



President
Mark W. Pennak

February 24, 2025

**WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT,
MARYLAND SHALL ISSUE, IN OPPOSITION TO SB 692 AND HB 741**

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 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 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 (“HQL”) and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and muzzle loading. I appear today as President of MSI in OPPOSITION To SB 692 and its cross-file, HB 741 (“the Bill”).

The Bill: The Bill adds new provisions to MD Code, Public Safety, § 5-110 and creates a new Section 5-145.2 to the Public Safety Article. Together these provisions require a State licensed firearms dealer to complete TO COMPLETE THE TRAINING OR SATISFACTORILY PASS THE WRITTEN EXAM REQUIRED UNDER § 5-145.2 OF THIS SUBTITLE. Specifically, Section 5-145.2 requires every licensed dealer and every employee of a licensed dealer to annually COMPLETE THE TRAINING AND SATISFACTORILY PASS THE WRITTEN EXAM imposed by subsection (d) of new Section 5-145.2. Subsection (d) then provides that the State Police approve a “training course” that includes training materials and

PROVIDES INSTRUCTION ON:

1. STATE AND FEDERAL LAWS REGULATING THE TRANSFER OF FIREARMS AND AMMUNITION;
2. PREVENTING AND REPORTING TO LAW ENFORCEMENT THE THEFT OF FIREARMS AND AMMUNITION;
3. TEACHING CUSTOMERS FIREARM SAFETY, INCLUDING SAFE STORAGE AND HANDLING OF FIREARMS; AND
4. RECOGNIZING AND REPORTING TO LAW ENFORCEMENT SIGNS OF:
 - A. STRAW PURCHASES;
 - B. FIREARM TRAFFICKING;
 - C. FRAUDULENT ACTIVITY;

D. AN INDIVIDUAL WHO INTENDS TO USE A FIREARM FOR AN UNLAWFUL PURPOSE OR SELF-HARM; AND
E. ANY OTHER SUBJECT THE SECRETARY DETERMINES IS APPROPRIATE;
AND
(2) OFFER A WRITTEN MULTIPLE CHOICE EXAM TESTING THE SUBJECTS DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

The Bill then requires that the exam imposed by the State Police to INCLUDE AT LEAST 20 QUESTIONS and imposes a passing grade requirement of AT LEAST 70% OF THE EXAM QUESTIONS. Any violation of these new training and examination requirements imposed by new Section 5-142.2(b) is punishable by A CIVIL PENALTY NOT EXCEEDING \$1,000. The Bill has no *mens rea* requirement.

The Bill Is Both Burdensome and Unnecessary.

First the Bill is unnecessary because federal law effectively requires every dealer (and by extension every dealer's employee) to know and apply federal and State laws concerning the sale of firearms. Every State dealer is required to be a Federal Firearms Licensee ("FFL"). MD Code, Public Safety, § 5-106(a). To be a Maryland licensed dealer, a person must submit an application to the Maryland State Police, MD Code, Public Safety, § 5-107, which conducts an extensive background investigation of the dealer applicant. MD Code, Public Safety, §§ 5-108, 5-109. Maryland licensed dealers are required by the State to maintain extensive records of firearm sales which the Maryland State Police may request and/or inspect upon request. COMAR § 29.03.01.43.

FFLs are licensed under federal law, 18 U.S.C. § 923, and are subject to regulations promulgated by the ATF. FFLs are required to comply with all relevant State and federal laws and are subject to an investigation by the ATF prior to the issuance of the FFL license. *Id.* at § 923(d). Annually, the ATF provides every FFL with a publication of State Laws and Published Ordinances – Firearms. <https://www.atf.gov/firearms/tools-and-services-firearms-industry/state-laws-and-published-ordinances-firearms>. See 27 C.F.R. § 478.24(a) ("The Director shall annually revise and furnish Federal firearms licensees with a compilation of State laws and published ordinances which are relevant to the enforcement of this part.").

Public Law 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, codified at 18 U.S.C. 923(d)(1)(G), amends the regulations in title 27, Code of Federal Regulations ("CFR"), part 478. The amended regulation requires FFLs to certify that they have secure gun storage devices available to their customers. See 27 C.F.R. § 478.104. Failure to do so can result in the revocation of their license.

FFLs are already required to prevent and report THE THEFT OF FIREARMS within 48 hours. 18 U.S.C. § 923(g)(6) ("Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Attorney General and to the appropriate local

authorities.”). Further reporting requirements, including reporting the theft of firearms and ammunition, are likewise imposed by SB 160 and its cross-file, HB 284. That legislation was requested by the State Police this Session and will likely be enacted into law. This Bill adds still another layer of regulation to those requirements, thereby making the regulation of dealers even more complex.

Yet despite the ever-increasing complexity of dealer regulations, the Bill effectively imposes strict liability on the dealers by omitting any *mens rea* requirement as an element of the regulatory offense. A \$1,000 fine could, for example, be imposed if the employee failed to obtain the training and pass the required examination within 20 days. Doing so in 21 days for one employee can result in a \$1,000 fine, regardless of the circumstances. The same is true if the employee failed to receive a passing score (a 69 instead of a 70). That failure could force the dealer to suspend or fire the employee and disrupt dealer operations. If the one-day failure involved two employees, the State Police could impose a \$2,000 fine, and so on. No knowing or willful failure is required. Simple inadvertence, honest mistake or a one-day delay is punished the same as open defiance.

The Bill imposes a new and costly bureaucracy on the Maryland State Police. It also seeks, inappropriately, to impose new burdens on dealers and their employees. That burden includes, for example, receiving instruction on TEACHING CUSTOMERS FIREARM SAFETY, INCLUDING SAFE STORAGE AND HANDLING OF FIREARMS, thereby suggesting that dealers and their employees need such instruction so that they can “teach” these subject matters. But teaching “firearms safety” is not and should not be their job. With few exceptions, every purchaser of a regulated firearm in Maryland is **already** required to obtain a Handgun Qualification License under MD Code Public Safety, § 5-117.1. To obtain the HQL, the individual must receive instruction **from a State certified instructor** on State firearms law, *id.* § 5-117.1(d)(3)(ii), as well as “a firearms orientation component that demonstrates the person's safe operation and handling of a firearm.” *Id.*, § 5-117.1(d)(3)(iii). That instruction would necessarily include teaching Maryland’s safe storage law. MD Code, Criminal Law, § 4-104. Wear and carry permit holders receive even more such instructions. See MD Code, Public Safety, § 5-306(a-1) (imposing “a minimum of 16 hours of in-person instruction by a qualified handgun instructor”). Requiring dealers and employees to receive instruction on TEACHING CUSTOMERS FIREARM SAFETY, INCLUDING SAFE STORAGE AND HANDLING OF FIREARMS is not only duplicative of these requirements but also imposes a duty that **should be** undertaken **only** by trained, State certified firearms instructors who are **already** regulated by the State. See MD Code, Public Safety, § 5-101(q). Nothing in State law requires (or should require) dealers or their employees to be certified instructors.

Existing state law, passed last Session, also imposes even more duties on dealers. Specifically, 2024 Maryland Laws, Ch. 714, authorizes the Attorney General to bring suit for firearm “sales” that were “knowingly,” “unlawful,” or “unreasonable under the totality of the circumstances.” MD Code, Courts and Judicial Proceedings, §§ 3-2502(b),(c), 2503(a)(1). Such suit may include any failure by a dealer to establish “reasonable controls” that prevent a sale to “[a] straw purchaser.” *Id.* §§

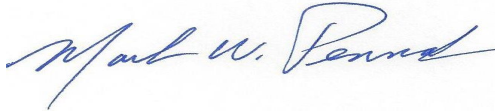
3-2501(f)(1), 3-2502(b). In short, the matters covered by this Bill are already regulated under this newly enacted statute.

Finally, and even more fundamentally, the Bill seems to be based on the premise that dealers should be forced to act as agents of the State in controlling any potential for misuse of firearms by customers and/or third parties. That premise is false under well-established Maryland case law. See, e.g., *Warr v. JMGM Group, LLC*, 433 Md. 170, 183 (2013) (holding that there is no duty to protect the general public from the actions of third parties unless “the person or entity sued had control over the conduct of the third party who caused the harm by virtue of some special relationship”). See also *Valentine v. On Target, Inc.*, 353 Md. 544, 553 (1999) (“One 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.”). Dealers and their employees are private individuals, not State actors. They should not be involuntarily drafted into serving as agents of State law enforcement. Imposing such requirements is an abuse of the licensing requirement.

Enough is enough.

We urge 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.

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