

# **HB 810 GOCPP Supports.pdf**

Uploaded by: Bethany Young

Position: FAV

WES MOORE  
*Governor*

ARUNA MILLER  
*Lieutenant Governor*



DOROTHY LENNIG  
*Executive Director*

## **TESTIMONY IN SUPPORT OF HOUSE BILL 810**

February 28, 2024

Bethany Young, Director of Policy and Legislation

The Governor's Office of Crime Prevention and Policy's (GOCPP) role is to advise the Governor on criminal justice strategies, coordinate across public safety agencies, and allocate resources Statewide to support public safety.

House Bill 810 bans the use or trafficking of switches or auto-sears. Switches can convert ordinary handguns to machine guns. Maryland currently presumes possession or use of a machine gun to be for an offensive or aggressive purpose when the machine gun is not registered. Federal law classifies switches as machine guns and places strict limits on the possession of machine guns.

A recent ATF report on firearms used in the commission of crimes revealed that in the last five years, the number of illegal machine gun conversion devices (switches or auto-sears) that law enforcement agencies reported being recovered has increased by an alarming 570%.

These small devices are lethal and stoke the unconscionable violence plaguing Maryland communities. HB810 is an important step in empowering law enforcement to recover and dispose of switches and auto-sears as they would a machine gun. The bill also updates penalties to ensure those using switches or auto-sears meet the accountability they deserve.

**GOCPP urges the House Judiciary Committee to favorably report on House Bill 810.**

**HB0810\_Weapon\_Crimes\_Switch\_Auto-Sear\_MLC\_FAV.pdf**

Uploaded by: Cecilia Plante

Position: FAV



## TESTIMONY FOR HB0810 Criminal Law - Weapon Crimes - Switch/Auto-Sear

**Bill Sponsors:** Speaker Jones

**Committee:** Judiciary

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Aileen Alex, co-chair

**Position:** FAVORABLE

I am submitting this testimony in favor of HB0810 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.

Maryland gun laws need to be strengthened. This bill addresses insidious devices that can transform most guns into the equivalent of machine guns.

Federal prosecutions involving automatic conversion devices have spiked in recent years. From 2017 to 2021, the number of cases jumped from 10 to 83, with over 260 cases filed in the last five years. These devices have been used in robberies, assaults, and murders.

HB0810 authorizes law enforcement units to seize and dispose of switch/auto-sears as contraband. Individuals are prohibited from manufacturing, possessing, selling, offering to sell, transferring, purchasing, or receiving a switch/auto-sear. Anyone found in violation is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both. Penalties are more severe for those using these devices in commission of a crime.

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, we continue to see gun-related crimes and deaths. This legislation contributes to public safety by addressing the possession and misuse of these sinister devices.

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.

# **HB810 Luedtke Testimony FAV.pdf**

Uploaded by: Dawn Luedtke

Position: FAV



**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

DAWN LUEDTKE  
COUNCILMEMBER  
DISTRICT 7

February 26, 2024

The Honorable Luke Clippinger  
Chair, Judiciary Committee  
Room 101, House Office Building  
Annapolis, MD 21401

RE: House Bill 810, *Criminal Law – Weapons Crimes – Switch/Auto-Sear*

Dear Chair Clippinger,

**I write in strong support of HB 810**, Criminal Law – Weapons Crimes – Switch/Auto-Sear, which would prohibit a person from purchasing, owning, selling, transferring, or receiving these deadly devices.

A Glock switch or any other auto-sear device takes a legal semi-automatic weapon and converts it into an automatic, rapid fire machine gun that can fire over 1,000 rounds per minute. Often referred to as simply a “switch,” this metal or plastic device is smaller than a pen cap and can be easily produced at home using a 3D printer. According to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), a switch can be inserted into a gun to apply continuous pressure to the trigger bar to prevent the gun from pausing between shots and allows rapid deployment of bullets time the trigger is depressed<sup>1</sup>. In fact, many gangs refer to the modified firearms, generally capable of firing 30 rounds from the magazine in 2.6 seconds, as “spray guns.”

Some opponents have argued that this law is redundant and unnecessary because federal law classifies any gun with a switch as a machine gun, and Maryland law already bans the possession of a machine gun. In order to charge someone with possession of a switch, one must be a federal law enforcement officer or deputized by federal law enforcement as a task force officer. We cannot rely on federal law enforcement to get these devices off the street; we need our local and state agencies to

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<sup>1</sup> <https://www.atf.gov/news/pr/indictment-so-called-%E2%80%98glock-switches%E2%80%99-would-have-turned-pistols-machineguns>

be empowered by State law. Federal law enforcement is unlikely to step in on small, local cases despite the devastation caused to our communities. As it stands currently, if a local or state law enforcement officer finds someone with a legally registered handgun that contains a switch, that officer cannot charge that person with a crime. Additionally, the will to enforce the law at the federal level is subject to fluctuation with changes in administration and we need to signa and staffing capacity. We need to make sure we have the flexibility to engage in maximum enforcement against use, possession, and manufacture of these devices.

I thank you for the opportunity to voice my support for House Bill 810 and **I urge this Committee's favorable report.**

Very truly yours,

A handwritten signature in black ink, appearing to read "Dawn Luedtke". The signature is fluid and cursive, with a large initial "D" and "L".

Dawn Luedtke  
Montgomery County Councilmember, District 7

Cc: Members of the Judiciary Committee

**BaltimoreCounty\_FAV\_HB0810.pdf**

Uploaded by: Elisabeth Sachs

Position: FAV



JOHN A. OLSZEWSKI, JR.  
*County Executive*



JENNIFER AIOSA  
*Director of Government Affairs*

AMANDA KONTZ CARR  
*Legislative Officer*

WILLIAM J. THORNE  
*Legislative Associate*

**BILL NO.:**               **HB 810**

**TITLE:**                   Criminal Law - Weapon Crimes – Switch/Auto-Sear

**SPONSOR:**             The Speaker of the House

**COMMITTEE:**         Judiciary

**POSITION:**            Support

**DATE:**                 February 28, 2024

**House Bill 810** will add a much-needed prohibition in Maryland’s criminal code for auto-sear devices, commonly referred to as “Glock switches,” enabling local State’s Attorneys to prosecute persons who manufacture, traffic, or possess these dangerous devices. Baltimore County Police are finding switch/auto-sear devices at crime scenes and when executing search warrants.

These small devices, which convert handguns and semi-automatic rifles into fully automatic machine guns, are already illegal under Federal law because the Federal criminal code defines the switch/auto-sear gun part as a “machine gun.” However, under Maryland’s criminal law, currently the switch/auto-sear itself is not defined as a “machine gun.” Maryland prosecutors are therefore only able to bring a criminal charge if the device is found attached to a firearm.

House Bill 810 will add prohibition of the switch/auto-sear device into Maryland’s criminal code in the same way that a “rapid fire trigger activator,” commonly referred to as a bump stock, is already prohibited. The bump stock causes multiple rapid firing by causing a trigger to move repeatedly; the switch/auto-sear causes similar multiple rapid firing with one trigger pull.

**Bill sections:**

The definition provided in the bill uses the definition from the Federal criminal code. Federal law defines a machine gun as “Any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun.” 26 U.S.C. 5845b.

The bill modifies Criminal Law section 4-304, which provides for law enforcement to seize unlawful assault weapons as contraband, to add a switch/auto-sear.

The bill adds a section, Criminal Law 4-305.2, prohibiting a person from transporting a switch/auto-sear into Maryland, and prohibits the manufacture, possess, sell, offer to sell, transfer, purchase, or receiving of a switch/auto-sear. This new section mirrors the prohibitions against bump stocks in existing Section 4-305.1. (The additional text in Section 4-305.1(b) is not

applicable for switch/auto-sears, because these devices are already illegal under Federal law and therefore there is no need for grandfathering or licensing provisions.)

Finally, in Section 4-306 – Penalties, the bill adds the use of a switch/auto-sear to the list of offenses with heightened penalties. The use of an assault weapon or a bump stock or a high-capacity magazine is already listed in Section 4-306.

Accordingly, Baltimore County requests a **FAVORABLE** report on House Bill 810 from the House Judiciary Committee. For more information, please contact Jenn Aiosa, Director of Government Affairs, at [jaiosa@baltimorecountymd.gov](mailto:jaiosa@baltimorecountymd.gov).

**2024-02-27 HB 810 (Support).pdf**

Uploaded by: Rhea Harris

Position: FAV

**CANDACE McLAREN LANHAM**  
*Chief Deputy Attorney General*



**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**LEONARD HOWIE**  
*Deputy Attorney General*

**ANTHONY G. BROWN**  
*Attorney General*

**PETER V. BERNS**  
*General Counsel*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

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(410) 576-7036

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February 28, 2024

**TO:** The Honorable Luke Clippinger  
Chair, Judiciary Committee

**FROM:** Tiffany Johnson Clark  
Chief, Legislative Affairs, Office of the Attorney General

**RE:** House Bill 810 – Criminal Law – Weapons Crimes – Switch/Auto-Sear –  
**Support**

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The Office of Attorney General respectfully urges this Committee to report favorably on House Bill 810 – Criminal Law – Weapons Crimes – Switch/Auto-Sear. House Bill 810 (1) prohibits a person from transporting a switch/auto-sear into the State, (2) prohibits a person from manufacturing, possessing, selling, offering to sell, transferring, purchasing, or receiving a switch/auto-sear, (3) authorizes a law enforcement unit to seize as contraband a switch/auto-sear, and (4) applying certain penalties to a person who uses a switch/auto-sear in a commission of a crime.

A “switch” or “auto-sear” (sometimes also called a Glock switch, Glock auto-sear, button, or giggle switch) is any device, such as a small device attached to the rear of a gun, which converts a gun from a semi-automatic gun to a fully-automatic gun. A switch/auto-sear allows a gun to fire continuously until the gun is out of ammunition, rather than waiting or pausing after each round and requiring another pull of the trigger. In essence, the “switch” or auto-sear converts the gun into a machine gun. Under the National Firearms Act, switches/auto-sears (whether installed or not) are considered to be machine guns and are illegal under federal law.

Despite being illegal federally, according to the New York Times, these devices are turning up with greater frequency at crime scenes. The sheer number of these devices that are in circulation and the ease with which they can be produced and installed at home makes it difficult for federal law enforcement to control their use. House Bill 801 would provide an additional tool to help get these devices out of our communities by allowing State law enforcement to seize these devices as contraband when they are found and to apply penalties to individuals who use these devices.

Machine guns are among the most regulated firearms in the United States, but switches/auto-sears provide an easy and inexpensive workaround to the regulation. When an already dangerous semi-automatic weapon is turned into a fully-automatic weapon, the weapon becomes even more lethal and can result in catastrophic results - especially to innocent bystanders and law enforcement. For the foregoing reasons, the Office of the Attorney General urges a favorable report on House Bill 801.

cc: Judiciary Committee members

# **HB810 - Switch Auto-Sear Prohbition.pdf**

Uploaded by: Shaoli Katana

Position: FAV



To: Members of The House Judiciary Committee  
From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section,  
Maryland State Bar Association  
Date: February 9, 2024  
Subject: **HB810 - Weapon Crimes - Switch/Auto-Sear**  
Position: **SUPPORT**

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The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports HB810 - Weapon Crimes - Switch/Auto-Sear.**

This bill adds devices known as switches or auto sears to the list of dangerous firearm-related items prohibited in the state.

Switches and auto sear devices are designed to convert firearms from semiautomatic mode to automatic mode, meaning multiple rounds can be fired with a single pull of a trigger. It is the latest technology designed to get around existing bans on machine guns and other automatic weapons. These are dangerous devices that are, unfortunately, readily available to purchase or to manufacture. They serve no realistic need for personal or home protection, hunting or other uses, but they have the potential to significantly increase the destructive power of a wide range of weapons. Banning their possession, transfer, manufacture and sale is an important public safety step.

For the reasons stated, we **Support HB810.**

If you have questions about the position of the Criminal Law and Practice Section's Legislative Committee, please feel free to address them to me at 240-606-1298 or at [doyleniemann@gmail.com](mailto:doyleniemann@gmail.com).

Should you have other questions, please contact The MSBA's Legislative Office at (410) 387-5606..

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Dana O. Williams  
President-Elect

Deborah L. Potter  
Secretary

Hon. Mark F. Scurti  
Treasurer

Victor L. Velazquez  
Executive Director

**mcguire\_unfavorable\_hb-0810.pdf**

Uploaded by: James McGuire

Position: UNF



26 February 2024

James I. McGuire III  
3482 Augusta Drive  
Ijamsville, MD 21754

**UNFAVORABLE FOR HOUSE BILL 0810**  
Criminal Law – Weapon Crimes – Switch/Auto–Sear

This bill conflicts with Federal NFA, GCA, and FOIA legislation (collectively, as amended.) Specifically, Class III firearms (automatic) lawfully possessed before May 19, 1986 are both explicitly possess-able and transferrable. These firearms contain auto-sears by their very nature, and would be prohibited by the “possession” restriction in HB-0810.

We already have Federal legislation that restricts the possession of automatic firearms. Adding poorly-thought-out State-level legislation just causes unnecessary ambiguity in the Justice system. Y’all need to think more.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. I. McGuire III", with a stylized flourish at the end.

James I. McGuire III

# **MSI Testimony on HB 810 auto final revised1.pdf**

Uploaded by: Mark Pennak

Position: UNF



President  
Mark W. Pennak

February 28, 2024

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 810

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 HB 810.

To be clear, this opposition is based on the Bill as drafted. **MSI would not be in opposition if the Bill were amended to change the existing Maryland definition of a “machine gun” to incorporate the federal definition.** Under the federal definition, an “auto-sear” is **already defined** as a machinegun. Incorporating the federal definition would thus legalize auto-sears in the same way they are already illegal under federal law and accomplish the regulatory objective of this Bill. In the absence of such an amendment, the Bill makes a mess of the existing regulatory framework and should receive an unfavorable report for that reason alone.

**The Bill:** This Bill amends MD Code, Public Safety, § 5-101(n) to add a new definition for a “switch/auto-sear” as A DEVICE THAT IS DESIGNED AND INTENDED FOR USE IN CONVERTING A FIREARM INTO A WEAPON THAT SHOOTS, IS DESIGNED TO SHOOT, OR CAN BE READILY RESTORED TO SHOOT AUTOMATICALLY MORE THAN ONE SHOT, WITHOUT MANUAL RELOADING, BY A SINGLE FUNCTION OF THE TRIGGER.” The Bill then adds a new Section to the Criminal Law Article, MD Code, Criminal Law, § 4-305.2, to provide that A PERSON MAY NOT: (1) TRANSPORT A SWITCH/AUTO-SEAR INTO THE STATE; OR (2) MANUFACTURE, POSSESS, SELL, OFFER TO SELL, TRANSFER, PURCHASE, OR RECEIVE A SWITCH/AUTO-SEAR. A violation of new Section 305.2 is punishable by imprisonment for up to three years, and/or a fine of \$5,000. MD Code, Criminal Law, § 4-306.

## Existing Federal Law:

Existing federal and State law already regulate the possession of machine guns. A “machinegun” is an item controlled by the National Firearms Act of 1934, 26 U.S.C. § 5801, *et seq* (“the NFA”) along with other items, such as suppressors, short-barreled rifles and short-barreled shotguns. Under federal law, to acquire or possess a machinegun, the person must first register, undergo an exhaustive background investigation, including fingerprinting by the ATF, pay a transfer tax on the firearm and notify local law enforcement officials. See 26 U.S.C. §§ 5811, 5812. See generally 27 C.F.R. § 479.105(b), 27 C.F.R. §§ 479.84, 479.85. No possession is allowed until the ATF has approved the transfer. 26 U.S.C. § 5812(b). The only machineguns that may be lawfully possessed by such persons are those manufactured prior to the enactment of the 1986 amendments to the Gun Control Act of 1968. See 18 U.S.C. § 922(o). Such machineguns are now extremely expensive. Possession without complying with these provisions is a serious federal felony under 18 U.S.C. § 922(o) and is punishable by imprisonment for 10 years. See 18 U.S.C. § 924(a)(2). See also 26 U.S.C. § 5861(d) (criminalizing the possession of an unregistered machinegun); 26 U.S.C. § 5871 (punishing a violation of Section 5861(d) by imprisonment for 10 years and a \$10,000 fine).

Federal law sets forth a definition of a machinegun applicable to these provisions in 26 U.S.C. § 5845(b), which provides:

The term “machinegun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, **any part** designed and intended solely and exclusively, or combination of **parts** designed and intended, for use in converting a weapon into a machinegun, and any **combination of parts** from which a machinegun can be assembled if such parts are in the possession or under the control of a person.  
(Emphasis added).

As emphasized, this definition expressly includes “any part” used exclusively in a machinegun or any combination of parts that could be used to convert a firearm into a machinegun. That definition includes all auto-sears, including the “auto-sear” addressed by this Bill. See, e.g., *United States v. Bailey*, 123 F.3d 1381, 1389 (11th Cir. 1997) (conviction affirmed for possession of a “drop-in autosear” that could be used to convert a firearm into a M-16 machinegun); *United States v. Cash*, 149 F.3d 706, 707 (7th Cir. 1998) (noting “auto sears are treated as machine guns”).

## Existing State Law:

Maryland law likewise regulates machine guns. Current Maryland law defines a “machine gun” to mean “a loaded or unloaded weapon that is capable of automatically discharging more than one shot or bullet from a magazine by a single function of the firing device.” MD Code, Criminal Law, § 4-401(c). Maryland law requires the annual registration of a machine gun with the Maryland State

Police and that registration necessarily presupposes that the machinegun already has been registered with the ATF under federal law. See MD Code, Criminal Law, § 4-403. Possession of a machine gun is governed by MD Code, Criminal Law, § 4-402(b)(4), which provides that “[t]his subtitle does not prohibit or interfere with \* \* \* the possession of a machine gun for a purpose that is manifestly not aggressive or offensive.” This provision allows possession by collectors who otherwise lawfully possess machine guns under federal law and who register with the State Police. Section, § 4-402(b)(4).

That point is reiterated in MD Code, Criminal Law, § 4-405(c), which provides that a “person may not possess or use a machine gun for an offensive or aggressive purpose” and Section 4-405(d) which punishes such possession or use with imprisonment by up to 10 years. Section 4-405(a) provides:

Possession or use of a machine gun is **presumed to be for an offensive or aggressive purpose** when:

(1) the machine gun:

(i) is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun is found;

(ii) is in the possession of, or used by, an unnaturalized foreign-born person or a person who has been convicted of a crime of violence in any state or federal court of the United States; or

**(iii) is not registered as required under § 4-403 of this subtitle;** or

(2) empty or loaded shells that have been used or are susceptible of being used in the machine gun are found in the immediate vicinity of the machine gun. (Emphasis added).

A violation of Section 4-405 is a misdemeanor and is punishable by imprisonment “not exceeding 10 years.” MD Code, Criminal Law, § 4-405(c).

Consistent with Section 4-405(c)(1)(iii), Section 4-405 has been interpreted not to apply to otherwise lawfully possessed machineguns that are possessed as a keepsake or for non-aggressive or non-offensive purposes. *Boyer v. State*, 666 A.2d 1269, 1275-76, 107 Md.App. 32 (1995), *cert. denied*, 672 A.2d 622, 341 Md. 647 (1996) (the statute “can in no way be ‘a trap for those who act in good faith’”). And that makes sense. Law-abiding gun collectors who have jumped through all the hoops imposed by the ATF, including paying the ATF transfer tax, going through the intensive background investigation by the ATF and registering their machinegun with the Maryland State Police are not a problem in Maryland (or anywhere else).

### **The Bill Would Needlessly Create Confusion In Existing Law.**

MSI is not opposed to State regulation of auto-sears. We are opposed only to the way this Bill accomplishes that task. Indeed, as should be apparent, the “auto-sear” banned by this Bill is **already** a machinegun under federal law because federal law, Section 5845(b), expressly encompasses “parts” of machineguns including auto-sears. Persons apprehended with auto-sears in their possession can

be turned over to the United States Attorney who may (and undoubtedly will) prosecute such persons under federal law.

A simple amendment to the definition of a machine gun under Maryland law would likewise allow prosecutions in Maryland **under the statutory framework established by existing State law**. The current Maryland definition of machine gun in MD Code, Criminal Law, § 4-401(c), does not specifically mention parts. To clearly make possession of an auto-sear illegal under Maryland law, the General Assembly need only incorporate the federal definition of machinegun (Section 5845(b)) into State law by amending the definition of machine gun in MD Code, Criminal Law, § 4-401(c), to so provide. In that way, parts of machine guns, such as auto sears, can be prosecuted pursuant to MD Code, Criminal Law, § 4-405, just as they may be prosecuted under federal law pursuant to Section 922(o) and Section 5861(d).

Such an incorporation of federal law would also provide clarity by incorporating the existing body of federal case law where the courts have vigorously enforced the federal definition under Section 922(o) and Section 5861(d). In contrast, this Bill needlessly singles out the auto-sear for special treatment while leaving other parts of machine guns unaddressed. Doing so risks creating confusion in the law as it may, as a consequence, be argued that other parts of a machinegun, as defined by federal law, Section 5845(b), would not be treated as a machine gun because such parts have not been specifically and separately identified as such in this Bill. *Office & Prof. Employees Int'l v. MTA*, 295 Md. 88, 96, 453 A.2d 1191, 1195 (1982) (“It is a settled principle of statutory construction that the Legislature’s enumeration of one item, purpose, etc. ordinarily implies the exclusion of all others.”). See also Sutherland, 2A Statutory Construction §§ 47.23, 47.24 (4th ed. 1984 rev.).

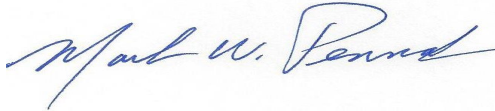
The Bill’s approach of separately addressing auto-sears outside of the existing regulatory framework established by Maryland law, also risks criminalizing registered collectors whose possession of a machine gun is fully consistent with existing federal and State law. Amending Section 4-401(c) to incorporate the federal definition would avoid that unintended result because existing Maryland law does not criminalize possession by persons who have otherwise complied with federal law and who have registered their machinegun with the State Police under State law. As noted, existing State law, Section 4-402(b)(4) and Section 4-405(a)(1)(iii) provide a safe harbor for collectors who have registered their machine guns with the State Police.

The Bill, as written, thus needlessly creates ambiguity in a criminal statute. Clarity in such statutes is highly desirable as a matter of constitutional law. See, e.g., *Johnson v. State*, 240 Md.App. 200, 201 A.3d 644 (2019) (noting that “sentencing provisions that fail to ‘state with sufficient clarity the consequences of violating a given criminal statute’ may be invalid on constitutional grounds”), quoting *United States v. Batchelder*, 442 U.S. 114, 123 (1979). See also *United States v. Lanier*, 520 U.S. 259 (1997) (“[A]lthough clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute, due process bars courts from applying a novel construction of a criminal statute to conduct

that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.”).

The federal definition of a machinegun has been in use for decades. Maryland’s existing regulatory framework for machine guns has likewise been in existence for decades. There is no good reason for this Bill to abandon Maryland’s existing framework or deviate from federal definition. Doing so would create needless uncertainty whereas incorporating the federal definition into the existing Maryland framework would be fully responsive to the concerns giving rise to the Bill. The Bill should be amended to so provide. In the absence of such amendment, the Bill should receive an unfavorable report.

Sincerely,



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

# **MSI Testimony on HB 810 auto final revised1.pdf**

Uploaded by: Mark Pennak

Position: UNF





President  
Mark W. Pennak

February 28, 2024

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 810

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 HB 810.

To be clear, this opposition is based on the Bill as drafted. **MSI would not be in opposition if the Bill were amended to change the existing Maryland definition of a “machine gun” to incorporate the federal definition.** Under the federal definition, an “auto-sear” is **already defined** as a machinegun. Incorporating the federal definition would thus legalize auto-sears in the same way they are already illegal under federal law and accomplish the regulatory objective of this Bill. In the absence of such an amendment, the Bill makes a mess of the existing regulatory framework and should receive an unfavorable report for that reason alone.

**The Bill:** This Bill amends MD Code, Public Safety, § 5-101(n) to add a new definition for a “switch/auto-sear” as A DEVICE THAT IS DESIGNED AND INTENDED FOR USE IN CONVERTING A FIREARM INTO A WEAPON THAT SHOOTS, IS DESIGNED TO SHOOT, OR CAN BE READILY RESTORED TO SHOOT AUTOMATICALLY MORE THAN ONE SHOT, WITHOUT MANUAL RELOADING, BY A SINGLE FUNCTION OF THE TRIGGER.” The Bill then adds a new Section to the Criminal Law Article, MD Code, Criminal Law, § 4-305.2, to provide that A PERSON MAY NOT: (1) TRANSPORT A SWITCH/AUTO-SEAR INTO THE STATE; OR (2) MANUFACTURE, POSSESS, SELL, OFFER TO SELL, TRANSFER, PURCHASE, OR RECEIVE A SWITCH/AUTO-SEAR. A violation of new Section 305.2 is punishable by imprisonment for up to three years, and/or a fine of \$5,000. MD Code, Criminal Law, § 4-306.

## Existing Federal Law:

Existing federal and State law already regulate the possession of machine guns. A “machinegun” is an item controlled by the National Firearms Act of 1934, 26 U.S.C. § 5801, *et seq* (“the NFA”) along with other items, such as suppressors, short-barreled rifles and short-barreled shotguns. Under federal law, to acquire or possess a machinegun, the person must first register, undergo an exhaustive background investigation, including fingerprinting by the ATF, pay a transfer tax on the firearm and notify local law enforcement officials. See 26 U.S.C. §§ 5811, 5812. See generally 27 C.F.R. § 479.105(b), 27 C.F.R. §§ 479.84, 479.85. No possession is allowed until the ATF has approved the transfer. 26 U.S.C. § 5812(b). The only machineguns that may be lawfully possessed by such persons are those manufactured prior to the enactment of the 1986 amendments to the Gun Control Act of 1968. See 18 U.S.C. § 922(o). Such machineguns are now extremely expensive. Possession without complying with these provisions is a serious federal felony under 18 U.S.C. § 922(o) and is punishable by imprisonment for 10 years. See 18 U.S.C. § 924(a)(2). See also 26 U.S.C. § 5861(d) (criminalizing the possession of an unregistered machinegun); 26 U.S.C. § 5871 (punishing a violation of Section 5861(d) by imprisonment for 10 years and a \$10,000 fine).

Federal law sets forth a definition of a machinegun applicable to these provisions in 26 U.S.C. § 5845(b), which provides:

The term “machinegun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, **any part** designed and intended solely and exclusively, or combination of **parts** designed and intended, for use in converting a weapon into a machinegun, and any **combination of parts** from which a machinegun can be assembled if such parts are in the possession or under the control of a person.  
(Emphasis added).

As emphasized, this definition expressly includes “any part” used exclusively in a machinegun or any combination of parts that could be used to convert a firearm into a machinegun. That definition includes all auto-sears, including the “auto-sear” addressed by this Bill. See, e.g., *United States v. Bailey*, 123 F.3d 1381, 1389 (11th Cir. 1997) (conviction affirmed for possession of a “drop-in autosear” that could be used to convert a firearm into a M-16 machinegun); *United States v. Cash*, 149 F.3d 706, 707 (7th Cir. 1998) (noting “auto sears are treated as machine guns”).

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That point is reiterated in MD Code, Criminal Law, § 4-405(c), which provides that a “person may not possess or use a machine gun for an offensive or aggressive purpose” and Section 4-405(d) which punishes such possession or use with imprisonment by up to 10 years. Section 4-405(a) provides:

Possession or use of a machine gun is **presumed to be for an offensive or aggressive purpose** when:

(1) the machine gun:

(i) is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun is found;

(ii) is in the possession of, or used by, an unnaturalized foreign-born person or a person who has been convicted of a crime of violence in any state or federal court of the United States; or

**(iii) is not registered as required under § 4-403 of this subtitle;** or

(2) empty or loaded shells that have been used or are susceptible of being used in the machine gun are found in the immediate vicinity of the machine gun. (Emphasis added).

A violation of Section 4-405 is a misdemeanor and is punishable by imprisonment “not exceeding 10 years.” MD Code, Criminal Law, § 4-405(c).

Consistent with Section 4-405(c)(1)(iii), Section 4-405 has been interpreted not to apply to otherwise lawfully possessed machineguns that are possessed as a keepsake or for non-aggressive or non-offensive purposes. *Boyer v. State*, 666 A.2d 1269, 1275-76, 107 Md.App. 32 (1995), *cert. denied*, 672 A.2d 622, 341 Md. 647 (1996) (the statute “can in no way be ‘a trap for those who act in good faith’”). And that makes sense. Law-abiding gun collectors who have jumped through all the hoops imposed by the ATF, including paying the ATF transfer tax, going through the intensive background investigation by the ATF and registering their machinegun with the Maryland State Police are not a problem in Maryland (or anywhere else).

### **The Bill Would Needlessly Create Confusion In Existing Law.**

MSI is not opposed to State regulation of auto-sears. We are opposed only to the way this Bill accomplishes that task. Indeed, as should be apparent, the “auto-sear” banned by this Bill is **already** a machinegun under federal law because federal law, Section 5845(b), expressly encompasses “parts” of machineguns including auto-sears. Persons apprehended with auto-sears in their possession can

be turned over to the United States Attorney who may (and undoubtedly will) prosecute such persons under federal law.

A simple amendment to the definition of a machine gun under Maryland law would likewise allow prosecutions in Maryland **under the statutory framework established by existing State law**. The current Maryland definition of machine gun in MD Code, Criminal Law, § 4-401(c), does not specifically mention parts. To clearly make possession of an auto-sear illegal under Maryland law, the General Assembly need only incorporate the federal definition of machinegun (Section 5845(b)) into State law by amending the definition of machine gun in MD Code, Criminal Law, § 4-401(c), to so provide. In that way, parts of machine guns, such as auto sears, can be prosecuted pursuant to MD Code, Criminal Law, § 4-405, just as they may be prosecuted under federal law pursuant to Section 922(o) and Section 5861(d).

Such an incorporation of federal law would also provide clarity by incorporating the existing body of federal case law where the courts have vigorously enforced the federal definition under Section 922(o) and Section 5861(d). In contrast, this Bill needlessly singles out the auto-sear for special treatment while leaving other parts of machine guns unaddressed. Doing so risks creating confusion in the law as it may, as a consequence, be argued that other parts of a machinegun, as defined by federal law, Section 5845(b), would not be treated as a machine gun because such parts have not been specifically and separately identified as such in this Bill. *Office & Prof. Employees Int'l v. MTA*, 295 Md. 88, 96, 453 A.2d 1191, 1195 (1982) (“It is a settled principle of statutory construction that the Legislature’s enumeration of one item, purpose, etc. ordinarily implies the exclusion of all others.”). See also Sutherland, 2A Statutory Construction §§ 47.23, 47.24 (4th ed. 1984 rev.).

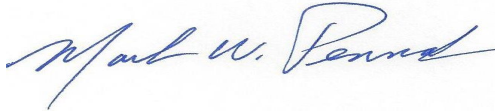
The Bill’s approach of separately addressing auto-sears outside of the existing regulatory framework established by Maryland law, also risks criminalizing registered collectors whose possession of a machine gun is fully consistent with existing federal and State law. Amending Section 4-401(c) to incorporate the federal definition would avoid that unintended result because existing Maryland law does not criminalize possession by persons who have otherwise complied with federal law and who have registered their machinegun with the State Police under State law. As noted, existing State law, Section 4-402(b)(4) and Section 4-405(a)(1)(iii) provide a safe harbor for collectors who have registered their machine guns with the State Police.

The Bill, as written, thus needlessly creates ambiguity in a criminal statute. Clarity in such statutes is highly desirable as a matter of constitutional law. See, e.g., *Johnson v. State*, 240 Md.App. 200, 201 A.3d 644 (2019) (noting that “sentencing provisions that fail to ‘state with sufficient clarity the consequences of violating a given criminal statute’ may be invalid on constitutional grounds”), quoting *United States v. Batchelder*, 442 U.S. 114, 123 (1979). See also *United States v. Lanier*, 520 U.S. 259 (1997) (“[A]lthough clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute, due process bars courts from applying a novel construction of a criminal statute to conduct

that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.”).

The federal definition of a machinegun has been in use for decades. Maryland’s existing regulatory framework for machine guns has likewise been in existence for decades. There is no good reason for this Bill to abandon Maryland’s existing framework or deviate from federal definition. Doing so would create needless uncertainty whereas incorporating the federal definition into the existing Maryland framework would be fully responsive to the concerns giving rise to the Bill. The Bill should be amended to so provide. In the absence of such amendment, the Bill should receive an unfavorable report.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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

# **MSI Testimony on HB 810 auto final revised1.pdf**

Uploaded by: Mark Pennak

Position: UNF



President  
Mark W. Pennak

February 28, 2024

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 810

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 HB 810.

To be clear, this opposition is based on the Bill as drafted. **MSI would not be in opposition if the Bill were amended to change the existing Maryland definition of a “machine gun” to incorporate the federal definition.** Under the federal definition, an “auto-sear” is **already defined** as a machinegun. Incorporating the federal definition would thus legalize auto-sears in the same way they are already illegal under federal law and accomplish the regulatory objective of this Bill. In the absence of such an amendment, the Bill makes a mess of the existing regulatory framework and should receive an unfavorable report for that reason alone.

**The Bill:** This Bill amends MD Code, Public Safety, § 5-101(n) to add a new definition for a “switch/auto-sear” as A DEVICE THAT IS DESIGNED AND INTENDED FOR USE IN CONVERTING A FIREARM INTO A WEAPON THAT SHOOTS, IS DESIGNED TO SHOOT, OR CAN BE READILY RESTORED TO SHOOT AUTOMATICALLY MORE THAN ONE SHOT, WITHOUT MANUAL RELOADING, BY A SINGLE FUNCTION OF THE TRIGGER.” The Bill then adds a new Section to the Criminal Law Article, MD Code, Criminal Law, § 4-305.2, to provide that A PERSON MAY NOT: (1) TRANSPORT A SWITCH/AUTO-SEAR INTO THE STATE; OR (2) MANUFACTURE, POSSESS, SELL, OFFER TO SELL, TRANSFER, PURCHASE, OR RECEIVE A SWITCH/AUTO-SEAR. A violation of new Section 305.2 is punishable by imprisonment for up to three years, and/or a fine of \$5,000. MD Code, Criminal Law, § 4-306.

## Existing Federal Law:

Existing federal and State law already regulate the possession of machine guns. A “machinegun” is an item controlled by the National Firearms Act of 1934, 26 U.S.C. § 5801, *et seq* (“the NFA”) along with other items, such as suppressors, short-barreled rifles and short-barreled shotguns. Under federal law, to acquire or possess a machinegun, the person must first register, undergo an exhaustive background investigation, including fingerprinting by the ATF, pay a transfer tax on the firearm and notify local law enforcement officials. See 26 U.S.C. §§ 5811, 5812. See generally 27 C.F.R. § 479.105(b), 27 C.F.R. §§ 479.84, 479.85. No possession is allowed until the ATF has approved the transfer. 26 U.S.C. § 5812(b). The only machineguns that may be lawfully possessed by such persons are those manufactured prior to the enactment of the 1986 amendments to the Gun Control Act of 1968. See 18 U.S.C. § 922(o). Such machineguns are now extremely expensive. Possession without complying with these provisions is a serious federal felony under 18 U.S.C. § 922(o) and is punishable by imprisonment for 10 years. See 18 U.S.C. § 924(a)(2). See also 26 U.S.C. § 5861(d) (criminalizing the possession of an unregistered machinegun); 26 U.S.C. § 5871 (punishing a violation of Section 5861(d) by imprisonment for 10 years and a \$10,000 fine).

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As emphasized, this definition expressly includes “any part” used exclusively in a machinegun or any combination of parts that could be used to convert a firearm into a machinegun. That definition includes all auto-sears, including the “auto-sear” addressed by this Bill. See, e.g., *United States v. Bailey*, 123 F.3d 1381, 1389 (11th Cir. 1997) (conviction affirmed for possession of a “drop-in autosear” that could be used to convert a firearm into a M-16 machinegun); *United States v. Cash*, 149 F.3d 706, 707 (7th Cir. 1998) (noting “auto sears are treated as machine guns”).

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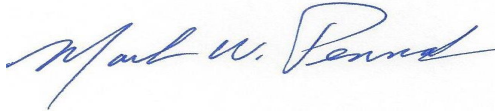
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Mark W. Pennak  
President, Maryland Shall Issue, Inc.  
mpennak@marylandshallissue.org

# **MSI Testimony on HB 810 auto final revised1.pdf**

Uploaded by: Mark Pennak

Position: UNF



President  
Mark W. Pennak

February 28, 2024

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Consistent with Section 4-405(c)(1)(iii), Section 4-405 has been interpreted not to apply to otherwise lawfully possessed machineguns that are possessed as a keepsake or for non-aggressive or non-offensive purposes. *Boyer v. State*, 666 A.2d 1269, 1275-76, 107 Md.App. 32 (1995), *cert. denied*, 672 A.2d 622, 341 Md. 647 (1996) (the statute “can in no way be ‘a trap for those who act in good faith’”). And that makes sense. Law-abiding gun collectors who have jumped through all the hoops imposed by the ATF, including paying the ATF transfer tax, going through the intensive background investigation by the ATF and registering their machinegun with the Maryland State Police are not a problem in Maryland (or anywhere else).

### **The Bill Would Needlessly Create Confusion In Existing Law.**

MSI is not opposed to State regulation of auto-sears. We are opposed only to the way this Bill accomplishes that task. Indeed, as should be apparent, the “auto-sear” banned by this Bill is **already** a machinegun under federal law because federal law, Section 5845(b), expressly encompasses “parts” of machineguns including auto-sears. Persons apprehended with auto-sears in their possession can

be turned over to the United States Attorney who may (and undoubtedly will) prosecute such persons under federal law.

A simple amendment to the definition of a machine gun under Maryland law would likewise allow prosecutions in Maryland **under the statutory framework established by existing State law**. The current Maryland definition of machine gun in MD Code, Criminal Law, § 4-401(c), does not specifically mention parts. To clearly make possession of an auto-sear illegal under Maryland law, the General Assembly need only incorporate the federal definition of machinegun (Section 5845(b)) into State law by amending the definition of machine gun in MD Code, Criminal Law, § 4-401(c), to so provide. In that way, parts of machine guns, such as auto sears, can be prosecuted pursuant to MD Code, Criminal Law, § 4-405, just as they may be prosecuted under federal law pursuant to Section 922(o) and Section 5861(d).

Such an incorporation of federal law would also provide clarity by incorporating the existing body of federal case law where the courts have vigorously enforced the federal definition under Section 922(o) and Section 5861(d). In contrast, this Bill needlessly singles out the auto-sear for special treatment while leaving other parts of machine guns unaddressed. Doing so risks creating confusion in the law as it may, as a consequence, be argued that other parts of a machinegun, as defined by federal law, Section 5845(b), would not be treated as a machine gun because such parts have not been specifically and separately identified as such in this Bill. *Office & Prof. Employees Int'l v. MTA*, 295 Md. 88, 96, 453 A.2d 1191, 1195 (1982) (“It is a settled principle of statutory construction that the Legislature’s enumeration of one item, purpose, etc. ordinarily implies the exclusion of all others.”). See also Sutherland, 2A Statutory Construction §§ 47.23, 47.24 (4th ed. 1984 rev.).

The Bill’s approach of separately addressing auto-sears outside of the existing regulatory framework established by Maryland law, also risks criminalizing registered collectors whose possession of a machine gun is fully consistent with existing federal and State law. Amending Section 4-401(c) to incorporate the federal definition would avoid that unintended result because existing Maryland law does not criminalize possession by persons who have otherwise complied with federal law and who have registered their machinegun with the State Police under State law. As noted, existing State law, Section 4-402(b)(4) and Section 4-405(a)(1)(iii) provide a safe harbor for collectors who have registered their machine guns with the State Police.

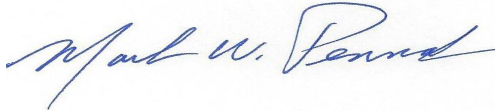
The Bill, as written, thus needlessly creates ambiguity in a criminal statute. Clarity in such statutes is highly desirable as a matter of constitutional law. See, e.g., *Johnson v. State*, 240 Md.App. 200, 201 A.3d 644 (2019) (noting that “sentencing provisions that fail to ‘state with sufficient clarity the consequences of violating a given criminal statute’ may be invalid on constitutional grounds”), quoting *United States v. Batchelder*, 442 U.S. 114, 123 (1979). See also *United States v. Lanier*, 520 U.S. 259 (1997) (“[A]lthough clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute, due process bars courts from applying a novel construction of a criminal statute to conduct



that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.”).

The federal definition of a machinegun has been in use for decades. Maryland’s existing regulatory framework for machine guns has likewise been in existence for decades. There is no good reason for this Bill to abandon Maryland’s existing framework or deviate from federal definition. Doing so would create needless uncertainty whereas incorporating the federal definition into the existing Maryland framework would be fully responsive to the concerns giving rise to the Bill. The Bill should be amended to so provide. In the absence of such amendment, the Bill should receive an unfavorable report.

Sincerely,



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