

Legislative Analysis



FIREARM INDUSTRY RESPONSIBILITY ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6183 as introduced
Sponsor: Rep. Stephanie A. Young

Analysis available at
<http://www.legislature.mi.gov>

House Bill 6184 as introduced
Sponsor: Rep. Ranjeev Puri

House Bill 6185 as introduced
Sponsor: Rep. Kelly Breen

Committee: Judiciary
Complete to 12-11-24

SUMMARY:

Taken together, House Bills 6183, 6184, and 6185 would eliminate civil liability protections for members of the firearm industry and newly allow civil actions to be brought against these entities for knowingly or recklessly creating or contributing to a public nuisance through the manufacture or distribution of a firearm-related product or the failure to implement reasonable controls on these practices.

House Bill 6184 would amend the Revised Judicature Act to require a *firearm industry member* to do both of the following:

- Not knowingly or recklessly create, maintain, or contribute to a *public nuisance* through the sale, manufacture, importing, or marketing of a *firearm-related product*.
- Establish and implement *reasonable controls* regarding the manufacture, sale, distribution, use, and marketing of the firearm industry member's firearm-related products.

Firearm industry member would mean a person engaged in the sale, manufacture, distribution, importing, or marketing of a firearm-related product.

Public nuisance would mean a condition that injures, endangers, threatens to injure or endanger, or contributes to the injury or endangerment of the health, safety, peace, comfort, or convenience of others or that otherwise constitutes a public nuisance under common law.

Firearm-related product would mean a firearm, ammunition, a firearm precursor part, a firearm component, a *three-dimensional printer* or computer numerical control milling machine, or a *firearm accessory* that meets any of the following conditions:

- The product was sold, made, distributed, or marketed in Michigan.
- The product was intended to be sold, made, distributed, or marketed in Michigan.
- The product is possessed in Michigan and it was reasonably foreseeable that the product would be possessed or used in Michigan.

Three-dimensional printer would mean a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive manufacturing process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object.

Firearm accessory would mean an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm that is designed or intended, or functions, to alter or enhance the firing capabilities of a firearm, the lethality of a firearm, or a shooter's ability to hold and use a firearm.

Reasonable controls would mean reasonable procedures, safeguards, and business practices designed to do all of the following:

- Prevent the sale or distribution of a firearm-related product to a **straw purchaser**; a **firearm trafficker**; a person prohibited from purchasing, possessing, or using a firearm under state or federal law; or a person the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves, of unlawfully harming another person, or of unlawfully possessing or using a firearm-related product.
- Prevent the loss of a firearm-related product or the theft of a firearm-related product from a firearm industry member.
- Ensure that the firearm industry member complies with all provisions of state and federal law and does not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.
- Ensure that the firearm industry member does not engage in an act or practice in violation of the Michigan Consumer Protection Act.¹
- Ensure that reasonable steps are taken to prevent the installation and use of a **pistol converter** on a firearm-related product.

Straw purchaser would mean an individual who conceals, or intends to conceal, from a firearm industry member that the purchase of a firearm is being made on behalf of a third party. (This would not include a person who purchases a firearm as a *bona fide gift* to another person who is not prohibited by law from possessing or receiving a firearm-related product. Under the bill, a gift to a person would not be a bona fide gift if the person has offered or given the purchaser a service or thing of value to acquire the firearm for them.)

Firearm trafficker would mean a person who acquires, transfers, or attempts to acquire or transfer a firearm for purposes of unlawful commerce.

Pistol converter would mean a device or instrument that, when installed in or attached to the slide of a semi-automatic pistol, interferes with the trigger mechanism and thus enables the pistol to discharge a number of shots or bullets rapidly or automatically with one continuous pull of the trigger.

¹ https://www.house.mi.gov/hfa/PDF/FiscalSnapshot/GG_AttyGen_Michigan_Consumer_Protection_Act_Jan2023.pdf

Under the bill, a violation of either of the above provisions by a firearm industry member would be a public nuisance. A firearm industry member's conduct would constitute a proximate cause of a private nuisance if the harm to the public is a reasonably foreseeable effect of the conduct, notwithstanding any intervening actions (including unlawful action by third parties).

The bill would authorize the attorney general to commence an action against any firearm industry member believed to be in violation of the above provisions to seek and obtain any of the following:

- An injunction prohibiting the firearm industry member from continuing the conduct, engaging in the conduct, or performing any acts in furtherance of the conduct.
- An order providing for abatement (i.e., reduction or stoppage) of the nuisance at the expense of the firearm industry member.
- Restitution.
- Compensatory and punitive damages.
- Reasonable attorney fees, filing fees, and reasonable costs associated with the action.
- Any other appropriate relief.

Similarly, the bill would allow any person identified under section 3805 of the act² that has been damaged as a result of a firearm industry member's acts or omissions in violation of the above provisions to commence an action to seek and obtain any of the following:

- Injunctive relief.
- Compensatory and punitive damages.
- Reasonable attorney fees, filing fees, and reasonable costs associated with the action.

The bill also would require any person commencing an action described above to notify the attorney general of the filing of the complaint within five days and provide the attorney general with a copy of the complaint and any other materials filed with the complaint. A party initiating an action and seeking relief under the bill would not be required to demonstrate that the firearm industry member acted with the intent to engage in a public nuisance or otherwise cause harm to the public.

Finally, the bill would state that its provisions must be applied in a manner consistent with the requirements of the state constitution and the United States Constitution and may not be interpreted to limit, restrict, or impair any of the following:

- The right of a person to pursue a legal action under any other law, including the Michigan Consumer Protection Act.
- Any obligation or requirement placed on a firearm industry member by any other law.
- The availability of an action for relief from or to remedy a public nuisance at common law.

Proposed MCL 600.3845

² Section 3805 of the act currently allows the state attorney general, a local prosecuting attorney, or a resident of a county or municipality in which a public nuisance is located to maintain an action for equitable relief in order to abate the nuisance and to perpetually enjoin any person or entity from engaging in the enjoined conduct throughout the state. (<https://www.legislature.mi.gov/documents/mcl/pdf/mcl-600-3805.pdf>)

House Bill 6185 would amend the firearm licensure act (1927 PA 372) to **eliminate** parts of section 15 of the act that currently provide the following:

- A federally licensed firearms dealer (a person licensed under 18 USC 923³) is not liable for damages arising from the use or misuse of a firearm if the sale complies with state and federal law.
- The act does not create a civil action or liability for damages arising from the use or misuse of a firearm or ammunition for a person, other than a federally licensed firearms dealer, who produces a firearm or ammunition.
- The state (through the attorney general) reserves exclusive authority to bring a civil action against any person who produces a firearm or ammunition. A political subdivision is prohibited from initiating such an action unless one or more of the following circumstances are narrowly construed by a court to be true:
 - The action arises from a breach of contract, other contract issue, or brought under a provision of the Uniform Commercial Code (in which case the political subdivision must be the purchaser and owner of the firearm or ammunition).⁴
 - The action involves expressed or implied warranties arising from the purchase of a firearm or ammunition by the political subdivision or the use of a firearm or ammunition by an employee or agent of the political subdivision.
 - The action is a product liability, personal injury, or wrongful death action when an employee, agent, or property of the political subdivision has been injured or damages as a result of a defect in the design or manufacture of the firearm or ammunition purchased and owned by the political subdivision.
- Subject to the above provisions, a political subdivision is prohibited from initiating a civil action based on any of the following:
 - A firearm's or ammunition's inherent potential to cause injury, damage, or death.
 - Failure to warn the purchaser, transferee, or user of the firearm's or ammunition's inherent potential to cause injury, damage, or death.
 - Failure to sell with or incorporate into the product a device or mechanism to prevent a firearm or ammunition from being discharged by an unauthorized person unless specifically provided for by contract.

MCL 28.435

House Bill 6183 would amend the sentencing guidelines in the Code of Criminal Procedure to revise a reference to a provision in section 15 of the firearm licensing act that would be renumbered by House Bill 6182.

MCL 777.11b

House Bills 6183 and 6184 cannot take effect unless House Bill 6185 is also enacted.

House Bill 6185 cannot take effect unless House Bills 6183 and 6184 are both also enacted.

³ <https://www.govinfo.gov/content/pkg/USCODE-2023-title18/pdf/USCODE-2023-title18-partI-chap44-sec923.pdf>

⁴ <https://legislature.mi.gov/documents/mcl/pdf/mcl-Act-174-of-1962.pdf>

FISCAL IMPACT:

House Bills 6184 and 6185 would have an indeterminate fiscal impact on the state and local units of government. Under the provisions of the bills, the Department of the Attorney General and local prosecuting attorneys would be authorized to initiate civil actions against firearm industry members who create a public nuisance, which could increase administrative and investigative costs for the state or local prosecutor's offices and law enforcement agencies; individuals would also be able to initiate these actions to pursue a narrower set of relief options. All of these civil proceedings would be heard by local courts, which would incur increased costs depending on changes in caseload. Because the number of civil actions that would be brought under the provisions of the bills cannot be known, an estimate of the fiscal impact on the state and local units of government cannot be made.

House Bill 6183 would not have a fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.