

HOUSE BILL 1396

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2lr3026
CF SB 873

By: **Delegate Atterbeary**

Introduced and read first time: February 17, 2022

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Firearm Industry Members – Public Nuisance**

3 FOR the purpose of prohibiting a certain firearm industry member from knowingly or
4 recklessly engaging in certain conduct in the State that endangers the safety or
5 health of the public; requiring a firearm industry member to establish and use
6 certain reasonable controls and procedures to prevent a certain product from being
7 possessed, used, marketed, or sold unlawfully in the State; establishing that a
8 violation of this Act is a public nuisance; authorizing the Attorney General to
9 investigate a violation or possible violation of this Act; authorizing certain parties to
10 bring a certain action against a firearm industry member under certain
11 circumstances; and generally relating to firearm industry members.

12 BY adding to

13 Article – Public Safety

14 Section 5–701 through 5–704 to be under the new subtitle “Subtitle 7. Firearm
15 Industry Members”

16 Annotated Code of Maryland

17 (2018 Replacement Volume and 2021 Supplement)

18 Preamble

19 WHEREAS, Since 2005, a federal law called the Protection of Lawful Commerce in
20 Arms Act (PLCAA) has shielded firearm manufacturers and dealers from being held liable
21 when crimes have been committed with their products; and

22 WHEREAS, PLCAA blocks litigation that could incentivize firearm manufacturers
23 to design their products more safely and compel firearm manufacturers to stop selling to
24 dealers who fuel the criminal market, have poor safety practices or training, or are not
25 willing to use basic security measures; and

26 WHEREAS, Firearm manufacturers received nearly two million pieces of data about

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 firearms recovered at crime scenes or in criminal investigations between 2010 and 2019;
2 however, with all of this information there is no incentive for the firearm manufacturers to
3 stop supplying dealers who cater to the criminal market because of PLCAA; and

4 WHEREAS, PLCAA shields firearm dealers who have taken few steps to secure their
5 premises when their guns are stolen and then used in a crime; and

6 WHEREAS, Since PLCAA was enacted, between 2006 and 2019, 484,000 Americans
7 have been killed with firearms and hundreds of thousands injured due to the illegal or
8 unreasonable sale, manufacture, distribution, importing, or marketing of firearms and the
9 firearm industry's failure to implement reasonable safety measures; and

10 WHEREAS, Not only does the illegal use of firearms constitute a public nuisance,
11 but the effects of such a nuisance also contribute to the public health crisis of firearm
12 violence in Maryland; and

13 WHEREAS, The firearm industry should be held liable and accountable for the
14 public nuisance caused by the firearm violence; now, therefore,

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Public Safety**

18 **SUBTITLE 7. FIREARM INDUSTRY MEMBERS.**

19 **5-701.**

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (B) (1) “DECEPTIVE ACT OR PRACTICE” MEANS A MATERIAL
23 REPRESENTATION, OMISSION, ACT, OR PRACTICE THAT MISLEADS OR IS LIKELY TO
24 MISLEAD A REASONABLE CONSUMER UNDER THE TOTALITY OF THE
25 CIRCUMSTANCES.

26 (2) “DECEPTIVE ACT OR PRACTICE” INCLUDES FALSE ADVERTISING.

27 (C) “FALSE ADVERTISING” MEANS USING ANY ADVERTISEMENT, INCLUDING
28 A LABEL, THAT IS MISLEADING IN A MATERIAL RESPECT.

29 (D) “FIREARM INDUSTRY MEMBER” MEANS A PERSON ENGAGED IN THE
30 SALE, MANUFACTURING, DISTRIBUTION, IMPORTING, OR MARKETING OF A
31 QUALIFIED PRODUCT.

1 (E) "QUALIFIED PRODUCT" MEANS:

2 (1) A FIREARM, AS DEFINED IN 18 U.S.C. § 921(A)(3)(A) AND (B);

3 (2) AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C. § 921(A)(16);

4 (3) AMMUNITION, AS DEFINED IN 18 U.S.C. § 921(A)(17)(A); OR

5 (4) A COMPONENT PART OF A FIREARM OR AMMUNITION.

6 (F) "REASONABLE CONTROLS AND PROCEDURES" MEANS POLICIES THAT
7 INCLUDE SCREENING AND SECURITY MEASURES TO:

8 (1) PREVENT THE THEFT OF A QUALIFIED PRODUCT BY OR SALE OF A
9 QUALIFIED PRODUCT TO:

10 (I) A STRAW PURCHASER;

11 (II) A TRAFFICKER;

12 (III) A PERSON PROHIBITED FROM POSSESSING A FIREARM
13 UNDER STATE OR FEDERAL LAW; OR

14 (IV) A PERSON AT RISK OF INJURING THE PERSON OR OTHERS;
15 OR

16 (2) PREVENT DECEPTIVE ACTS OR PRACTICES.

17 5-702.

18 (A) A FIREARM INDUSTRY MEMBER MAY NOT KNOWINGLY OR RECKLESSLY
19 ENGAGE IN CONDUCT THAT:

20 (1) IS UNLAWFUL; OR

21 (2) UNDER THE TOTALITY OF THE CIRCUMSTANCES:

22 (I) IS UNREASONABLE; AND

23 (II) CREATES, MAINTAINS, OR CONTRIBUTES TO A CONDITION IN
24 THE STATE THAT ENDANGERS THE HEALTH AND SAFETY OF THE PUBLIC THROUGH
25 THE SALE, MANUFACTURING, IMPORTING, OR MARKETING OF A QUALIFIED
26 PRODUCT.

1 **(B) A FIREARM INDUSTRY MEMBER THAT MANUFACTURES, MARKETS,**
2 **IMPORTS, OR OFFERS FOR WHOLESALE OR RETAIL SALE A QUALIFIED PRODUCT IN**
3 **THE STATE SHALL ESTABLISH AND USE REASONABLE CONTROLS AND PROCEDURES**
4 **TO PREVENT A QUALIFIED PRODUCT FROM BEING POSSESSED, USED, MARKETED, OR**
5 **SOLD UNLAWFULLY IN THE STATE.**

6 **5-703.**

7 **(A) A VIOLATION OF § 5-702 OF THIS SUBTITLE THAT RESULTS IN HARM TO**
8 **THE PUBLIC IS A PUBLIC NUISANCE.**

9 **(B) THE CONDUCT OF A FIREARM INDUSTRY MEMBER UNDER §**
10 **5-702 OF THIS SUBTITLE SHALL CONSTITUTE A PROXIMATE CAUSE OF THE PUBLIC**
11 **NUISANCE IF THE ENDANGERMENT OF THE HEALTH AND SAFETY OF THE PUBLIC**
12 **WAS A REASONABLY FORESEEABLE EFFECT OF THE CONDUCT, NOTWITHSTANDING**
13 **ANY INTERVENING ACTIONS, INCLUDING CRIMINAL ACTIONS BY THIRD PARTIES.**

14 **(C) INTENT TO CAUSE HARM TO THE PUBLIC BY A FIREARM INDUSTRY**
15 **MEMBER IS NOT AN ELEMENT OF A VIOLATION OF THIS SUBTITLE.**

16 **5-704.**

17 **(A) IF THE ATTORNEY GENERAL SUSPECTS THAT A FIREARM INDUSTRY**
18 **MEMBER HAS VIOLATED OR WILL IMMINENTLY VIOLATE § 5-702 OF THIS SUBTITLE,**
19 **OR IF THE ATTORNEY GENERAL BELIEVES IT IS IN THE PUBLIC INTEREST THAT AN**
20 **INVESTIGATION SHOULD BE MADE TO ASCERTAIN WHETHER A FIREARM INDUSTRY**
21 **MEMBER HAS VIOLATED OR WILL IMMINENTLY VIOLATE § 5-702 OF THIS SUBTITLE,**
22 **THE ATTORNEY GENERAL MAY:**

23 **(1) REQUIRE THE FIREARM INDUSTRY MEMBER TO FILE A WRITTEN**
24 **STATEMENT OR REPORT UNDER OATH CONCERNING THE FACTS AND**
25 **CIRCUMSTANCES OF THE VIOLATION OR POSSIBLE VIOLATION AS THE ATTORNEY**
26 **GENERAL CONSIDERS NECESSARY;**

27 **(2) EXAMINE UNDER OATH THE FIREARM INDUSTRY MEMBER**
28 **CONCERNING THE VIOLATION OR POSSIBLE VIOLATION;**

29 **(3) EXAMINE ANY RECORD, OBJECT, BOOK, DOCUMENT, ACCOUNT, OR**
30 **PAPER RELATING TO THE VIOLATION OR POSSIBLE VIOLATION AS THE ATTORNEY**
31 **GENERAL CONSIDERS NECESSARY; AND**

32 **(4) IN ACCORDANCE WITH AN ORDER OF THE COURT OF APPEALS,**

1 IMPOUND AND RETAIN IN THE ATTORNEY GENERAL'S POSSESSION ANY RECORD,
2 BOOK, DOCUMENT, ACCOUNT, OBJECT, OR PAPER THAT IS PRODUCED UNDER THIS
3 SUBSECTION UNTIL THE COMPLETION OF ALL PROCEEDINGS IN CONNECTION WITH
4 THE IMPOUNDED ITEMS.

5 (B) (1) IF THE ATTORNEY GENERAL DETERMINES THAT THERE HAS BEEN
6 A VIOLATION UNDER THIS SUBTITLE, THE FOLLOWING PARTIES MAY BRING AN
7 ACTION AGAINST THE FIREARM INDUSTRY MEMBER FOR INJUNCTIVE RELIEF OR TO
8 RECOVER FOR DAMAGES, OR BOTH, IN THE COURT OF APPEALS OR IN A FEDERAL
9 COURT SITTING IN THE STATE:

10 (I) THE ATTORNEY GENERAL ON BEHALF OF THE STATE;

11 (II) A CITY CORPORATION COUNSEL ON BEHALF OF THE
12 LOCALITY; OR

13 (III) A PERSON THAT SUFFERED DAMAGE AS A RESULT OF THE
14 VIOLATION.

15 (2) THE COURT MAY AWARD COMPENSATORY AND PUNITIVE
16 DAMAGES TO A PREVAILING PLAINTIFF UNDER THIS SUBSECTION.

17 (3) THE PREVAILING PARTY IN ANY SUCH PROCEEDING IS ENTITLED
18 TO AN AWARD FOR COURT COSTS, REASONABLE ATTORNEY'S FEES, AND ANY OTHER
19 RELIEF THE COURT CONSIDERS PROPER.

20 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
21 the application thereof to any person or circumstance is held invalid for any reason in a
22 court of competent jurisdiction, the invalidity does not affect other provisions or any other
23 application of this Act that can be given effect without the invalid provision or application,
24 and for this purpose the provisions of this Act are declared severable.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
26 1, 2022.