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February 13, 2024

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401

Re: SB 488—Gun Industry Accountability Act of 2024

Dear Chair Smith:

The Office of the Attorney General supports Senate Bill 488, the Gun Industry Accountability Act of 2024 (“SB 488”).

SB 488 would provide citizens, as well as this Office, with an important tool for holding the gun industry accountable for its contributions to the crisis of gun violence in our communities. A federal statute—enacted to protect the gun industry—generally bars suits against industry members arising from the unlawful misuse of a firearm. But the statute contains an exception for suits arising out of the violation of a state or federal statute applicable to the sale or marketing of firearms and ammunition. SB 488 would enable use of that exception by (1) requiring firearms industry members to implement reasonable controls to prevent guns and ammunition from falling into the wrong hands; (2) requiring firearms industry members to refrain from knowingly contributing to public harm through unreasonable or unlawful conduct; and (3) allowing both the public and the Attorney General to enforce the statute against violators. I urge the Committee to favorably report SB 488 so that the firearms industry can be held accountable for its conduct, and so that it can be incentivized to prevent the deadly misuse of its products.

All of us are familiar with the tragic costs of Maryland’s epidemic of gun violence. On average, guns kill nearly 800 people each year in our state, with Baltimore City particularly hard-

hit.¹ Much of the blame lies with the gun industry, which has done far too little to keep guns and ammunition out of the hands of those who are not allowed to have them or who would use them to do harm. According to Brady: United Against Gun Violence, “only 5% of gun dealers are responsible for 90% of recovered crime guns.”² In 2022 alone, federal firearms licensees reported the loss or theft of some 17,000 firearms.³ And the gun industry has a history of marketing its products to young people and those most prone to commit acts of violence.⁴

Federal law, however, creates impediments to holding the firearms industry accountable. The Protection of Lawful Commerce in Arms Act (“PLCAA”), enacted in 2005, prohibits any “qualified civil liability action” from being brought in federal or state court.⁵ The term “qualified civil liability action” is defined to mean “a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association . . . resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.”⁶ And “qualified product” includes firearms, ammunition, and component parts thereof.⁷ Thus, as a general matter, when guns and ammunition are used to commit acts of violence, their manufacturers and sellers are immune from suit, regardless of how blameworthy their conduct may have been.

PLCAA’s definition of “qualified civil liability action” contains exceptions, though. For instance, “an action for breach of contract or warranty in connection with the purchase of the product” is not included.⁸ Nor is “an action brought against a seller for negligent entrustment or negligence per se.”⁹ And, most important for present purposes, the definition of “qualified civil liability action” excepts “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.”¹⁰

¹ Everytown for Gun Safety, *At a Glance—Maryland*, <https://www.everytown.org/state/maryland/>.

² Brady: United Against Gun Violence, *Combating Crime Guns Initiative*, <https://brady-static.s3.amazonaws.com/crimegunsinitiative.pdf>. A “crime gun” is defined as “a gun that has been recovered by law enforcement after being used in a crime, suspected of being used in a crime, or the possession of the gun itself may have been a crime.” *Id.*

³ Bureau of Alcohol, Tobacco, Firearms and Explosives, *Federal Firearms Licensee Theft/Loss Report—2022*, <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2022>.

⁴ *See, e.g.,* Rick Rojas et al., *Sandy Hook Families Settle with Gunmaker for \$73 Million over Massacre*, N.Y. Times, Feb. 15, 2022, <https://www.nytimes.com/2022/02/15/nyregion/sandy-hook-families-settlement.html>.

⁵ 15 U.S.C. § 7902(a).

⁶ *Id.* § 7903(5)(A).

⁷ *Id.* § 7903(4).

⁸ *Id.* § 7903(5)(A)(iv).

⁹ *Id.* § 7903(5)(A)(ii).

This exception has come to known as the “predicate exception,” and it holds great promise for holding the gun industry accountable. Under the predicate exception, if a gun manufacturer or seller violates a state or federal statute governing the sale or marketing of guns and ammunition—a “predicate statute”—a suit to redress the resulting harm is not barred by PLCAA. PLCAA itself provides examples of suits that would fall within the predicate exception: suits arising out of a defendant’s noncompliance with federal or state recordkeeping requirements, suits arising out of certain false statements of fact material to the legality of firearms and ammunition transactions, and suits arising out of certain efforts to provide firearms or ammunition to people statutorily prohibited from possessing them.¹¹

SB 488 would add a predicate statute to Maryland law, enabling firearm manufacturers, sellers, and marketers to be sued for their irresponsible conduct without running afoul of PLCAA. The bill would create two obligations for firearms industry members (defined to include manufacturers and sellers, as well as others involved in the firearms trade). First, it would prohibit them from knowingly creating, maintaining, or contributing to public harm by engaging in conduct that is unlawful or unreasonable. Second, it would require them to establish and implement reasonable controls regarding the sale, manufacture, distribution, importation, marketing, possession, and use of firearm-related products. And the bill would enable citizens to enforce these obligations, by suing for injury or loss resulting from their violation.

The bill would allow for wider-scale enforcement, too: It would define violations as a public nuisance, and it would authorize the Attorney General to sue firearms industry members for their creation of that public nuisance. Should SB 488 become law, I intend to make full use of this authority to hold the firearms industry to account for its behavior.

Enacting SB 488 would place Maryland alongside other states that have put in place predicate legislation to hold the firearms industry accountable: In the last two years, California,¹² Colorado,¹³ Delaware,¹⁴ Hawaii,¹⁵ Illinois,¹⁶ New Jersey,¹⁷ New York,¹⁸ and Washington¹⁹ have all enacted legislation meant to enable citizens or Attorneys General to sue bad actors in the firearm industry in a manner consistent with PLCAA. Although the details vary, these states generally require, at a minimum, that firearms industry members implement reasonable controls in marketing, selling, and distributing firearms. Some states impose additional or more specific obligations as well. All of these states allow their Attorneys General to enforce the law by suing

¹⁰ *Id.* § 7903(5)(A)(iii).

¹¹ *Id.* § 7903(5)(A)(iii)(I), (II).

¹² Cal. Civ. Code §§ 3273.50 to .55.

¹³ Colo. Rev. Stat. § 6-27-101 to -106.

¹⁴ Del. Code tit. 10, § 3930.

¹⁵ Hawaii Rev. Stat. § 134-A to -D.

¹⁶ 815 Ill. Comp. Stat. 505/2BBBB.

¹⁷ N.J. Stat. Ann. §§ 2C:58-34 to -36.

¹⁸ N.Y. Gen. Bus. Law § 898-A to -E.

¹⁹ Wash. Rev. Code Ann. 7.48.330.

violators. To date, none of these states' statutes has been successfully challenged in court, and at least one has been expressly upheld.²⁰

SB 488 would provide Marylanders harmed by gun violence with a way to recover for their injuries or for family members' loss of life, when those harms flow from a manufacturer or seller's failure to do what the statute requires. For instance, if a seller fails to secure a firearm against theft, and it is subsequently stolen and used to kill, the seller may be liable. Similarly, if a seller fails to take reasonable precautions against firearm sales to convicted felons, and a convicted felon purchases a firearm and uses it to kill, the seller may be liable.

At the same time, SB 488 also would provide firearms industry members with important incentives to act responsibly. The prospect of civil liability will give gun manufacturers and sellers ample reason to establish and implement controls designed to keep firearms out of the wrong hands. On that score, the statute provides industry members with guidance: It defines "reasonable controls" as policies designed to (1) prevent the sale or distribution of firearm-related products to straw purchasers, traffickers, people prohibited from possessing firearms, and certain people apt to use firearms to cause harm or commit crimes; (2) prevent loss or theft of firearm-related products; and (3) ensure that members comply with state and federal law and do not otherwise promote certain unlawful firearm-related conduct. I expect that, guided by that framework, firearms industry members will be able to devise and implement reasonable controls that comply with the statute. And if they do not, I will use the statute's enforcement mechanisms to compel them to change their behavior.

Once again, I support passage of this important legislation, and I look forward to the Committee's questions.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

²⁰ See *National Shooting Sports Found., Inc. v. James*, 604 F. Supp. 3d 48 (N.D.N.Y. 2022), appeal pending, No. 22-1374 (2d Cir.).