

# SENATE BILL 873

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CF 2lr3026

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By: **Senators Waldstreicher and Smith**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

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## 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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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. FIREARM INDUSTRY MEMBERS.**

20 **5-701.**

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

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

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

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

30 **(D) “FIREARM INDUSTRY MEMBER” MEANS A PERSON ENGAGED IN THE**  
31 **SALE, MANUFACTURING, DISTRIBUTION, IMPORTING, OR MARKETING OF A**  
32 **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

1 THE SALE, MANUFACTURING, IMPORTING, OR MARKETING OF A QUALIFIED  
2 PRODUCT.

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

8 **5-703.**

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

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

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

18 **5-704.**

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

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

29 (2) EXAMINE UNDER OATH THE FIREARM INDUSTRY MEMBER  
30 CONCERNING THE VIOLATION OR POSSIBLE VIOLATION;

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

1           **(4) IN ACCORDANCE WITH AN ORDER OF THE COURT OF APPEALS,**  
2 **IMPOUND AND RETAIN IN THE ATTORNEY GENERAL’S POSSESSION ANY RECORD,**  
3 **BOOK, DOCUMENT, ACCOUNT, OBJECT, OR PAPER THAT IS PRODUCED UNDER THIS**  
4 **SUBSECTION UNTIL THE COMPLETION OF ALL PROCEEDINGS IN CONNECTION WITH**  
5 **THE IMPOUNDED ITEMS.**

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

11                   **(I) THE ATTORNEY GENERAL ON BEHALF OF THE STATE;**

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

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

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

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

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

26           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
27 1, 2022.