to adopt better behavior.

The fight to stop gun violence will require many reforms. The Gun Industry Accountability Act is an important step forward that will enhance public safety and promote accountability within the gun industry. The Montgomery County Young Democrats urge your support for SB 488 and ensure its swift passage.

Please contact us at mocoyoungdems@gmail.com with any questions.

Sincerely,

The Montgomery County Young Democrats

2024 MD Industry Accountability Written Testimony

Uploaded by: Ramya Swami

Position: FAV

Brady
840 First St. NE Ste. 400
Washington, DC 20002



Testimony of Ramya Swami, Manager, State Policy, Brady
Support for SB 488
Before the Maryland Senate Judicial Proceedings Committee
February 16, 2024

Chair Smith, Vice Chair Waldstreicher, and distinguished members of the Maryland Senate Judicial Proceedings Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Brady today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence. **In furtherance of our goal to reduce firearm violence across Maryland, the Brady Campaign to Prevent Gun Violence is proud to support the passage of Senate Bill 488.** SB 488 creates a path for gun industry members to be held accountable for dangerous, unlawful, negligent and unsafe business practices that impact Marylanders and removes barriers that currently prevent victims and survivors from obtaining justice in the courtroom.

The Gun Industry has been Afforded Special Protections that Harm Marylanders

A top priority of the gun industry, the Protection of Lawful Commerce in Arms Act (PLCAA) was signed into law by then-President George W. Bush in 2005.¹ PLCAA provides gun manufacturers, distributors, and gun dealers with special protections from civil liability that no other U.S. industry is currently afforded. Although PLCAA does not provide complete immunity from all civil lawsuits, some courts have interpreted the law to effectively bar victims and survivors of gun violence from holding firearms businesses liable for injuries caused by negligence, defective products, or unreasonably dangerous conduct that would otherwise be actionable under civil justice principles. Enabling the gun industry to evade accountability at the expense of victims of gun violence significantly contributes to the gun violence epidemic by removing key incentives for the gun industry to adopt life-saving business practices.²

¹ 15 U.S.C. § 7901 (2005).

² Brady Campaign & Brady Center, "What is PLCAA?", Brady, available at <https://www.bradyunited.org/fact-sheets/what-is-plcaa>.

Moreover, PLCAA has had a chilling effect on civil cases against the gun industry and has worked to prevent victims and survivors from recovering damages they are owed after tragic injuries or deaths. SB 488 would ensure that the gun industry would no longer be shielded from accountability for their dangerous, irresponsible, or illegal practices that endanger the lives of Marylanders.

PLCAA Denies Justice to Victims and Survivors

Victims should have recourse for the gun industry's negligence and dangerous practices, but PLCAA currently protects gun dealers and manufacturers from being held responsible. Gun dealers and manufacturers should be held responsible for negligent and irresponsible sales practices that are the proximate cause of an individual's injuries or death, and for selling to someone who is likely to harm themselves or others. Manufacturers who design firearms without life-saving safety features, such as chamber-loaded indicators and magazine disconnect safeties, or sell to someone who is clearly likely to harm themselves should be held liable for their design failures and malpractice.³

PLCAA Perpetuates the Flow of Crime Guns into Communities of Color

The latest available data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reveals that just 2.7 percent of dealers accounted for over 71 percent of crime gun traces.⁴ While this small minority of gun dealers are the sources of crime guns recovered in communities of color, these gun dealers typically sit outside those communities in less diverse and more affluent suburbs.⁵ Residents of these communities suffer from the chronic stress of daily interpersonal gun violence and the negative impacts on their community's economic prosperity, without recourse or compensation, while irresponsible gun dealers face no consequences. The implications of this lack of accountability cannot be overstated. While gun violence touches Americans across the country, it disproportionately impacts communities of color. Approximately 80 percent of America's gun deaths occur in urban areas with large minority populations.⁶ Black Americans are 11 times more likely than their white peers to be the victim of a firearm homicide, and this problem is exacerbated for Black males, who lose four years in life expectancy on the basis of gun violence alone.⁷ Non-Hispanic Black males in Maryland are 27.7 times more likely to be victims of firearm homicide than non-Hispanic white males.⁸

³ Vernick, J., Meisel, Z., Teret, S., Milne, J. and Hargarten, S., 1999. "I Didn't Know the Gun Was Loaded": An Examination of Two Safety Devices That Can Reduce the Risk of Unintentional Firearm Injuries," *Journal of Public Health Policy*, 20(4), pp.427-440, available at <https://www.jstor.org/stable/3343129?seq=1>.

⁴ Department of the Treasury, "Commerce in Firearms in the United States," Bureau of ATF (Feb. 2000), available at http://www.joebrower.com/RKBA/RKBA_FILES/GOV_DOCS/BATF_report_020400.pdf.

⁵ Brady Campaign and Brady Center, "Crime Guns in Impacted Communities," Brady, available at <https://www.bradyunited.org/reports/crime-guns-in-impacted-communities>.

⁶ *Id.*

⁷ CDC, "Injury Prevention & Control," available at <https://www.cdc.gov/injury/wisqars/fatal.html>; Kalesan, B., Vyliparambil, M., Zuo, Y., Siracuse, J., Fagan, J., Branas, C. and Galea, S., 2018. "Cross-sectional study of loss of life expectancy at different ages related to firearm deaths among black and white Americans," *BMJ Evidence-Based Medicine*, 24(2), pp.55-58, available at <https://ebm.bmj.com/content/24/2/55>.

⁸ CDC, "Injury Prevention & Control," available at <https://www.cdc.gov/injury/wisqars/fatal.html>.

PLCAA Disincentivizes Responsible Business Practices

The mere threat of civil liability motivates companies to adopt safe business practices that prevent future injuries and death.⁹ For example, car manufacturers made numerous safety improvements that have cut automobile-related deaths by 50 percent since the 1960s, primarily because of technological advancements spurred by fear of liability.¹⁰ PLCAA effectively removed this motivation for the gun industry, disincentivizing gun dealers from adopting safe sales practices and gun manufacturers from incorporating affordable life-saving safety devices into their products and monitoring their distribution practices.¹¹ While the gun industry claims that mental health and violent video games are to blame for gun violence, it's actually common industry practices that create the conditions that enable most gun violence to occur.¹² The limitations on the ability to hold the industry accountable prevent public awareness and deter regulatory changes, as well as disincentivize independent action by the industry to avoid liability, all of which would reduce gun violence and save lives.

Conclusion

SB 488 will function as an exception to PLCAA, ensuring that valid civil claims can be brought against the gun industry for their dangerous, negligent, and even unlawful actions. The possibility of civil liability will not only provide civil justice to victims and survivors but also encourage the gun industry to act responsibly to help stem the tide of crime guns that harm Marylanders, particularly in urban areas where communities of color are disproportionately harmed. Having operated with special protections for years, the industry has had no financial incentive to curb irresponsible conduct and instead puts profits over people. The prospect of civil liability can lead to safer products and better conduct that the industry has resisted for years.

SB 488 must be enacted because no industry should be above the law, especially not one that makes and sells lethal weapons. SB 488 will make sure that bad actors in the gun industry are held accountable and victims of gun violence are able to get justice through the law. ***For the reasons described above, Brady urges the committee to support the passage of Senate Bill 488.***

Sincerely,
Ramya Swami

⁹ Vernick, J. et al., 2003. "Role of Litigation in Preventing Product-related Injuries," *Epidemiologic Reviews*, 25(1), pp.90-98, available at <https://academic.oup.com/epirev/article/25/1/90/718671>.

¹⁰ LaFrance, Adrienne, "Why Haven't Gunmakers Improved Safety Technology the Way Automakers Did?," *The Atlantic* (Jan. 21, 2016), available at <https://www.theatlantic.com/technology/archive/2016/01/guns-cars/424878/>.

¹¹ Sampson, Kelly, "Tobacco Kills People. Opioids Kill People. But Guns Don't?," *Brady* (Sept. 4, 2019), available at <https://bradyunited.medium.com/tobacco-kills-people-opioids-kill-people-but-guns-dont-7852c288d496>.

¹² Zeballos-Roig, Joseph, "The NRA Issued a Statement Supporting Trump's Call to Focus on Mental Illness to Reduce Gun Violence after the Shootings in El Paso and Dayton," *Insider* (Aug. 5, 2019), available at <https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8>; Hudson, Laura, "The NRA Solution to Gun Violence: More Guns, Fewer Video Games," *Wired* (Dec. 21, 2012), available at <https://www.wired.com/2012/12/nra-video-games/>; Gluck, A., Nabavi-Noori, A. and Wang, S., 2021. Gun Violence in Court. *The Journal of Law, Medicine & Ethics*, 48(S4), pp.90-97, available at <https://journals.sagepub.com/doi/abs/10.1177/1073110520979406>.

Testimony in support of SB0488.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB0488_RichardKaplowitz_FAV
2/16/2022

Richard Keith Kaplowitz
Frederick, MD 21703-7134

TESTIMONY ON SB#0488 - POSITION: FAVORABLE

Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

FROM: Your Full Name

My name is Richard Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of/ SB#/0488, Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)

Multiple laws exist that protect consumers from harm from unsafe products. We have an epidemic of gun violence in this country with more than one mass shooting a day since the beginning of the year. Much of this is attributable to the firearms industry's total disregard of how their products are marketed and sold. Weapons of war are being manufactured, imported, and sold, and the responsible parties have been shielded from responsibility for the carnage.

This bill is an attempt to alleviate some of the problems caused by this immoral conduct by that industry that no other industry would and is held harmless for. It will permit those damaged by the weapons so carelessly made available to have a path to redress the effects on them and our society at large by the willful proliferation of these dangerous weapons. The misinterpretation of the second amendment ignores the "well regulated militia" component of the amendment and favors arming everyone with weapons not meant for personal protection but for conducting warfare. The framers of the Constitution could not have foreseen, in a era of muskets, the quick and deadly arms now overwhelming our society.

This bill is an attempt to restore a balance between those harmed by guns and those whose sale, manufacture, distribution, importation and marketing have impacted their lives so tragically.

I respectfully urge this committee to return a favorable report on SB0488.

SB 488 PLCAA .pdf

Uploaded by: Cathy Wright

Position: UNF



SB 488
Civil Actions – Public Nuisances – Firearm Industry Members
Gun Industry Accountability Act of 2024

UNFAVORABLE

The Maryland State Rifle & Pistol Association (MSRPA) opposes SB 488, the Gun Industry Accountability Act of 2024. This bill would regulate the gun industry, including manufacturers and retailers, to prevent reckless harm caused by firearms. Violations of this law would be treated as a public nuisance, with both the state and private citizens having the right to take legal action.

The MSRPA is the official National Rifle Association state organization for Maryland. The MSRPA's mission is to defend our rights in Maryland, support training in firearm safety and shooting skills through its affiliated clubs, and sponsor and sanction local competition throughout the state.

The intent of this bill is to overrule the Protection of Lawful Commerce in Arms Act (PLCAA), a United States Federal law which protects firearm manufacturers and dealers from being held liable for criminal misuse of their products. The PLCAA was enacted in 2005 by a broad bipartisan majority in response to dozens of frivolous lawsuits orchestrated and largely funded by gun control groups, solely to put gun companies out of business based on circumstances beyond their control.

Despite political rhetoric to the contrary, the PLCAA does not grant the firearm and ammunition industry blanket immunity from suit different than that enjoyed by other industries. Instead, the PLCAA codifies common law and common sense principles to prevent baseless litigation from bankrupting an entire lawful industry. In addition, PLCAA does not shield gun companies from being sued for wrongdoings. It includes carefully crafted exceptions to allow legitimate victims their day in court for cases involving defective firearms, breaches of contract, criminal behavior by a gun maker or seller, or the negligent entrustment of a firearm to an irresponsible person.

SB 488 is basically the same bill as SB 113, which met with an UNFAVORABLE response last year. This bill will not pass muster with the Maryland Declaration of Rights or Federal Code.

Page 2
MSRPA testimony SB 488

Maryland's licensed firearms dealers are NOT the source of reckless, illegal actions of negligent citizens or violent criminals. The firearms industry is already highly regulated by federal and state statutes, with severe civil and criminal penalties for any and all criminal transgressions.

The bill is vague and probably would not survive judicial review. SB 488 allows enforcement of any "harm to the public" but doesn't define this phrase, and there are no guidelines for its implementation. Under the bill entirely lawful conduct can be deemed "unreasonable" and a "public nuisance." How do you define a LAWFUL industry as unreasonable and a public nuisance? Other terms within the bill, including "reasonable controls" and "unreasonable under the totality of the circumstances," are imprecise. Or are they, except to accomplish the destruction of an industry you may not like?

The manufacture, distribution, and sales of firearms, ammunition, and accessories associated with hunting and shooting sports contribute to Maryland's economy. There are hundreds of firearm related businesses, with good paying jobs, and which contribute millions of dollars in taxes to the state, including taxes used for conservation. When this industry is forced to abandon Maryland because of this bill, our citizens will surely feel the loss and may also be inclined to leave the state.

Bottom line: SB 488 threatens a lawful industry, our basic constitutional rights of self-defense, and our civil liberties, *and* it will not make Maryland safer from criminal violence.

The MSRPA respectfully requests and unfavorable report on SB 488.

Cathy S. Wright, MSRPA VP, Legislative Affairs
cwright@msrpa.org
<http://www.msrpa.org>

SB488.pdf

Uploaded by: Donna Worthy

Position: UNF

Testimony SB488

My name is Donna Worthy. I am President of the Maryland Firearms Dealers Association as well as the President of Worth-A-Shot, a Firearms store in Millersville Maryland.

I strongly oppose SB488. This bill is written with an impossible standard for Firearm Stores. This bill is so vague that it implies an impossible standard for gun store owners to follow. Because of the vagueness of the law and the potential to lawsuits being essentially limitless, no company would be able to obtain insurance to cover themselves. Without insurance, companies would be forced to go out of business.

This bill uses words such as "reasonable and unreasonable". The use of these words leaves the bill up for interpretation.

If the purpose of this bill is to reduce the amount of firearms in MD or reduce crime, this bill will not achieve that. This bill would however, cause many gun stores in MD to go out of business. This will cause the loss of thousands of jobs and a large loss in tax revenue for this state. Individuals that wish to purchase firearms can still do so, even if a large number of stores go out of business in Maryland. It is perfectly legally to purchase long guns in other states, and handguns can be purchased out of state by simply transferring said firearm to one of the few remaining stores here in Maryland.

Firearm stores are your first line of defense. We turn away any suspicious sales or straw purchases. We are already held to tight standards both by the state and the ATF. We have regular inspections and audits from both agencies.

In conclusion, passing this bill would not reduce gun violence, crime or even the number of firearms in this state. It would however, reduce jobs and tax revenue for the state and cause many stores to go out of business.

For these reasons I strongly urge an unfavorable report for SB488.

SB0488.pdf

Uploaded by: Galen Muhammad

Position: UNF

SB0488

I vehemently opposed to this bill.

This bill places the responsibility of criminal activity on the firearms industry and firearms, *themselves*, instead of where it **should** be placed: On the individual committing the crime(s).

As Senator Folden has stated before, there are more deaths in Maryland because of vehicular accidents and there are **certainly** more deaths because of tobacco use, first and secondhand. Why not go after the tobacco industry, especially since tobacco use has absolutely no upside?

Holding the manufacturers of firearms and their accessories for criminal activity is scapegoating and does not and will not address the problem of crimes that criminals commit using illegal firearms. This bill would only run more jobs and businesses out of the state and into surrounding states.

I am **100%** supportive of holding firearms manufacturers accountable **if** and **when** they create products that fail to do what they were created to do (i.e., malfunctions), but not holding them responsible for crimes that criminals commit with their products.

I ask this committee to give this bill an unfavorable review.

Ian Rus Maxwell SB0488 Testimony MGA 2024.pdf

Uploaded by: Ian Rus Maxwell

Position: UNF

SB0488 – Civil Actions – Gun Industry Accountability Act of 2024

I am writing to oppose, and urge an unfavorable report on SB 0488.

As written the bill opens legitimate firearms and accessories dealers to undue burdens.

Section G-IV-2 requires a dealer to reject sale of a firearm to “A person who the firearm industry member has reasonable cause to believe intends to use the firearm-related product... (2) to cause harm to the person or another person.” Many people purchase firearms specifically for self-defense. Using a firearm in self-defense could easily be construed as “causing harm” to another person. Consequently, it is not difficult to conceive that any dealer who sold a firearm to anyone - who later used the firearm for self-defense purposes – could be involved in action by the Attorney General and sued by any person who perceives they were harmed, in any way, by the use of a firearm in self-defense. The proposed law is unjust in the extreme and should never be encoded into Maryland law.

Sincerely,

Ian Rus Maxwell

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Boyd's MD 20841

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SB 488- Public Nuisance - NSSF Opposition Letter.p

Uploaded by: Jake McGuigan

Position: UNF



JAKE MCGUIGAN

Managing Director, Gov't Relations - State Affairs

jmcguigan@nssf.org | 203-426-1320 x238 | nssf.org

400 N. Capitol Street NW, Suite 475, Washington, D.C. 20001

February 16, 2024

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

SENATE BILL 488 OPPOSE

Re: Senate Bill 488 - Public Safety – Firearm Industry Members – Public Nuisance

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

On behalf of the National Shooting Sports Foundation (“NSSF”), and our industry members located throughout the state of Maryland, I write today to express our opposition to Senate Bill 488 (“SB 488”), the so-called “Gun Industry Accountability Act of 2023.” SB 488 seeks to gut the federal Protection of Lawful Commerce in Arms Act (“PLCAA”) and hold firearm industry members liable for the criminal misuse of firearms.

BACKGROUND ON NSSF

As the trade association for America’s firearms, ammunition, hunting, and recreational shooting sports industry, the National Shooting Sports Foundation (“NSSF”) seeks to promote, protect, and preserve hunting and the shooting sports. NSSF represents more than 10,000 members which include federally licensed manufacturers, wholesale distributors and retailers of firearms, ammunition and related goods and accessories, as well as public and private shooting ranges, sportsmen’s clubs, and endemic media, including close to 100 businesses located in Maryland, such as Beretta USA, Benelli USA and its family of brands, and LWRC International. Nationally, our industry contributes close to \$70.5 billion dollars annually to the economy creating over 345,000 good paying jobs and paying over \$7.8 billion dollars in taxes. Our industry has a \$1 billion dollar impact on the Maryland economy, creating more than 4,200 jobs paying over \$287 million in wages and nearly \$109 million dollars in taxes.

Members of the firearm industry are proud of their longstanding cooperative relationship with law enforcement. For example, on behalf of our industry members, for over two decades NSSF has partnered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) on an anti-straw purchasing campaign called *Don’t Lie for the Other Guy* (www.dontlie.org). This joint effort assists ATF in training licensed retailers to be better able to identify potential illegal straw purchases and avoid those transaction. Don’t Lie also provides public service announcements to educate the public that it is a serious crime to illegally straw purchase a firearm for which you can be sentenced to up to ten years in prison and fined of up to \$250,000.

Another example is *Operation Secure Store* (www.operationsecurestore.org), a joint ATF/NSSF initiative providing licensed retailers with education on solutions and services that enhance operational security and aid in identifying potential risks, protecting interests, and limiting the disruption of operations. The mission is to deter and prevent thefts from retailers and enhance public safety.

NSSF also provides significant compliance resources and educational opportunities to members of the industry. See <https://www.nssf.org/retailers/ffl-compliance/>.

OPPOSITION TO SB 488

NSSF is strongly opposed to SB 488 for several reasons. First and foremost, the bill seeks to subject members of the heavily regulated firearm industry to civil lawsuits for the criminal misuse or unlawful possession of firearms in Maryland. SB 488 is trying to use the threat of crushing liability to coerce out-of-state businesses to adopt sales practices and procedures not required by Congress or the law of the state where they operate. The Constitution reserves the power to regulate interstate commerce solely to Congress. This law interferes with the sovereignty of other states to make policy choices about how firearms should be sold in their state, subject only to the Second Amendment and federal law.

As proposed, SB 488 would permit lawsuits by victims of criminal acts and citizens claiming they have been harmed by an alleged public nuisance in Maryland. It also allows lawsuits by the State and any local government. Cities around the country were part of a wave of similar lawsuits filed over twenty years ago that led to Congress passing the bipartisan PLCAA in 2005.

The PLCAA codified a bedrock legal principle. Manufacturers and retailers are not responsible for the subsequent criminal misuse or illegal possession of their lawfully sold, non-defective products by remote third parties – criminals – over whom they have no control. Firearm industry members are not legally responsible for illegal shootings any more than a cookware manufacturer is responsible if a criminal misuses a sharp kitchen knife to stab someone.

This bill seeks to impose liability on law abiding firearms business for the criminal misuse of firearms. This is contrary to the will of Congress which, in enacting the PLCAA found –

Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully

competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

15 U.S.C. § 790(a)(5),(6).

Congress' purposes in enacting the PLCAA included -

To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful of firearm products or ammunition products by others when the product functioned as designed and intended.

To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

15 U.S.C. § 790(b)(1),(4),(6).

The logic underlying this bill is seriously flawed. It seeks to impose liability on members of the firearm industry for the “lawful design, manufacture, marketing, distribution, importation, [and] sale” of firearms in compliance with all federal, state, and local laws, when those firearms are subsequently obtained by third parties¹ over whom the industry member has no ability to control and later illegally find their way into Maryland and are criminally misused. This is tantamount to declaring drunk driving a public nuisance and then imposing liability on Ford for lawfully designing, make and selling a car later used by a drunk driver who causes an accident. Selling a legal, non-defective product in compliance with all laws and regulations – especially a heavily regulated product – does not “create, maintain or contribute to a condition in the State that endangers the safety or health of the public...” and is not a public nuisance under American jurisprudence. The bill goes further, it declares that the lawful business practices are “constitute a proximate cause of the public nuisance.... notwithstanding any intervening actions, including but not limited to criminal actions by third parties.”

The U.S. Supreme Court held that the Second Amendment protects the right of individuals to keep and bear arms and that the Second Amendment applies to the States. *See e.g., District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). The courts have since held that the Second Amendment includes the right to acquire firearms *See e.g., Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), *Jackson v City and County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2011); *Ill. Ass'n of Firearms Retailers v City of Chicago*, 961 F.Supp.2d 928, 930 (N.D. Ill. 2014); *See also, Andrews v State*, 50 Tenn.

¹ According to the U.S. Department of Justice studies, most (>80%) firearms used in crime are stolen, borrowed from friends and family members, or obtained on the black market.

165, 178 (1871). The Second Amendment protects the lawful commerce in firearms because that “[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense...” *Teixeira v. City. of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017).

If enacted, businesses in the firearm industry will abandon the Maryland market to avoid a tidal wave of vexatious “regulation through litigation” the bill is intended to bring about. Maryland residents will no longer be able to exercise their Second Amendment right to purchase firearms. The bill will undermine and diminish, if not violate, the Second Amendment rights of Maryland resident.

The bills own findings demonstrate that this legislation will not make Maryland safer. The conduct complained of arises from the actions of criminals who misuse firearms to perpetrate their crimes. It does not arise from lawful, heavily regulated commerce.

CONCLUSION

It is for these reasons, the National Shooting Sports Foundation opposes this ill-advised and ill-considered bill that will not improve public safety but will force result in vexatious litigation and drive business out of Maryland and diminish the ability of law abiding residents of Maryland to acquire firearms for lawful purposes. We would respectfully request an “Unfavorable Report” for Senate Bill 488 from the Senate Judicial Proceedings Committee.

Sincerely,



Jake McGuigan

SB0488.pdf

Uploaded by: Jason Mooney

Position: UNF

I OPPOSE THIS BILL

SB 0488 isn't needed and is in direct conflict with the Federal Protection of Lawful Commerce in Arms Act (PLCAA). Let's not pretend that SB 0488 is anything other than a direct attack on the firearms industry as a method to bankrupt and do away with guns in Maryland and ultimately America. An obviously unconstitutional bill and action that the PLCAA was created to prevent. The PLCAA passed congress with large bipartisan support and was narrowly crafted to protect the firearms industry from unconstitutional lawsuits yet, provides many exemptions from protection for any illegal activity that the businesses in the firearms industry might do. Here are the facts:

- Despite political rhetoric to the contrary, the PLCAA does not grant the firearm and ammunition industry immunity from suit different than that what is enjoyed by other industries.
- The PLCAA was enacted by a broad bipartisan margin in response to the dozens of frivolous lawsuits orchestrated and largely funded by gun control groups solely to put gun companies out of business based on circumstances entirely beyond their control.
- Members of the MGA need to hear how this crucial law is what stands between law-abiding industry members and gun control advocates that want to punish the industry for the illegal actions of criminals.
- Most states recognized a need for this kind of protection and therefore they passed similar protections ahead of the PLCAA.
- Unlike the PLCAA common sense law, SB 0488 lacks common sense and is a blatant attack on the gun industry.
- The PLCAA ensures that responsible and law-abiding federally licensed manufacturers and retailers of firearms and ammunition are not unjustly blamed in federal and state civil actions for "the harm caused by those who criminally or unlawfully misuse" these products that function as designed and intended. And SB 0448 is clearly design to attempt to undo these constitutional protections that any other industry has.
- The Congressional Record shows the PLCCA was deliberately drafted to allow lawsuits where companies have violated the law. For example, then-Rep. Cliff Stearns (R-FL6) stated, "This legislation will end these coercive and undemocratic lawsuits...this legislation is very narrowly tailored to allow suits against any bad actors to proceed. It includes carefully crafted exceptions to allow legitimate victims their day in court for cases involving defective firearms, breaches of contract, criminal behavior by a gun maker or seller, or the negligent entrustment of a firearm to an irresponsible person."
- Six exemptions in the law expressly allow suits based on knowing violations of federal or state law related to gun sales, or on traditional grounds including negligence or breach of contract.
- Congress specifically carved out exceptions to allow claims of negligence and negligent entrustment to proceed where allowed under state law (i.e. retailer sells a firearm to someone under age or someone visibly intoxicated who then uses the firearm to injure themselves or others).
- The bill also allows product liability cases involving actual injuries caused by a defective firearm or criminal misconduct on the part of the company.

Jason Mooney, Leonardtown MD.

SB0488_Testimony_2A_Maryland.pdf

Uploaded by: John Josselyn

Position: UNF



2A Maryland

2A@2AMaryland.org

Senate Bill 0488

Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2024)

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 even 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 488, 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 0488 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.

§3-2301 (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, ALTERATION, IMPORTATION, MARKETING, POSSESSION, OR USE OF A FIREARM-RELATED PRODUCT.

Under this section, gunsmiths who perform simple alteration of firearms such as improving the accuracy of a firearm by improving the feel and function of a trigger on a target rifle or pistol will now be vulnerable to lawsuits.

§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 that it lacks sufficient personnel to bring, manage, and litigate claims under the bill and that it estimates the need for one assistant Attorney General and one paralegal, with estimated general fund expenditures of \$207,816 in fiscal 2025 (which assumes a hiring date of October 1, 2024), and at least \$252,200 annually thereafter. However, OAG acknowledges that the need for staff depends on how many civil actions are actually filed. 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 total

approximately \$140,000 annually. Although the bill takes effect June 1, 2024, it is assumed that any potential expenditures are not incurred until fiscal 2025.

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).

Attached to this testimony is a page from the Maryland State Police Firearms Training Course Instructional Material which depicts one of the devices instructors must include but which are deemed a threat to public safety under SB 488.

SB 488 is a vindictive Bill directed at everything and everyone except the criminals.

We strongly urge an unfavorable report.

John H. Josselyn, Director
2A Maryland
02/16/2024

II. HOME FIREARM SAFETY

A. Storing firearms in the home

1. Treat ALL guns as if they are loaded.
2. Always store your firearm unloaded and in a secure location. Consider a locked closet, drawer, or similar storage facility. A small and relatively inexpensive combination lock or key lock safe is ideal for storing firearms and ammunition.
3. Store firearms and ammunition separately.
4. Do not store firearms along with other valuable items such as jewelry. These are prime targets for theft.
5. Never store firearms in the glove compartment or trunk of your automobile.
6. Regardless of the storage method selected, always store firearms and ammunition in a location that is not subject to moisture or temperature extremes.
7. Never store firearms under the pillow or near the bed.
8. Always store firearms in the same safe location.
9. Have a routine when entering your home of securing the firearm and ammunition immediately upon arrival.

B. Making a gun "safe" for storage

1. Commercially manufactured "trigger locks" may be used to prevent the trigger from functioning. Remember that you should always keep the key in your possession.
2. A revolver may be effectively rendered safe by placing a padlock through the top strap so that the cylinder cannot be closed.
3. We must be willing to accept the obligation of firearms safety at all times – at the range, on the street, and at home. It is essential that each and every one of us exercise skill and good judgment when it comes to firearms.
4. The mere existence of laws, rules, and regulations will not prevent accidents. It is only the diligent application of those rules, coupled with an ample measure of common sense that will enhance our ability to handle firearms safely.
5. Be aware that children may think the firearm is a toy gun due to the fact that many modern semi-automatic pistols are made with polymer components.

Types of Storage Devices

Gun Cases: commonly used for transportation and storage

Gun Lockbox: allows for storage of a gun and protection from unauthorized access

Gun Safe: greatest level of security

Lockable Drawer: must not forget to lock, can be forced open

Lockable Gun Rack: allows firearms, especially long guns, to be stored securely and displayed

Cable Locks



Judge: Casinos have no duty to stop compulsive gamblers



The Borgata casino in Atlantic City, New Jersey, and its parent company, MGM Resorts International, were sued by a self-professed compulsive gambler. Wayne Parry/AP 2023

BY WAYNE PARRY ASSOCIATED PRESS

ATLANTIC CITY, N.J. — Atlantic City's casinos have no legal obligation to stop compulsive gamblers from betting, a judge ruled, dismissing a lawsuit from a self-described problem gambler who accused the Borgata and its parent

company, MGM Resorts International, of plying him with offers to gamble despite knowing about his addiction.

U.S. District Court Judge Madeline Cox Arleo dismissed a lawsuit Jan. 31 by Sam Antar against the gambling companies, saying the voluminous rules and regulations governing gambling in New Jersey do not impose a legal duty upon casinos to cut off compulsive gamblers.

New Jersey casino law “pervasively regulates the responsibilities of casinos as they relate to compulsive gamblers, but is notably silent on whether casinos or online gambling platforms may induce people who present with compulsive gambling behavior to patronize their businesses,” the judge wrote in her decision.

She also cited two previous New Jersey cases in which a compulsive gambler and a patron who claimed to have lost money gambling while drunk sued unsuccessfully.

Similar lawsuits have been dismissed in other states.

“The New Jersey Legislature ... has not yet seen fit to require casinos to prevent or stop inducing gambling from those that exhibit problem gambling behavior,” Arleo wrote. “As a matter of law, (the) defendants do not owe a negligence common law duty of care to plaintiffs.”

Antar said the law needs to be changed, adding that he plans to appeal the dismissal of the case.

“This is not just about me; this is about all the people across this country who have this addiction,” he said. “When are we as a country going to address this?”

New Jersey, like other states, has a program in which gamblers can voluntarily exclude themselves from in-person or online betting. The casinos must honor that list and have been fined by regulators for allowing self-excluded gamblers to place bets.

Antar, who has homes in New York and in Long Branch, New Jersey, gambled \$30 million over 100,000 bets during nine months in 2019, according to his lawsuit, which does not specify how much he lost. Antar said he is not certain of the amount, and his lawyer, Matthew Litt, said it was “at least in the six figures.”

His lawsuit made some of the same claims that were raised — and rejected by a judge — in another person’s lawsuit targeting Atlantic City casinos.

In 2008, a federal judge ruled against New York gambler Arelia Taveras, who sued seven Atlantic City casinos that she said had a duty to stop her from gambling. She lost nearly \$1 million over two years, including dayslong gambling binges.

“She spent money on the bona fide chance that she might win more money,” U.S. District Court Judge Renée Bumb wrote in a 2008 ruling. “In short, she gambled. The mere fact that defendants profited from her misfortune, while lamentable, does not establish a cognizable claim in the law.”

Litt, Antar’s lawyer, said his appeal will center on his contention that New Jersey’s Consumer Fraud Act, designed to protect customers from “unconscionable” acts by companies, should apply in this case.

In 2013, Antar was sentenced to 21 months in federal prison for taking \$225,000 in a fraudulent investment scheme. He was convicted and jailed in 2022 on theft-by-deception charges involving nearly \$350,000.

In 2023, he admitted committing federal securities fraud for bilking investors, including friends, stemming from that same case, served four months in jail and was ordered to pay restitution.

Antar is currently free under an intensive supervision program, and says he has been informally counseling young people with gambling problems.

“Who better than me to show them what this can become?” he said.

SB0488-hb0947.pdf

Uploaded by: Karla Mooney

Position: UNF

SB0488/HB0947

Civil Actions – Public Nuisances – Firearm Industry Members (Gun Industry Accountability Act of 2024)

Karla Mooney
21175 Marigold St
Leonardtown MD 20650
Resident of St. Mary' County Dist. 29C

I am State Director of The DC Project-Women for Gun Rights and the State Leader of the Armed Women of America. I stand in solidarity with the Ladies of both groups, numbering many more than just myself. I am also a professional Multi-disciplined Firearms Instructor and Maryland QHIC.

This is a bill written to take away accountability to the person who committed a crime with a firearm. This is a direct violation of PLACCA. Unless the seller of the firearm was indeed breaking the law by selling to a minor, or a straw purchase or someone visibly intoxicated who then uses the firearm to injure themselves or others – he or she is not breaking any law by selling the firearm.

Much like other bills entered for consideration, this bill is missing the mark. Firearms are a self-defense tool of last resort. Meaning there was no other way to protect yourself or your loved ones for great bodily harm or death. With crime rising in the state, the need for more individuals to be able to protect themselves and their loved ones has also risen. The safety of one's self is certainly a right is it not? I believe it is.

There is a scripture from the bible that speaks to this issue that I would like to remind you of:
Mark:7:20-23

“HE went on: What comes out of a person is what defiles them. For it is from within, out of a person's heart that evil thoughts come-sexual immorality, theft, murder, adultery, greed, malice, deceit, lewdness, envy, slander, arrogance and folly. All these evils come from inside and defile a person.”

Please consider that you are trying to legislate out evil of a person, not a manufacture or retailer. I oppose this bill and ask for an unfavorable report on it.

MSI Testimony on SB 488 and HB 947 PLCAA final.pdf

Uploaded by: Mark Pennak

Position: UNF



President
Mark W. Pennak

February 14, 2023

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 488 and HB 947

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 the District of Columbia and the Bar of Maryland. 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 and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home, muzzle loading, as well as a range safety officer. I appear today in opposition to SB 113 and its cross-file, HB 259 (collectively referred to herein as “the Bill” or “this Bill”).

The Bill: This Bill defines a new offense of “public nuisance” and is designed to negate the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901, *et seq.* (“PLCAA”). It provides a new duty of care on a “firearm industry member” a term that is defined by the bill to include “A PERSON ENGAGED IN THE SALE, MANUFACTURING, DISTRIBUTION, IMPORTING, OR MARKETING” of any “a “firearm-related product,” a term that is defined to include all firearms and ammunition, including mere “COMPONENTS” of firearms and ammunition.

The Bill provides that “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.” The bill does not define “components.” Nor does the bill attempt to define “reasonable under the totality of the circumstances.”

The Bill then provides, in a separate provision, that “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.” The Bill also imposes an additional requirement that “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." A violation of either one of these provisions is declared to be "A PUBLIC NUISANCE."

In a separate section, the Bill then creates new causes of action, providing that the Attorney General of the State may bring a suit against any such industry member for any violation of the "public nuisance" created by the Bill. Likewise, the Bill provides that a civil suit may be brought against such industry member by "FOR INJURY OR LOSS SUSTAINED AS A RESULT OF A VIOLATION" of the "nuisance" provisions. The Attorney General "may seek (I) INJUNCTIVE RELIEF. (II) RESTITUTION; (III) COMPENSATORY AND PUNITIVE DAMAGES; (IV) REASONABLE ATTORNEY'S FEES AND COSTS; AND (V) ANY OTHER APPROPRIATE RELIEF." The private plaintiff likewise "may seek and be awarded" the same relief (except for "any other appropriate relief"). Under the Bill, neither the private plaintiff nor the Attorney General need prove that any industry member acted with "any intent to violate" these provisions.

THE BILL IS UNCONSTITUTIONALLY VAGUE:

The Vagueness Standard:

Article 24 of the Maryland Declaration of Rights prohibits the enactment or enforcement of vague legislation. Under Article 24, "[t]he void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001). A statute must provide "legally fixed standards and adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]" and "must eschew arbitrary enforcement in addition to being intelligible to the reasonable person." (Id. at 615). Under this test, a statute must be struck down if it is "so broad as to be susceptible to irrational and selective patterns of enforcement." (Id. at 616). See also *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020). "A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999)). Under this test, a statute must be struck down if it is "so broad as to be susceptible to irrational and selective patterns of enforcement." *Galloway*, 365 Md. at 616, quoting *Bowers v. State*, 283 Md. 115, 122, 389 A.2d 341 (1978). See also *Ashton v. Brown*, 339 Md. 70, 89, 660 A.2d 447 (1995); *In Re Leroy T.*, 285 Md. 508, 403 A.2d 1226 (1979).

The void for vagueness doctrine applies to laws imposing civil penalties as well as to laws imposing criminal penalties. *Madison Park North Apartments, L.P. v. Commissioner of Housing and Community Development*, 211 Md. App. 676, 66 A.3d 93 (2013), *appeal dismissed*, 439 Md. 327, 96 A.3d 143 (2014). See also *Parker v.*

State, 189 Md. App. 474, 985 A.2d 72 (2009) (“the criteria for measuring the validity of a statute under the vagueness doctrine are the same as in a non-First Amendment context: fair warning and adequate guidelines”); *Neutron Products, Inc. v. Department Of The Environment*, 166 Md.App. 549, 609, 890 A.2d 858 (2006) (“Maryland courts have applied the void for vagueness doctrine to civil penalties”) (citing *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 591, 846 A.2d 377, *cert. denied*, 543 U.S. 862 (2004) (applying the void for vagueness analysis to regulations imposing sanctions on physicians)).

Federal constitutional law is in accord. See, e.g., *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074, 1079 (4th Cir. 2006) (recognizing that “[a] statute is impermissibly vague if it either (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits or (2) authorizes or even encourages arbitrary and discriminatory enforcement” (internal quotations omitted)). Such a statute need not be vague in all possible applications in order to be void for vagueness under the Due Process Clause. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision’s grasp”). And the rule is well established that the government “cannot find clarity in a wholly ambiguous statute simply by relying on the benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1322 (11th Cir. 2017) (en banc). Such statutes are facially invalid.

The Bill Is Hopelessly Vague:

The ban on “unreasonable” conduct is vague.

This Bill fails under Article 24 in multiple ways. First, the duty of care created by the bill bars conduct that is not only “unlawful,” but also imposes liability on an industry member who “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.”

That standard is hopelessly vague as the bill does not define “UNREASONABLE UNDER THE TOTALITY OF THE CIRCUMSTANCES.” There is simply no feasible way for a dealer or other industry member to know, ahead of time, what conduct is “unreasonable” under this standard. To pass muster under the Due Process Clause, a statute banning “unreasonable” conduct must provide an “objective” and “quantifiable” standard by which reasonableness is measured. See, e.g., *Munn v. City of Ocean Springs, Miss.*, 763 F.3d 437, 440-41 (5th Cir. 2014), citing *Coates v. City of Cincinnati*, 402 U.S. 611, (1971) (explaining that statute criminalizing “annoying” others was “vague” because “no standard of conduct is specified at all”). See also *United States Telecom Ass’n v. FCC*, 825 F.3d 674, 736 (D.C. Cir. 2016) (holding that a prohibition on “unreasonable” conduct gave “sufficient notice to affected entities of the prohibited conduct going forward” **where the regulation “set forth the factors” for enforcement and “included a description of**

how each factor will be interpreted and applied.”) (emphasis supplied). This Bill does not even approach affording such notice. If there is no standard, there is no notice to the “industry member” as to what circumstances may “contribute to harm to the public.” Indeed, in allowing the Bill never even defines that what qualifies as “harm to the public.” The Attorney General and private plaintiffs may not make up unreasonable conduct through ad hoc litigation. Prior notice is required. Under this Bill, conduct that is entirely lawful could nonetheless be deemed “unreasonable” and thus constitute a “public nuisance.” Arbitrary and discriminatory enforcement is virtually guaranteed.

The term “reasonable controls” is vague.

The additional requirement that the “industry member” “establish and implement reasonable controls” is likewise vague. The term “reasonable controls” is defined as “policies” that are “designed to (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 1 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.” As thus defined every one of these acts are already barred by federal and/or State law. See, e.g., 18 U.S.C. §§ 922(b), (d), (h), (n).). Maryland law goes well beyond federal law, imposing, for example, security requirements on licensed dealers. House Bill 1021, 2022 Session Laws, Ch. 55.

Persons who knowingly participate in in criminal activities may also be charged as aiders and abettors under federal law, 18 U.S.C. § 2, or as accessories under State law. *State v. Hawkins*, 326 Md. 270604 A.2d 489 (1992). If the Bill is intended to provide that industry members need only comply with existing law, then the Bill is ridiculous. One hardly needs a law that commands someone to obey the law. The Bill must thus be intended to impose additional requirements, none of which are specified. There is no standard by which these additional requirements are to be determined. Beyond these pre-existing provisions, there is simply no way for an ”industry members” to know what a “reasonable control” would constitute. What additional steps or “controls” must the industry member impose other than those already required by law? The Bill is silent.

This bill thus does not purport to incorporate specific standards, such as set out in MD Code, Commercial Law, § 13-301, a provision that bans the use of “deceptive trade practices,” as specifically defined in that provision. See *American Home Products Corp. v. FTC*, 695 F.2d 681, 710 (3d Cir. 1982) (setting aside an FTC unfair practices order as “excessively vague and overbroad”). The industry member is thus left completely at sea concerning the scope of this provision and its meaning and is thus threatened with potentially enormous litigation burdens and liability. The discretion of the enforcing official or plaintiff is virtually unlimited. Again, there are simply no enforcement “guidelines” as required by Article 24. Courts may “not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *United States v. Stevens*, 559 U.S. 460, 480 (2010). See also *Dubin*

v. United States, 599 U.S. 110, 132 (2023) (same); *McDonnell v. United States*, 579 U.S. 550, 576 (2106) (same); *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir. 2011) (same).

Unlike New York legislation from which this Bill was apparently copied (at least in part), N.Y. Gen. Bus. Law §§ 898-b, the vagueness of this Bill is not alleviated by any existing Maryland general “public nuisance” statute or other statutes containing the same language. Compare MD Code, Alcoholic Beverages, § 29-2612 and MD Code, Alcoholic Beverages, § 32-2614 and MD Code, Alcoholic Beverages, § 27-2616 (public nuisance associated with the illegal sale of alcohol); MD Code, Criminal Procedure, § 10-105(a) (allowing expungement of “public nuisance” crimes). See generally *In re Expungement Petition of Meagan H.*, 2022 WL 3153968 (Ct. of Sp. Appeals 2022) (listing public nuisance crimes for discreet and clear misconduct). Indeed, the rule in Maryland is that “[w]hile a private party may seek an injunction against a public nuisance, **it must have an interest in property injured by the nuisance and have suffered damage distinct from that experienced by other citizens.**” *Brady v. Walmart Inc.*, 2022 WL 2987078 at *17 (D. Md 2022) (applying Maryland law) (emphasis added). This Bill would permit a private recovery and injunctive relief for any “harm to the public” and thus dissolves the requirement that the plaintiff must have suffered “damage distinct” from that of other citizens. The Bill thus improperly authorizes suits by persons **who may not sue under controlling “public nuisance” case law.**

Moreover, unlike in New York, where there was long-standing statutory and case law that provided definitions and clarity to the virtually identical language used in the New York gun legislation, there is no comparable body of Maryland law addressing these terms. Compare *NSSF v. James*, 604 F.Supp.3d 48, 65-66 (N.D.N.Y. 2022), *appeal pending*, No. 22-1374 (2d Cir.) (holding that Section 898 was not void for vagueness because it tracked other New York law dating back to 1965 which provided explicit definitions, in the statute or in the case law, for the same terms). The district court in *James* declined to enjoin the New York statute under PLCAA, holding that it was enough under PLCAA predicate statute if the statute “expressly regulates firearms.” (604 F.Supp. at 59-61). The NSSF took an appeal to the United States Court of Appeals for the Second Circuit which heard oral argument on November 3, 2023. While the Second Circuit’s decision has yet to be issued, that argument did not go well for New York. Indeed, this Bill is even more extreme than the New York statute, which declared to be a nuisance only that conduct that “endangers the safety or health of the public,” not merely conduct that “harms the public” in some undefined way. See N.Y. Gen. Bus. Law §§ 898-c, declaring a violation of N.Y. Gen. Bus. Law §§ 898-b.

The Bill’s use of “knowingly or reckless conduct” is not a limit on liability

The Bill’s requirement that the conduct be “knowingly” or “reckless” is meaningless here. The requirement of “knowingly” means that person knows that the conduct is illegal and does it anyway. See, e.g., *Chow v. State*, 393 Md. 431 (2006) (holding that a knowing violation of a Maryland statute making it unlawful for a person who is not a regulated gun owner to sell, rent, transfer, or purchase any regulated firearm without complying with the application process and seven-day waiting

period requires that a defendant knows that the activity they are engaging in is illegal). See also *Rehaif v. United States*, 139 S.Ct. 2191 (2019) (holding that the “knowingly” requirement on the federal ban on possession of a firearm by an illegal alien required proof that the alien actually knew that he was illegally in the United States).

Here, it is virtually impossible to “knowingly” engage in prohibited conduct where the Bill sanctions **not only** “unlawful” conduct, but also bans utterly undefined “unreasonable” conduct. Again, the Bill does not even set forth any criteria by which “unreasonable” conduct is measured. For the same reason, it is equally impossible to be “reckless” about such conduct where the Bill establishes no standards by which “recklessness” can be assessed ahead of time. There are simply no enforcement “guidelines” as required by Article 24. *Compare* MD Code Criminal Law § 2-210 (punishing “death of another as the result of the person's driving, operating, or controlling a vehicle or vessel in a criminally negligent manner” and defining criminally negligent as occurring where “(1) the person should be aware, but fails to perceive, that the person's conduct creates a substantial and unjustifiable risk that such a result will occur; and (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person”), sustained against a vagueness challenge in *Bettie v. State*, 216 Md. App. 667, 682, 88 A.3d 906 (2014). The industry member is left to guess. The potential liability is limitless and there is simply no way to guard against it as no industry member will have prior notice.

The effect on Maryland industry members.

As should be apparent from the foregoing discussion, this Bill creates an impossible business environment for “industry members” in Maryland. Industry members simply have no possible way to anticipate what conduct will cross the line and subject them to ruinous litigation costs and potentially huge judgments. Because of the vagueness of this Bill, there are no steps that the industry members can take to minimize the risk of liability. If the purpose of the bill is to change or cabin industry behavior, then notice must be provided. Otherwise, the bill is just punitive and can only be viewed as designed to put industry members out of business with crippling litigation costs and damage awards, including punitive damages. Because the standard for liability is potentially limitless, there is no way “industry members” will be able to obtain liability insurance to protect themselves.

Smart dealers and other industry members will seek to minimize exposure by moving their operations out of Maryland. That may well be the intent behind this Bill in the demonstratively false belief that such a result will result in fewer guns in Maryland. But that will not happen because Marylanders will merely purchase firearms and ammunition from out-of-State sources. Dealers in neighboring States are just a relatively short drive away. The supply of firearms will not diminish; the location of the sources will simply change, and Maryland will lose tax revenue and jobs. That happened in 2013 when Maryland passed the Firearms Safety Act of 2013. A major Maryland firearms manufacturer, Beretta, moved out of Maryland to Tennessee. See <https://www.nbcwashington.com/news/local/beretta-moves-all-manufacturing-out-of-md-after-state-passes-new-gun-bill/2071229/>.

Second Amendment Concerns:

Such vagueness is particularly intolerable because this Bill affects the exercise of rights under the Second Amendment to the Constitution. See, e.g., *City of Chicago v. Morales*, 527 U.S. 41, 53 (1999) (striking down a vague ordinance on grounds it affected a liberty interest protected by the Due Process Clause). Specifically, under *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. Chicago*, 561 U.S. 742, 750 (2010), and *NYSRPA v. Bruen*, 142 S.Ct. 2111 (2022), the Second Amendment protects the right of a law-abiding citizen to acquire firearms, including handguns. See *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). That right to acquire a firearm has already been recognized in Maryland in the HQL litigation. See *MSI v. Hogan*, 566 F.Supp. 3d. 404, 424 (D.Md. 2021) (“The requirements for the purchase of a handgun, as set out in the HQL law, undoubtedly burden this core Second Amendment right because they ‘make it considerably more difficult for a person lawfully to acquire and keep a firearm ... for the purpose of self-defense in the home.’”), quoting *Heller v. District of Columbia*, 670 F.3d 1244,1255 (D.C. Cir. 2011). See also *MSI v. Moore*, 86 F.4th 1038, 1043 (4th Cir. 2023), *rehearing granted*, 2024 WL 124290 (4th Cir. Jan. 11, 2024) (holding that the right to acquire firearms was implicit in the right to “keep and bear arms”). Under federal and State law, firearms are principally “acquired” from or through “industry members.” Regulations, like this Bill, that impose potentially huge liability on “industry members” necessarily affect the exercise of Second Amendment rights of Marylanders to acquire firearms for their own self-defense.

Firearm dealers also have an ancillary Second Amendment right to sell firearms to law-abiding citizens. See, e.g., *Teixeira v. County of Alameda*, 873 F.3d 670, 676-78 (9th Cir. 2017) (en banc), *cert. denied*, 138 S.Ct. 1988 (2018). Under this precedent, any law that “meaningfully constrain[s]” a customer from having “access” to a dealer is actionable under the Second Amendment. 873 F.3d at 680. See also *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 216 (4th Cir. 2020) (holding that a firearms dealer had Second Amendment standing to challenge Maryland’s HQL statute and may sue on its own behalf and had third party standing to sue on behalf of its “customers and other similarly situated persons”). Regulation of dealer operations and that of other “industry members” is thus imbued with constitutional concerns.

Such infringements of this right to access to a dealer are open to challenge under the June 2022 decision of the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2126-27 (2022), where the Court established a new text, history, and tradition test for assessing Second Amendment challenges. There is no historical tradition that would support the State-wide imposition of ruinous liability potential on sellers of firearms. See *Pizza di Joey*, 470 Md. at 904 (“a person may assert a facial vagueness challenge if the challenged statute implicates the First Amendment *or another fundamental right*”) (emphasis added). Enforcement prosecutions under this Bill will likely drive many if not most dealers out of business. Any intent or desire to thus regulate dealers to the point of near extinction is constitutionally illegitimate. The Bill is, and is obviously designed to be, extremely punitive.

The Bill Is Contrary To The PLCAA:

PLCAA:

As enacted by Congress, the PLCAA expressly provides that a “**qualified civil liability action may not be brought in any Federal or State court.**” 15 U.S.C. § 7902(a). A “qualified liability act” is defined by the PLCAA to mean “a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party...” 15 U.S.C. § 7903(5)(A). This ban on suits expressly covers all “qualified products” which are defined to mean any “firearm” or “ammunition or any “component part of a firearm or ammunition.” 15 U.S.C. § 7903(4). “Congress enacted the PLCAA upon finding that manufacturers and sellers of firearms “are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products ... that function as designed and intended.” *Prescott v. Slide Fire Solutions, LP*, 341 F.Supp.3d 1175, 1187 (D. Nev. 2018), quoting *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009), (quoting 15 U.S.C. § 7901(a)(5)).

PLCAA creates a “predicate exception” to preemption, providing that “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.” 15 U.S.C. § 7903(5)(A)(iii). This reference to “proximate cause” makes clear that Congress intended to ban suits in which liability where harm was caused by “the criminal or unlawful” use of a firearm by another, finding that sellers and manufacturers of firearms “are not and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.” 15 U.S.C. § 7901(a)(5). Congress further found that suits based on harm caused by third parties would represent an improper “expansion of liability” that “would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.” 15 U.S.C. § 7901(a)(7). See generally, *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), *cert. denied*, 560 U.S. 924 (2010) (discussing the purposes of the PLCAA); *City of New York v. Beretta*, 524 F.3d 384 (2d Cir. 2008), *cert. denied*, 556 U.S. 1104 (2009) (same).

As noted, Congress did create the “predicate exception” to preemption. Such suits are strictly defined to include:

[A]n 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**, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18.

15 U.S.C. § 7903(5)(A)(iii) (emphasis added).

Congress likewise permitted suits for “physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, ***except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.***” 15 U.S.C. § 7903(5)(A)(v) (emphasis added). Other types of suits are similarly permitted, such as suits for breach of warranty or contract (§7903(A)(5)(iv)), or where suit is brought against a transferor convicted of illegally selling a qualified product under 18 U.S.C. § 924(h) (punishing a person who “knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)...”). 15 U.S.C. § 7903(5)(A)(i). Congress likewise permitted suits for “negligent entrustment or negligence per se.” (Section 7903(5)(A)(ii)).

Similarly, in Section 7903(5)(A)(v), the PLCAA allows suits for a “defect in design or manufacture,” but provides that “where the discharge of the product was caused by a volitional act that constituted a criminal offense, **then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.**” (Emphasis added). Proximate causation is central to the preemption posed by PLCAA. Under Section 7901, Congress declared that “[t]he liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law.” See *Ileto*, 565 F.3d at 1135. Thus, by requiring proximate cause in crafting the limited exceptions to the ban, Congress made clear its intent to ban a suit where the harm is **not** the proximate cause of the injury or harm **under the common law**, as construed throughout the United States. See, e.g., *District of Columbia v. Beretta USA, Corp.*, 940 A.2d 163, 171 (2008) (noting that “the predicate exception requires proof that, despite the misuse of the firearm by a third person, ‘the [statutory] violation was a proximate cause of the harm for which relief is sought’”), quoting § 7903(5)(iii); *Soto v. Bushmaster Firearms International, LLC*, 331 Conn. 53, 98, 202

A.3d 262 (2019), *cert. denied*, 140 S.Ct. 513 (2019) (noting that “[p]roving such a causal link at trial may prove to be a Herculean task”).

The Bill Illegally Imposes Liability For Undefined “Unreasonable” Conduct:

This Bill does not satisfy the “predicate exception” requirements of 15 U.S.C. § 7903(5)(A)(iii). Again, that provision allows suits for only “knowing” violations of law. This Bill does not create such a law because it is impossible to have a knowing violation where the Bill punishes merely “unreasonable” conduct without creating a specific standard for measuring reasonable. The knowing violation requirement has thus led a federal district court to invalidate, under PLCAA, a virtually identical New Jersey statute, N.J.S.A. 2C:58-35. See *NSSF v. Platkin*, 2023 WL 1380388 (D.N.J. Jan. 31, 2023). Specifically, the court held:

The knowingly requirement of the predicate exception necessitates the actor **to have a sufficiently concrete duty to have knowingly violated a relevant statute**. It is contrary to the PLCAA to hold an industry member liable who complies with all laws but did not know that it failed to employ ‘reasonable procedures, safeguards, and business practices,’ or has conducted its lawful business in a manner so ‘unreasonable under all the circumstances’ that it can be said to have “contribute[d] to” “a condition which ... contributes to the injury or endangerment of the health, safety, peace, comfort, or convenience of others.

Slip op. at *6 (emphasis added). As this holding makes clear, a “knowing” violation cannot be found where the statute does not adequately define the standard under which a violation can be found. Only those statutes that impose obligations that an industry member can know it is violating in real time can be predicate statutes. Full stop. This Bill is virtually identical to that part of the New Jersey statute and will fail for the same reason.

This Bill imposes no standard for assessing reasonableness and thus effectively imposes regulation by litigation. That reality defeats the preemption envisioned by Congress. That provision provides that “civil liability actions” may not be brought in any State or Federal court, 15 U.S.C. § 7902(a), and requires the immediate dismissal of any such suit that had been brought. *Id.* § 7902(b). The preemption thus runs to the **suit**, not merely to liability because Congress understood that it was the **litigation itself** that was “an abuse of the legal system” and thus a threat to “lawful commerce” in firearms. See 15 U.S.C. § 7901(a)(6) (“The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.”).

These underlying purposes were recently stressed in *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 2024 WL 227773 at *15 (1st Cir. 2024). There, the First Circuit rejected the plaintiff’s (Mexico) claim that PLCAA did not

apply to a suit by a foreign sovereign as well as the plaintiff's claim that the defendant "knowingly violated" the Federal ban on the sale of machineguns by allowing the sale of semi-automatic firearms (such as an AR-15), which could be converted to fully automatic firearms. The court held that the "knowing possession of a readily convertible semiautomatic weapon does not constitute de facto knowing possession of a 'machinegun'" and thus the sale of a semi-automatic firearm could not be a "knowing" violation of federal law. *Id.* at *16. The court stressed that semi-automatic firearms are perfectly legal under federal law. *Id.* at *15-*16. The court did allow the claim to go forward that the defendants sold firearms to dealers who the defendants allegedly **knew** were **illegally** selling firearms to members of Mexican drug cartels, holding that such sales would satisfy the predicate exception's requirement for a "knowing violation" of federal law. *Id.* at *14. It remanded the case, stressing that Mexico still had to prove that claim.

As this decision makes clear, PLCAA bars suits against industry members for sales that are otherwise legal under State and federal law. Yet, this Bill impermissibly imposes liability for "unreasonable" conduct and for failing to impose "reasonable controls and procedures" **in addition** to liability for illegal conduct. It is nonsense to say that an industry member who complies with all the many laws that explicitly state what it may and may not do can nonetheless "know" in real time that its actions were "unreasonable" or that it failed to employ "reasonable controls and procedures" that "contributed" to a "public harm," where "contributed" and "public harm" are not even defined. Indeed, as discussed below, it is highly doubtful that liability for "contributing" to a harm can satisfy PLCAA's proximate causation requirement. The suits authorized by undefined "unreasonable" conduct in this Bill are thus flatly preempted by PLCAA.

The Bill Illegally Allows Liability Without Regard to Proximate Causation:

The predicate statute requirement of Section 7903(5)(iii) makes clear that suits are allowed only if and when "the knowing" violation of a State or federal statute "was a proximate cause of the harm for which relief is sought." As very recently stated by the Supreme Court of New Hampshire, "[o]ne of the PLCAA's purposes is to shield firearms manufacturers and sellers from liability for injuries 'solely caused' by the misuse of firearms by third parties." *Hardy v. Chester Arms, LLC*, --- A.3d ---, 2024 WL 332134 at *5 (N.H. Jan. 30, 2024), citing 15 U.S.C. § 7901(b)(1), and 15 U.S.C. § 7901(a)(6)-(7). See also *Estados Unidos Mexicanos*, 2024 WL 227773 at *19 (under PLCCA, the plaintiff must show that "its alleged harms are proximately caused by defendants' actions, and not merely derivative of harms to its citizens"). As discussed below, Maryland has abundant case law on this proximate causation requirement. This Bill ignores the proximate causation requirement in imposing liability for mere "harm to the public."

In *NSSF*, the district court relied on this point in finding that the PLCAA proximate causation requirement was violated by a New Jersey statute that is virtually identical to this Bill. The court ruled that the New Jersey law "would subject manufacturers, distributors, dealers, and importers of firearms or ammunition products and their trade associations to civil liability for the harm *solely caused by the criminal or unlawful misuse of firearm* or ammunition products by others." Slip

op. at *7 (emphasis added). The court in *NSSF* thus awarded preliminary injunctive relief, finding that the plaintiffs and its members would suffer immediate irreparable injury. As explained above, suits for harm caused by criminal misuse of firearms are flatly barred by PLCAA. And as stressed by the First Circuit in *Estados Unidos Mexicanos*, an actual knowing violation of an existing known requirement is still required under the predicate exception.

We acknowledge of course that the district court decision in *NSSF* was recently vacated on appeal by the Third Circuit, but that court merely held that the particular plaintiffs in that case lacked Article III standing to bring a pre-enforcement challenge. *NSSF v. Platkin*, 80 F.4th 215 (3d Cir. 2023). The Third Circuit did not reach the merits and did not suggest that the district court was incorrect on the merits. Thus, the merits of the New Jersey statute may still be challenged in any enforcement action when the statute is enforced on the same grounds on which the district court ruled. Even assuming *arguendo* that the Third Circuit's Article III standing decision is correct, this Bill suffers from the same flaws as the New Jersey statute and will likewise fail on the first enforcement attempt. It should also be noted that the Third Circuit's standing decision is based on Article III considerations in federal court. The standard for standing to bring a pre-enforcement suit in the Maryland courts simply requires that plaintiff be affected or aggrieved in a way different than the general public. That standard for suits in State courts is much less demanding than Article III requirements, particularly where (as here) the regulation at issue "implicates" the regulated entity's constitutional rights. See *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 362-64, 235 A.3d 873 (2020) (collecting case law).

Finally, the Bill fails PLCAA's ban on suits in any court on a cause of action that would impose liability stemming from the misuse of a firearm. Specifically, as noted, the PLCAA flatly bans any suit where the harm results "from the criminal or unlawful misuse of a qualified product by the person or a third party." While this Bill does not expressly allow such recovery, the Bill does allow liability to be imposed for any "harm to the public" through any sale or practice that is, though perfectly legal, is found to be nonetheless "unreasonable." "Harm to the public" is utterly undefined. The obvious intent of the Bill is to reach *any* "harm to the public" that may remotely be said to flow from any industry practice, including harm resulting from criminal misuse of firearms. Liability for criminal or third-party misuse violates PLCAA's proximate causation. In allowing recovery for harm to the public flowing from criminal misuse of a firearm, the Bill violates PLCAA.

Maryland law of proximate causation:

Stated simply, "industry members" do not owe a "duty of care" to the "public" to prevent "harms" that arise from the acts of third parties who may use firearms illegally or improperly. And that is true regardless of whether the harm is "unreasonable under the totality of the circumstances." The common law proximate causation rule in Maryland, like other states, is that a criminal act of a third party is an intervening or superseding cause that prevents liability from being assigned to the defendant as a matter of law. See generally, W.P. Keeton, Prosser and Keeton

on the Law of Torts § 44, at 305 (5th ed. 1984); Restatement (Second) of Torts § 448 (1965). That sort of liability is exactly what PLCAA forbids.

Thus, in *Valentine v. On Target, Inc.*, 353 Md. 544, 727 A.2d 947 (1999), the Maryland Court of Appeals (now renamed as the “Supreme Court of Maryland”) expressly rejected the claim brought against a firearms dealer by the estate and survivors of a victim who was shot and killed by an unknown assailant who used a gun stolen from the dealer. The court held that it did not “discern in the common law the existence of a third-party common-law duty that would apply to these facts.” 353 Md. at 553. As stated in *Valentine*, “[o]ne cannot be expected to owe a duty to the world at large to protect it against the actions of third parties, which is why the common law distinguishes different types of relationships when determining if a duty exists.” *Valentine*, 353 Md. at 553, 727 A.2d at 951. The Court of Appeals reached the same result in *Warr v. JMGM Group, LLC*, 433 Md. 170, 71 A.3d 347 (2013), where the court applied *Valentine* to hold that a bar owner owed no duty to third parties or to the public when an intoxicated bar patron caused an accident after leaving the bar.

Both *Valentine* and *Warr* apply the general common law that establishes a bright line rule that this lack of a duty obtains regardless of whether the harm was, in some sense, “foreseeable.” *Valentine*, 353 Md. at 556 (“although the inherent nature of guns suggests that their use may likely result in serious personal injury or death to another this does not create a duty of gun dealers to all persons who may be subject of the harm”); *Warr*, 433 Md. at 183 (“When the harm is caused by a third party, rather than the first person, as is the case here, *our inquiry is not whether the harm was foreseeable, but, rather, whether the person or entity sued had control over the conduct of the third party who caused the harm* by virtue of some special relationship”). (Emphasis added). In short, *Valentine* and *Warr* applied the common law, and the common law in Maryland plainly rejects the Bill’s imposition of liability merely because a lawful (but “unreasonable”) practice resulted in “harm to the public.” See also *Ford v. Edmondson Village Shopping Center Holdings, LLC*, 251 Md.App. 335, 254 A.3d 138 (2021) (discussing *Valentine*). The Bill’s attempt to impose a legal duty on industry members to the public at large without regard to intervening causes is directly contrary to the common law, as these cases make plain. Indeed, imposing liability for the acts of third parties that result in harm to the public is **precisely** the type of suit banned by the PLCAA in Section 7902 and Section 7903(5)(ii).

Because the PLCAA expressly bars actions in any “court,” the State is not free to authorize suits that ignore proximate causation requirements in enacting a “public nuisance” statute directed at the entire firearms industry. As the Supreme Court recently noted, “[t]he Supremacy Clause provides that ‘the Judges in every State shall be bound’ by the Federal Constitution, ‘any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’” *Espinoza v. Montana Depart. of Revenue*, 140 S.Ct. 2246, 2262 (2020). Thus, the Supremacy Clause “creates a rule of decision’ directing state courts that they ‘must not give effect to state laws that conflict with federal law[].’” *Id.*, quoting *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324 (2015). The Bill’s authorization of suits for “harm to the

public” without regard to proximate causation and the other provisions of the PLCAA is preempted.

The Bill Is Preempted By PLCAA In Other Ways:

The Bill conflicts with the PLCAA in other ways. First, this bill provides that an industry member is subject to liability if the industry member knowingly or recklessly engages in the MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING of firearm-related products and that conduct that is “unlawful” or merely “unreasonable.” That broad liability is inconsistent with the predicate exception in PLCAA, which allows liability if the “**manufacturer or seller**” (and only these members of the industry) knowingly violated “a State or Federal statute **applicable to the sale or marketing of the product.**” (Emphasis added). This Bill is broader as it imposes liability not only on the “manufacturer or seller” it also imposes liability on any “firearm industry member” who is defined to include any “PERSON ENGAGED IN THE SALE, MANUFACTURE, DISTRIBUTION, IMPORTATION, OR MARKETING OF A FIREARM-RELATED PRODUCT.” The PLCAA preempts the Bill’s attempt to regulate more broadly the MARKETING, DISTRIBUTION, IMPORTATION of these products and by persons who are not a “manufacturer or seller.”

The Bill also impermissibly allows liability for “reckless” conduct. The narrow exceptions carved out by Section 7903(5)(A)(iii) require a “knowing” violation of a record keeping requirement or a “knowing” violation of a State or Federal statute “applicable to the sale or marketing of the product.” The Supreme Court has held that “in order to establish a ‘willful’ violation of a statute, ‘the Government must prove that the defendant **acted with knowledge that his conduct was unlawful.**” *Bryan v. United States*, 524 U.S. 814, 191-92 (1998), quoting *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994) (emphasis added). The same point applies to “knowing.” See *Rehaif v. United States*, 139 S.Ct. 2191 (2019) (holding that the “knowingly” requirement on the federal ban on possession of a firearm by an illegal alien required proof that the alien knew that he was illegally in the United States). In contrast, this bill imposes liability where the industry member “recklessly” engaged in conduct. Nothing in these provisions of the PLCAA permits liability for “reckless” conduct. “Recklessness” is a deliberate indifference to the risk of harm, while “knowingly” requires that the actor knows that the conduct is illegal. See *County of Sacramento v. Lewis*, 523 U.S. 833, 850-51 (1998). Any liability under the bill for “reckless” conduct is thus preempted. “Reckless” behavior and “knowingly” behavior are simply not the same, as any first-year law student knows.

Third, as noted above, this Bill also imposes liability for conduct that is merely “UNREASONABLE.” As explained above, because this element is undefined and incredibly vague, it is impossible to “know” whether a particular conduct is illegal under this amorphous standard and thus “knowingly” violate it. In any event, the PLCAA also sharply limits a state’s authority to impose liability for third party conduct for “unreasonable” conduct. Section 7903(5)(A)(iii)(II), allows suits where the “the manufacturer or seller” knew or had “reasonable cause to believe that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition **under subsection (g) or (n) of section 922 of Title 18.**”

(Emphasis added). Subsection (g) bans possession of a modern firearm or modern ammunition by a prohibited person and subsection (n) bans such possession by a person under indictment for a crime punishable by more than one year.

This provision of the PLCAA requires that the violation involve these **two sections** of the U.S. Code. Only this subsection of PLCAA allows “a reasonable cause to believe” standard. Otherwise, a “knowing violation” is required by the predicate exception of PLCAA. This exception to preemption in the PLCAA is thus far narrower in scope than the potentially massive liabilities for “UNREASONABLE” conduct. The liability imposed by this Bill goes far beyond any such sales in violation of subsection (g) and (n), as it imposes liability for **any** knowingly “unreasonable” conduct. As the district court’s decision in *NSSF* makes clear, it is quite impossible to be “knowingly” “unreasonable” where “unreasonable” is never defined by reference to any standard, either objective or subjective. That provision of the Bill and the Bill’s application to all firearms industry members are thus preempted. Another exception to the preemption ban involving “reasonableness” is set out in Section 7903(5)(A)(v), which allows suits where the harm “resulting directly from a defect **in design or manufacture of the product**, when used as intended or in a **reasonably foreseeable** manner.” (Emphasis added). The liability allowed by this Bill is not limited to harm caused by a defect in “design or manufacture.”

Section 7903(5)(A)(ii) allows actions against “a seller” (and only a “seller”) for “negligent entrustment or negligence per se.” Since this provision is limited to a “seller” it does not authorize any suit against any other type of “industry member.” Moreover, the term “negligent entrustment” is defined by Section 79003(5)(B) as meaning “the supplying of a qualified product by a seller for use by another person when the seller **knows, or reasonably should know**, the person to whom the product is supplied **is likely to, and does, use the product** in a manner involving unreasonable risk of physical injury to the person or others.” This definition is a limitation on the exception and the exception thus reaches only conduct where the product is both “likely” to be used and **is in fact** used in a manner involving an “unreasonable risk of physical injury.” It does not allow suits for any “UNREASONABLE” conduct as this bill does. This additional liability imposed by the Bill goes beyond that allowed by the PLCAA and is thus preempted.

Indeed, Maryland’s law of negligent entrustment is still narrower as, under Maryland law, “the doctrine of negligent entrustment is generally limited to those situations in which the chattel is under the control of the supplier at the time of the accident” and that “without the right to permit or prohibit use of the chattel at the time of the accident, an individual cannot be liable for negligent entrustment.” *Broadwater v. Dorsey*, 344 Md. 548, 558, 688 A.2d 436 (1997). That is the common law and thus, as explained above, Maryland is not free to abrogate the common law to expand liability to escape preemption under the PLCAA. In this regard, the PLCAA does not create any cause of action and incorporates the common law on what constitutes “negligent entrustment,” as limited by the PLCAA. See Section 7903(5)(C) (providing “no provision of this [statute] shall be construed to create a public or private cause of action”). That means no suit for negligent entrustment would be available under Maryland common law unless the “industry member” had the right to control the use of the “qualified product” **at the time of the incident** that

caused the harm of which the plaintiff complains. Even then, under the PLCAA, the use must cause cognizable **harm** to a person, not merely be “unlawful” or “unreasonable” and cause “harm to the public” (whatever that means). Suits, such as those by the Attorney General authorized in the Bill, are not permissible under this section of the PLCAA in the absence of any harm to an individual. This Bill allows such suits for “harm to the public,” a term that is, again, wholly nebulous, and undefined.

The PLCAA’s carve out for suits alleging “negligence per se” is even narrower. It is well established at common law that such negligence requires a violation of a specific statute, that the person alleging the negligence is within the class of persons sought to be protected, and that the harm suffered is of a kind which the statute was intended, in general, to prevent. *Polakoff v. Turner*, 385 Md. 467, 479, 869 A.2d 837 (2005). Thus, “a violation of a statute or regulation would, at most, establish evidence of ordinary negligence, not gross negligence or negligence per se.” *Johnson v. Lee*, 2019 WL 3283301 at *6 (Md Ct.Sp.App. 2019). See also *Absolon v. DolloHITE*, 376 Md. 547, 557, 831 A.2d 6 (2003). Nothing in this Bill would satisfy the “negligence per se” exception to the preemption imposed by the PLCAA.

The Bill Violates the Commerce Clause and Due Process Clause:

Last, but hardly least, this Bill violates the Commerce Clause **and** the Due Process Clause. The Constitution vests in Congress the “Power” to “regulate Commerce ... among the several States.” U.S. Const. art. I, §8, cl. 3. “Although the [Commerce] Clause is framed as a positive grant of power to Congress,” the Supreme Court has “long held that this Clause also prohibits state laws that unduly restrict interstate commerce.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S.Ct. 2449, 2459 (2019). Applying that principle, the Court has consistently “struck down [state] statute[s]” that “discriminate[] against interstate commerce.” *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986).

By its terms, the Bill applies to “firearm related product,” regardless of where the product is made or distributed. It likewise applies to any “industry member” without regard to where that industry member is located. The Bill thus indisputably applies to conduct taking place in other States. On its face, that is a violation of the Commerce Clause. See, e.g., *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (A state may not enact or enforce legislation that “directly controls commerce occurring wholly outside the boundaries of a State”). As stated in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986), “[w]hen a state statute directly regulates or discriminates against interstate commerce ... [courts] generally [strike] down the statute without further inquiry.” See also *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511 (1935).

While the State may generally enact local legislation that does not discriminate against interstate commerce, *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (plurality opinion), six members of the Supreme Court continue to agree that the Commerce Clause does not allow a State to disproportionately burden interstate commerce under the test articulated in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). See *National Pork Producers*, 598 U.S. at 391-92 (Sotomayor, J.,

and Kagan, J., concurring), *id.*, 598 U.S. at 394-95 (Roberts, C.J., Alito, J., Kavanaugh, J., and Jackson, J., concurring in part and dissenting in part), *id.*, 598 U.S. at 407 n.3 (Kavanaugh, J., concurring in part dissenting in part) (noting a split on this point). *Pike* holds that “[w]here the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld *unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.*” 397 U.S. at 142 (emphasis added). Application of that test, in turn, will depend on “whether it [the State interest] could be promoted as well with a lesser impact on interstate activities.” *Id.* *Pike* remains good law.

Under this Bill, a manufacturer that does not engage in any commerce in Maryland still could be sued in Maryland by the Attorney General or private party for manufacturing, selling, or marketing its products in other states in an “unreasonable” way (whatever that means) or for failing to impose “reasonable controls” (whatever that means) if the conduct merely “contribute[s]” “to harm to the public” (whatever that means). Indeed, nothing in the Bill requires that the “harm to the public” even occur **in Maryland**. Rather, this Bill purports to reach nationwide to every seller, manufacturer, distributor, importer, or marketer of a “firearm related product” merely if it was “reasonably foreseeable that **possession** would occur in the State.” Such “possession” need not be even linked to the “harm to the public.” Here, whatever legitimate interest this State has in preventing “harm to the public” in Maryland can be accomplished by expressly regulating specific conduct taking place *in Maryland* in such a way that a potential defendant has full notice of what is prohibited. This Bill is not so limited. Instead, the Bill will be used to regulate-by-litigation nationwide. *Pike* does not permit a single State to regulate the entire industry, nationwide, just because it is “foreseeable” that a person in Maryland may come into possession of an item after the item is placed into the stream of commerce elsewhere.

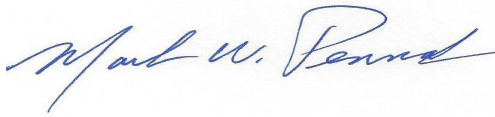
Mere foreseeability of possession is not even sufficient under the Due Process Clause for a State to exercise jurisdiction over an out of state corporation. See, e.g., *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102 110 (1987) (“The ‘substantial connection,’ * * *, between the defendant and the forum State necessary for a finding of minimum contacts **must** come about by an action of the defendant **purposefully directed toward the forum State.**”). (Emphasis added). See also *Daimler AG v. Bauman*, 571 U.S. 117, 132-33 (2014). “Foreseeability” of mere **possession** in Maryland is likewise insufficient under the Commerce Clause. See *National Pork Producers*, at 376 n.1 (plurality opinion) (noting that its decision was limited to circumstances where the out-of-state company “choose” to sell within the state). Thus, the California statute at issue in *National Pork Producers* only purported to regulate sales taking place *in California* if the regulated animals were not reared in accordance with the statute’s requirements. The prohibited conduct, the sale, was expressly tied to California. This Bill is not so limited.

By any measure this Bill disproportionately burdens interstate commerce under *Pike*, and as explained above, it does so in flagrant disregard of the text and purposes of PLCAA, which is expressly intended to protect such interstate

commerce from such State abuse-of-process regulation. See 15 U.S.C. § 7901(a)(8) (“The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.”), id., § 7901(b)(6) (among the purposes of PLCAA is “[t]o preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States”).

Respectfully, enacting a Bill suffering from so many flaws is senseless. We urge an unfavorable report.

Sincerely,



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

SB 488 FEB24 Testimony.pdf

Uploaded by: Mark Schneider

Position: UNF

SB 488

My name is Mark Schneider I am the Vice President of the Maryland Licensed Firearm Dealers Association.

Our Organization opposes SB 488 as it threatens our members' ability to stay in business.

There are many problems with this Bill. Data does not support the claim that Maryland Licensed Firearms Dealers are the source of the reckless, illegal actions of criminals.

We are a highly regulated industry abiding by both federal and state statutes governing the sale of our products. No licensed dealer knowingly sells to the criminal market as Federal and state law already prohibits this with severe civil and criminal penalties.

Vague Terms such as "unreasonable sale", "reasonable safety measures", "deceptive act or practice", "reasonable controls and procedures", and "false advertising", are either not defined or not clearly explained and are thus unacceptable terms.

This Bill would open every licensed dealer to frivolous, punitive litigation and if enacted into law would make it impossible to obtain insurance. Without insurance no dealer could stay in business.

Dealers should not be held liable for the legal and lawful sale of firearms. Those who commit illegal acts with firearms should. And we support stricter penalties for those who illegally use firearms.

I Request an Unfavorable Report

SB 488 Gun Industry Accountability Act

Uploaded by: Michael Burke

Position: UNF

WRITTEN TESTIMONY OF MICHAEL F. BURKE, IN OPPOSITION TO HB 947/SB 488

I am – a Veteran with 21 years of military service; I am also an experienced law enforcement officer with more than 30 years of experience at the County, State and Federal levels. I am an expert in Maryland Firearms Law, Federal Firearms law and the law of self-defense; 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 and Chief Range Safety Officer. Also – I am a Certified Protection Professional (CPP) and subject matter expert in Physical Security and other security disciplines, a locksmith, and a Computer Security and electronics expert. **I write today in opposition to HB 947/SB 488.**

The Bill:

Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry Accountability Act of 2024)- This unconstitutional bill is intended to circumvent federal protections for the lawful commerce of firearms and open the floodgates to a barrage of frivolous lawsuits seeking the force firearms manufacturers and dealers out of business by holding the innocent citizens of Maryland responsible for the unlawful acts of criminals.

TO WIT:

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

Like so many other laws proposed or passed by the Maryland General Assembly, this harsh BILL will unfairly punish and impede the poorest third of the Citizens of this state. Most specifically, this TAX punishes the majority of the residents- the VOTERS- of Baltimore City, Baltimore County, Prince Georges County, as well as the Eastern Shore Counties (Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester), Southern (Calvert, Charles, and St. Mary’s counties) and Western Maryland (Washington, Allegany, and Garrett counties.)

First: this is a futile effort to achieve an impossible goal. (Recall that Beretta moved their billion-dollar manufacturing facilities to Tennessee in 2016 because of Maryland laws and taxes.) Prime military firearms contractors today- SIG-Sauer- build their firearms in New Hampshire, while Glock builds their firearms in Georgia.

Second: many firearms and ammunition sales are handled by the Black-Market dealers across Maryland. They will not comply with any State of Federal firearms laws or regulations as they are criminal organizations engaged in for-profit distribution of prohibited products (guns, drugs, sex slaves, stolen property, etc). They won’t be sued under this statute- they possess no

licenses, no sales permits, no real estate, no payroll employees, no fixed assets or traceable income.

Third: the legitimate individuals who are Federal Firearms License holders (like myself) will immediately be AT RISK should 'anyone' be offended by anything we do – or fail to do. Countless law-abiding residents of Maryland will be at risk of ruinous civil litigation without regard to our basic Constitutional rights under the 4th, 5th, 6th, and 14th Amendments of the United States Constitution.

The Bill Violates the Second Amendment: This Bill affects the exercise of Second Amendment rights. Under the Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), law-abiding gun owners with carry permits have a Second Amendment right to carry in public. 142 S.Ct. at 2135. There is also a well-recognized right to acquire a firearm in this State under the Second Amendment. See *Maryland Shall Issue v. Hogan*, 566 F.Supp. 3d 404, (D. MD 2021). With that right comes the ancillary right to sell firearms, as without dealers, there can be no acquisition. See, e.g., *Andrews v. State*, 50 Tenn. 165, 178 (1871) ("The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."); *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc), cert. denied, 138 S.Ct. 1988 (2018) ("the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms"). This Bill would certainly impede the ability of purchasers to acquire firearms BY ATTACKING THE RIGHT OF LICENSED INDIVIDUALS and BUSINESSES TO CONDUCT LEGALLY PERMITTED TRANSACTIONS.

Even more fundamentally, the State may not condition these Second Amendment rights by subjecting such dealers and customers to unfair LITIGATION on 2A protected items. Under the "unconstitutional conditions doctrine," the State may not condition the exercise of a constitutional right by demanding that a person give up another constitutional right. See, e.g., *Simmons v. United States*, 390 U.S. 377, 393-394 (1968) (it is "intolerable that one constitutional right should have to be surrendered in order to assert another"). Cf. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (a government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests especially, his interest in freedom of speech"); *Elrod v. Burns*, 427 U.S. 347, 359 (1976) (same). That would be true even if there was no Second Amendment right involved at all. See *United States v. American Library Assn., Inc.*, 539 U.S. 194, 210 (2003) ("the government may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech even if he has no entitlement to that benefit"). See also *United States v. Scott*, 450 F.3d 863, 868 (9th Cir. 2006) (applying the doctrine to the Fourth Amendment context). It is no answer to these points to assert that the government

would not abuse this technology to conduct warrantless surveillance. This “just trust us” approach does not pass constitutional muster. Courts may “not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *United States v. Stevens*, 559 U.S. 460, 480 (2010). See also *McDonnell v. United States*, 579 U.S. 550, 576 (2016) (same); *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir. 2011) (same).

In the 1966 case of *Harper v. Virginia State Board of Elections*, the Supreme Court reversed its decision in *Breedlove v. Suttles* to also include the imposition of poll taxes in state elections as violating the Equal Protection Clause of the 14th Amendment to the United States Constitution.

THE BILL IS UNCONSTITUTIONALLY VAGUE:

The Vagueness Standard:

Article 24 of the Maryland Declaration of Rights prohibits the enactment or enforcement of vague legislation. Under Article 24, “[t]he void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be “sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.” *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001). A statute must provide “legally fixed standards and adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]” and “must eschew arbitrary enforcement in addition to being intelligible to the reasonable person.” (Id. at 615). Under this test, a statute must be struck down if it is “so broad as to be susceptible to irrational and selective patterns of enforcement.” (Id. at 616). See also *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020). “A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41, 56–57 (1999)). Under this test, a statute must be struck down if it is “so broad as to be susceptible to irrational and selective patterns of enforcement.” *Galloway*, 365 Md. at 616, quoting *Bowers v. State*, 283 Md. 115, 122, 389 A.2d 341 (1978). See also *Ashton v. Brown*, 339 Md. 70, 89, 660 A.2d 447 (1995); *In Re Leroy T.*, 285 Md. 508, 403 A.2d 1226 (1979).

The term “reasonable controls” is vague.

The additional requirement that the “industry member” “establish and implement reasonable controls” is likewise vague. The term “reasonable controls” is defined as “policies” that are “designed to (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 1 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.” As thus defined every one of these acts are already barred by federal and/or State law. See, e.g., 18 U.S.C. §§ 922(b), (d), (h), (n).). Maryland law goes well beyond federal law, imposing, for example, security requirements on licensed dealers. House Bill 1021, 2022 Session Laws, Ch. 55.

The Bill Illegally Allows Liability Without Regard to Proximate Causation:

The predicate statute requirement of Section 7903(5)(iii) makes clear that suits are allowed only if and when “the knowing” violation of a State or federal statute “was a proximate cause of the harm for which relief is sought.” As very recently stated by the Supreme Court of New Hampshire, “[o]ne of the PLCAA’s purposes is to shield firearms manufacturers and sellers from liability for injuries ‘solely caused’ by the misuse of firearms by third parties.” *Hardy v. Chester Arms, LLC*, --- A.3d ----, 2024 WL 332134 at *5 (N.H. Jan. 30, 2024), citing 15 U.S.C. § 7901(b)(1), and 15 U.S.C. § 7901(a)(6)-(7). See also *Estados Unidos Mexicanos*, 2024 WL 227773 at *19 (under PLCCA, the plaintiff must show that “its alleged harms are proximately caused by defendants’ actions, and not merely derivative of harms to its citizens”). As discussed below, Maryland has abundant case law on this proximate causation requirement. This Bill ignores the proximate causation requirement in imposing liability for mere “harm to the public.”

This Bill, if enacted, will not survive judicial review. I urge an unfavorable report.

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Uploaded by: Thomas Kasuba

Position: UNF

Please **UNFAVORABLE** SB0448
Civil Actions – Public Nuisances – Firearm Industry Members
(Gun Industry Accountability Act of 2024)

Does one think of Bass Pro in the Arundel Mills mall when you say "Firearm Industry Member" because they WILL be included with this bill. Let's play "change the noun" and switch the merchandise from "firearm" to ANY other item and anyone with a conscience will viscerally feel that this bill is just plain wrong. There really has to be some limit to the stigmatizing of honest citizens and perfectly legitimate industries; they are NOT the bad guys. I find the name of this bill incredibly offensive and utterly uncalled for. "Accountability"? Accountable for making an honest living actually making/selling a sporting goods product? "Public nuisance"; I guess many people, myself included, aren't considered part of the "public" since they find nothing annoying about the firearms industry. Driving businesses out of business through such wanton vilification will certainly not solve whatever problem this bill purports to solve.

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