

SENATE BILL NO. 27
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Carroll Foy)

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 11.2, consisting of sections numbered 59.1-148.5, 59.1-148.6, and 59.1-148.7, relating to firearm industry members; standards of responsible conduct; civil liability.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 11.2, consisting of sections numbered 59.1-148.5, 59.1-148.6, and 59.1-148.7, as follows:

CHAPTER 11.2.

VIRGINIA FIREARM INDUSTRY STANDARDS OF RESPONSIBLE CONDUCT.

§ 59.1-148.5. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

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

"Firearm industry member" means a person engaged in the sale, manufacturing, distribution, importing, or marketing of a firearm-related product.

"Firearm-related product" means a firearm, ammunition, a firearm component, including unfinished frames or receivers, or a firearm accessory that was (i) sold, made, distributed, or marketed in the Commonwealth; (ii) intended to be sold, made, distributed, or marketed in the Commonwealth; or (iii) possessed in the Commonwealth, and it was reasonably foreseeable that the product would be possessed or used in the Commonwealth.

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

"Frame" and "receiver" have the same meanings attributed to them in 18 U.S.C. § 921 et seq. and regulations issued pursuant thereto.

"Public nuisance" means a condition that injures, endangers, or threatens to injure or endanger or

contributes to the injury or endangerment of the health, safety, peace, comfort, or convenience of others or otherwise constitutes a public nuisance under common law.

"Reasonable controls" means reasonable procedures, safeguards, and business practices that are designed to (i) prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a firearm-related product; (ii) prevent the loss of a firearm-related product or theft of a firearm-related product from a firearm industry member; (iii) 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; (iv) prevent the installation and use of an auto sear, as defined in subsection A of § 18.2-308.5:1, on firearm-related products; and (v) ensure that the firearm industry member does not engage in an act or practice in violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

"Straw purchaser" means an individual who conceals, or intends to conceal, from a person that the purchase of a firearm-related product is being made on behalf of a third party. A "straw purchaser" does not include a bona fide gift to a person who is not prohibited by law from possessing or receiving a firearm-related product. For purposes of this chapter, a gift to a person is not a bona fide gift if the person has offered or given the purchaser a service or thing of value to acquire the firearm-related product for the person.

"Unfinished frame or receiver" means a forging, casting, printing, extrusion, machined body, or similar item that (i) is designed to or may readily be completed, assembled, or otherwise converted to function as a frame or receiver or (ii) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or otherwise converted. However, "unfinished frame or receiver" does not include a component designed and intended for use in an antique weapon.

§ 59.1-148.6. Firearm industry standards of responsible conduct; civil liability.

A. A firearm industry member, by conduct unlawful in itself or unreasonable under all the circumstances, may not knowingly create, maintain, or contribute to a public nuisance through the sale, manufacturing, importing, or marketing of a firearm-related product.

B. A firearm industry member shall establish and implement reasonable controls regarding the manufacture, sale, distribution, use, and marketing of the firearm industry member's firearm-related

products.

C. A violation of subsection A or B is a public nuisance that is actionable as provided in this section and is not deemed criminal in nature.

D. Whenever it appears to the Attorney General or the local county, city, or town attorney that a firearm industry member has engaged in or is engaging in conduct in violation of this section, the Attorney General or local county, city, or town attorney may commence an action to seek and obtain (i) an injunction prohibiting the firearm industry member from continuing the conduct or engaging in the conduct or doing any acts in furtherance of the conduct, (ii) an order providing for abatement of the public nuisance at the expense of the firearm industry member, (iii) an order of restitution, (iv) an award of compensatory and punitive damages, (v) an award of reasonable attorney fees and costs of the action, and (vi) any other appropriate relief that may be awarded by the court.

E. Any person that has been injured as a result of a firearm industry member's acts or omissions in violation of this section may commence an action to seek and obtain (i) an injunction prohibiting the firearm industry member from continuing the conduct or engaging in the conduct or doing any acts in furtherance of the conduct, (ii) an award of compensatory and punitive damages, and (iii) an award of reasonable attorney fees and costs of the action.

F. To prevail in an action under this section, the party seeking relief is not required to demonstrate that the firearm industry member specifically intended to create, maintain, or contribute to a public nuisance or otherwise cause harm to the public.

G. This section shall not be construed or implied to limit or impair in any way (i) the right of a person to pursue a legal action under any other law or (ii) an obligation or requirement placed on a firearm industry member by any other law.

Nothing in this section is intended to restrict or alter the availability of an action for relief from or to remedy a public nuisance at common law other than a violation of subsection A or B.

§ 59.1-148.7. Limitation of action; venue.

A. An action brought pursuant to § 59.1-148.6 shall be commenced within two years after the cause of action accrues.

B. An action brought pursuant to § 59.1-148.6 may be brought in the county, city, or town of the Commonwealth (i) in which all or a substantial part of the acts or omissions that form the basis for the cause of action occurred, (ii) where any defendant resided when the cause of action arose or where the principal office of any defendant is located, or (iii) where the plaintiff resides if the plaintiff is a natural person.