

# HOUSE BILL 859

E4

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By: **Delegate Cox**

Introduced and read first time: February 7, 2022

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Arms Protection Act**

3 FOR the purpose of prohibiting the enforcement of certain federal laws relating to firearms,  
4 firearm accessories, and firearm ammunition; requiring the Attorney General to  
5 defend a resident of the State in certain federal prosecutions; authorizing a resident  
6 of the State to file suit against a federal actor or State actor who enforces or aids and  
7 abets the enforcement of certain federal law and authorizing a court to award  
8 attorney's fees, court costs, and damages to a prevailing plaintiff; and generally  
9 relating to the enforcement of federal firearms laws in the State.

10 BY adding to

11 Article – Public Safety

12 Section 5–701 through 5–705 to be under the new subtitle “Subtitle 7. Maryland  
13 Arms Protection Act”

14 Annotated Code of Maryland

15 (2018 Replacement Volume and 2021 Supplement)

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

18 **Article – Public Safety**

19 **SUBTITLE 7. MARYLAND ARMS PROTECTION ACT.**

20 **5–701.**

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

23 (B) “FEDERAL ACTION” MEANS:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(1) AN EXECUTIVE ORDER ISSUED BY THE PRESIDENT OF THE**  
2 **UNITED STATES;**

3           **(2) AN ACT OF CONGRESS;**

4           **(3) AN ADMINISTRATIVE RULE OR REGULATION ADOPTED BY A**  
5 **FEDERAL AGENCY;**

6           **(4) AN ARBITRARY CLASSIFICATION OF A FIREARM:**

7                 **(I) BASED ON ATTRIBUTES THAT DO NOT PERTAIN TO THE**  
8 **PRIMARY COMBUSTION FUNCTION OF THE FIREARM SUCH AS THE NATURAL**  
9 **UNMODIFIED RATE OF FIRE; OR**

10                **(II) DESIGNED TO PROHIBIT POSSESSION OF A FIREARM**  
11 **NONMECHANICALLY NECESSARY ATTRIBUTES, INCLUDING:**

12                         **1. BAYONET LUGS;**

13                         **2. TELESCOPING STOCKS;**

14                         **3. MUZZLE BREAKS;**

15                         **4. PISTOL GRIPS; AND**

16                         **5. PISTOL BRACES; OR**

17           **(5) A CLARIFICATION ISSUED THROUGH AN EXECUTIVE OR**  
18 **LEGISLATIVE AGENCY DESIGNED TO PROHIBIT OWNERSHIP OR POSSESSION OF**  
19 **FIREARMS BASED ON ATTRIBUTES WHICH ARE NONMECHANICALLY NECESSARY OR**  
20 **IN COMMON USE.**

21           **(C) “FEDERAL ACTOR” MEANS AN OFFICIAL, AN AGENT, AN EMPLOYEE, A**  
22 **CONTRACTOR, OR ANY OTHER INDIVIDUAL WORKING IN A PROFESSIONAL CAPACITY**  
23 **FOR THE FEDERAL GOVERNMENT.**

24           **(D) “FIREARM” HAS THE MEANING STATED IN § 5–101 OF THIS TITLE.**

25           **(E) “FIREARM ACCESSORY” MEANS AN ITEM USED IN CONJUNCTION WITH**  
26 **OR AFFIXED TO A FIREARM THAT IS NOT MECHANICALLY NECESSARY TO THE BASIC**  
27 **FUNCTION OF THE FIREARM.**

1 (F) "REGISTRY" MEANS A LIST ESTABLISHED AND MAINTAINED BY A  
2 GOVERNMENTAL ENTITY DENOTING OWNERSHIP, RESIDENCE, OR THE STORAGE  
3 LOCATION OF FIREARMS LEGALLY OWNED OR STORED WITHIN THE STATE.

4 (G) "STATE ACTOR" MEANS AN OFFICIAL, EMPLOYEE, OR AGENT OF THE  
5 STATE OR A POLITICAL SUBDIVISION OF THE STATE, INCLUDING PERSONS UNDER  
6 CONTRACT WITH THE STATE.

7 5-702.

8 THE GENERAL ASSEMBLY FINDS THAT:

9 (1) THE RIGHT TO KEEP AND BEAR ARMS IS A FUNDAMENTAL RIGHT  
10 OF AN INDIVIDUAL NECESSARY FOR SELF-DEFENSE AND THE PRESERVATION OF  
11 LIBERTY AND MAY NOT BE INFRINGED;

12 (2) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROTECT  
13 STATE ACTORS FROM BEING DIRECTED THROUGH FEDERAL ACTION TO VIOLATE  
14 THEIR OATH OF DEFENSE AND PRESERVATION OF INDIVIDUAL RIGHTS SECURED BY  
15 THE CONSTITUTION OF THE UNITED STATES;

16 (3) UNDER THE PRINCIPLES OF FEDERALISM ENSHRINED IN THE  
17 CONSTITUTION OF THE UNITED STATES, THE FEDERAL GOVERNMENT MAY NOT  
18 COMMANDEER STATE ACTORS TO PARTICIPATE IN THE ENFORCEMENT OR  
19 FACILITATION OF ANY FEDERAL ACTION OR REGULATORY PROGRAM THAT  
20 INFRINGES ON THE RIGHT TO KEEP AND BEAR ARMS;

21 (4) THE RIGHT TO BE FREE FROM THE COMMANDEERING HAND OF  
22 THE FEDERAL GOVERNMENT WAS MOST NOTABLY RECOGNIZED BY THE UNITED  
23 STATES SUPREME COURT IN PRINTZ V. UNITED STATES, 521 U.S. 898 (1997),  
24 WHERE THE COURT HELD THAT "THE FEDERAL GOVERNMENT MAY NEITHER ISSUE  
25 DIRECTIVES REQUIRING THE STATES TO ADDRESS PARTICULAR PROBLEMS, NOR  
26 COMMAND THE STATES' OFFICERS, OR THOSE OF THEIR POLITICAL SUBDIVISIONS,  
27 TO ADMINISTER OR ENFORCE A FEDERAL REGULATORY PROGRAM"; AND

28 (5) THE ANTI-COMMANDEERING PRINCIPLES RECOGNIZED BY THE  
29 SUPREME COURT IN PRINTZ V. UNITED STATES ARE PREDICATED ON THE WRITING  
30 OF JAMES MADISON, WHO ADVISED IN FEDERALIST NO. 46 A "REFUSAL TO  
31 CO-OPERATE WITH THE OFFICERS OF THE UNION" IN RESPONSE TO EITHER  
32 UNCONSTITUTIONAL FEDERAL MEASURES OR CONSTITUTIONAL BUT UNPOPULAR  
33 FEDERAL MEASURES.

34 5-703.

1           **(A) A FEDERAL ACTION RELATING TO A FIREARM, FIREARM MAGAZINE,**  
2 **FIREARM ACCESSORY, OR FIREARM AMMUNITION THAT IS INTENDED TO RESTRICT**  
3 **THE POSSESSION, TRANSFER, OR USE OF A FIREARM, FIREARM MAGAZINE, FIREARM**  
4 **ACCESSORY, OR FIREARM AMMUNITION IS UNENFORCEABLE BY A STATE ACTOR IN**  
5 **THE STATE.**

6           **(B) ANY FEDERAL ACTION EFFECTIVE ON OR AFTER DECEMBER 31, 2020,**  
7 **THAT ATTEMPTS TO REGISTER, RESTRICT, OR BAN THE OWNERSHIP OR PURCHASE**  
8 **OF A FIREARM, FIREARM MAGAZINE, FIREARM ACCESSORY, OR FIREARM**  
9 **AMMUNITION OR TO RECLASSIFY THE FIREARM, FIREARM MAGAZINE, FIREARM**  
10 **ACCESSORY, OR FIREARM AMMUNITION WHICH RESULTS IN THE PROHIBITION**  
11 **AGAINST OR RESTRICTION OF CONTINUED OWNERSHIP OR COMMON USE IS**  
12 **UNENFORCEABLE IN THE STATE.**

13           **(C) THE FEDERAL GOVERNMENT MAY NOT CREATE A FIREARM OR FIREARM**  
14 **ACCESSORY REGISTRY IN THE STATE.**

15           **(D) THE ATTORNEY GENERAL SHALL DEFEND A RESIDENT OF THE STATE**  
16 **WHO IS PROSECUTED BY THE FEDERAL GOVERNMENT FOR THE RESIDENT'S**  
17 **ALLEGED VIOLATION IN THE STATE OF A FEDERAL LAW THAT IS UNENFORCEABLE**  
18 **UNDER THIS SUBTITLE.**

19 **5-704.**

20           **(A) (1) A FEDERAL ACTOR OR STATE ACTOR OWES AN INDIVIDUAL DUTY**  
21 **TO EACH RESIDENT OF THE STATE NOT TO VIOLATE THE RESIDENT'S SECOND**  
22 **AMENDMENT RIGHT TO BEAR ARMS.**

23           **(2) THIS DUTY ESTABLISHED UNDER PARAGRAPH (1) OF THIS**  
24 **SUBSECTION IS FOR THE PURPOSE OF ESTABLISHING A DIRECT ACTION FOR CIVIL**  
25 **LIABILITY IF A FEDERAL ACTOR OR STATE ACTOR BREACHES THIS DUTY AGAINST A**  
26 **STATE RESIDENT.**

27           **(B) (1) A FEDERAL ACTOR WITHIN THE STATE MAY NOT VIOLATE, OR AID**  
28 **OR ABET A VIOLATION OF, THE SECOND AMENDMENT RIGHT TO BEAR ARMS OF A**  
29 **RESIDENT OF THE STATE.**

30           **(2) A STATE ACTOR MAY NOT VIOLATE, OR AID OR ABET A VIOLATION**  
31 **OF, THE SECOND AMENDMENT RIGHT TO BEAR ARMS OF A RESIDENT OF THE STATE.**

32           **(C) AN INDIVIDUAL AFFECTED BY A VIOLATION OF SUBSECTION (B) OF THIS**  
33 **SECTION MAY FILE SUIT SEEKING DAMAGES AGAINST THE FEDERAL ACTOR, STATE**

1 ACTOR, OR GOVERNMENTAL ENTITY EMPLOYING OR CONTRACTING WITH THE  
2 FEDERAL ACTOR OR STATE ACTOR IN THE CIRCUIT COURT FOR THE COUNTY WHERE  
3 THE VIOLATION OCCURRED.

4 (D) (1) THE IMMUNITY PROVISIONS PROTECTING STATE AND LOCAL  
5 GOVERNMENT PERSONNEL UNDER THE LOCAL GOVERNMENT TORT CLAIMS ACT  
6 UNDER SUBTITLE 3 OF THE COURTS ARTICLE OR THE MARYLAND TORT CLAIMS  
7 ACT UNDER TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE DO NOT  
8 APPLY TO A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE.

9 (2) ANY ELEMENT OF GOVERNMENTAL IMMUNITY, INCLUDING  
10 QUALIFIED IMMUNITY, IS NOT A DEFENSE TO A CLAIM BROUGHT UNDER THIS  
11 SECTION.

12 (E) IN AN ACTION FILED UNDER THIS SUBTITLE, THE COURT MAY AWARD A  
13 PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES, COURT COSTS, AND  
14 DAMAGES, INCLUDING PUNITIVE DAMAGES.

15 (F) BEGINNING ON THE DATE OF A DETERMINATION OF A VIOLATION OF  
16 THIS SECTION BY A COURT, A FEDERAL ACTOR OR STATE ACTOR IS SUBJECT TO THE  
17 FOLLOWING:

18 (1) TERMINATION OF EMPLOYMENT AND ANY ENTITLEMENTS,  
19 EXCEPT FOR PENSION OR HEALTH CARE BENEFITS RELATED TO RETIREMENT,  
20 BESTOWED BY THE EMPLOYMENT;

21 (2) A BAR FROM STATE EMPLOYMENT IN ANY CAPACITY FOR A PERIOD  
22 OF AT LEAST 10 YEARS; OR

23 (3) A BAR FROM CONTRACTING WITH ANY STATE DEPARTMENT,  
24 AGENCY, OR OFFICE HAVING CONTRACTS WITH THE STATE OR ACTING AS  
25 SUBCONTRACTORS FOR THE STATE.

26 (G) A PERSON THAT CONTRACTS WITH THE STATE OR SUBMITS A BID FOR  
27 CONSIDERATION TO A STATE BID REQUEST MAY NOT HIRE, EMPLOY, OR  
28 SUBCONTRACT WITH AN INDIVIDUAL FOUND LIABLE UNDER THIS SUBTITLE.

29 5-705.

30 (A) (1) AN AGENCY, AN OFFICE, A DEPARTMENT, OR AN ENTITY OF THE  
31 STATE OR A POLITICAL SUBDIVISION OF THE STATE MAY NOT USE FEDERAL MONEY  
32 OR GRANTS RECEIVED TO SUPPORT OR ADVANCE A FEDERAL PROVISION THAT IS  
33 UNENFORCEABLE UNDER THIS SUBTITLE.

1           **(2) FEDERAL FUNDS TO SUPPORT OR ADVANCE A FEDERAL**  
2 **PROVISION THAT IS UNENFORCEABLE UNDER THIS SUBTITLE RECEIVED BY THE**  
3 **STATE SHALL BE USED FOR THE IMPROVEMENT OF PUBLIC HUNTING LANDS AND**  
4 **SHOOTING RANGES OWNED AND MAINTAINED BY THE STATE.**

5           **(B) (1) A POLITICAL SUBDIVISION OF THE STATE THAT HAS RECEIVED**  
6 **FEDERAL FUNDS TO SUPPORT OR ADVANCE A FEDERAL PROVISION THAT IS**  
7 **UNENFORCEABLE UNDER THIS SUBTITLE SHALL REMIT THE MONEY OR GRANTS TO**  
8 **THE STATE TREASURER WITHIN 10 DAYS OF RECEIPT.**

9           **(2) FUNDS RECEIVED BY THE STATE TREASURER UNDER**  
10 **PARAGRAPH (1) OF THIS SUBSECTION SHALL BE DEPOSITED IN THE GENERAL FUND**  
11 **AND USED FOR THE IMPROVEMENT OF PUBLIC HUNTING LANDS AND SHOOTING**  
12 **RANGES OWNED AND MAINTAINED BY THE STATE.**

13           **(C) IF THE USE OF FEDERAL MONEY OR GRANTS RECEIVED BY THE STATE**  
14 **OR A POLITICAL SUBDIVISION OF THE STATE IS RESTRICTED, THE FEDERAL MONEY**  
15 **OR GRANT SHALL BE RETURNED TO THE APPROPRIATE FEDERAL ENTITY.**

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

21           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2022.