

VTFSC Analysis

Section 5 of H.606

Section 5 of H.606 is the most egregious and insidious attack on the Second Amendment / Article 16 that the VTFSC has ever seen. We are strongly against this suggested statute.

Negative effects on Vermont Firearm Manufacturers

In 2005, Congress passed the Protection of Lawful Commerce in Arms Act ([PLCAA](#)). This legislation was specifically designed to shield United States firearms manufacturers and Federal Firearms License holders (FFL) from being held liable when one of their products is later used in some heinous crime, so long as they followed the law.

PLCAA, however, **DOES NOT** provide complete blanket immunity to firearm manufacturers and dealers. PLCAA allows both manufacturers and dealers to be held liable for damages resulting from defective products, breach of contract, criminal misconduct, and other actions for which they are responsible. They can even be held liable for negligent entrustment (a cause of action in United State tort law) if it is found that a manufacturer or dealer had reason to believe that a firearm they transferred was intended to be used in crime.

Despite the clear protection provided by PLCAA, section 5 of H.606 attacks the firearms manufacturing industry in Vermont, an attack that can and likely will directly affect an estimated 300+ Vermont employees of companies such as Atlas Gun Works, Century Arms and Caspian Arms by opening the door to allowing “Public Nuisance” lawsuits. Such lawsuits can only serve one purpose: To financially ruin these companies as they defend themselves from what could be an avalanche of frivolous lawsuits.

These businesses will experience litigation exposure, even without any element of “intent.” This is because they can be targeted based on the theory that their products, marketing, or distribution practices “contribute” to a public nuisance even though the alleged nuisance never had any intent to cause harm.

The onus on these businesses do not stop there. This section speaks to “reasonable controls” as being procedures and practices that need to be developed and designed to prevent:

- Sales to straw purchasers, traffickers and prohibited persons; actions that are already controlled and addressed by both Federal law and state law ([13 VSA § 4025](#));

- False or deceptive advertising and the promotion of unlawful manufacture, sale, possession, marketing and use when this is already regulated under state law by [13 VSA § 2005](#).
- Loss/theft

In practical terms: Manufacturers will need to spend time and effort to formalize compliance programs that are well over and above existing Federal Requirements. This work however would still be needed because these companies will need to be able to show “*we did something reasonable*” as a defense.

PLCAA bars civil liability for harms resulting from criminal misuse of firearms by third parties where the defendant engaged in lawful conduct. Section 5 attempts to relabel “liability” as “public nuisance”; it does so by avoiding the concepts of “intent” or even “proximate cause” and it also extends “liability” to marketing and distribution practices.

The firearms industry is one of the most tightly regulated industries in the United States today, and we do not see Vermont Firearm Manufacturers doing anything wrong.

Negative effects on Vermont Federal Firearm License Holders (FFLs)

As a result of FFL plainly falling in the “sale” and “distribution” designation of section 5, FFLs are in the core target set, and [as of 1/27/26](#) this would be 236 FFLs listed by the ATF as a “Type 01” (Dealer in Firearms Other Than Destructive Devices – Including Gunsmiths).

For the purpose of clarification, FFLs are the people who are registered with the Federal government to be in the business of selling firearms to ordinary law-abiding citizens.

Under this section, dealers will face expanded liability claims after crimes, suicides, thefts or trafficking incident claims allege that the FFL did not provide inadequate screening, training, storage, inventory controls and even marketing – even in situations where the underlying sale completely complied with state and federal law.

With section 5: FFLs will be encumbered with more security and inventory-control costs, because “reasonable controls” explicitly includes preventing loss and theft. The practical impact of that would force FFLs to spend even more on safes/vaults, alarms, camera systems, access controls, inventory reconciliation, employee background checks, as well as documentation, because “reasonable” will be argued after the fact in litigation.

Section 5 will also likely result in more refused firearm sales and denials, because “controls” would include avoiding sales when there is “reasonable cause to believe” a

purchaser is at a substantial risk of harm. How is an FFL supposed to gauge that?

Further: section 4092(c) extends consumer-protection-style enforcement to private parties, meaning that FFLs can expect more frequent private-party litigation.

As a point of information: An FFL is never under any mandate to sell a firearm to anyone – they have the right to refuse a sale “just because,” this would be in addition to denying a sale to a prohibited person. To reduce liability, FFLs may well decide to not sell a firearm, even when the sale is lawful and the customer is legally eligible, leading to inconsistent outcomes, customer friction and possible accusations of discrimination / unfairness.

we further question how this proposed law will square with [13 VSA 4019\(g\)](#), a statute which states: *“A licensed dealer who facilitates a firearm transfer pursuant to this section shall be immune from any civil or criminal liability for any actions taken or omissions made when facilitating the transfer in reliance on the provisions of this section. This section shall not apply to reckless or intentional misconduct by a licensed dealer.”*

FFLs today engage in one of the most tightly regulated industries in the United States, we do not see FFLs in Vermont doing anything wrong, with this attack striking at the core of the second amendment – the ability to purchase and sell arms in order to support the right to keep and bear arms.

Negative Effects on Vermont Citizens who Sell a Firearm

Section 5 does NOT limit “sale” to manufacturers and FFLs. It applies to any person **“engaged in the sale”** of firearm-related products in Vermont.

A private citizen who sells a firearm, even once, is characterized as a “firearm industry member” for that transaction – even when the sale goes thru an FFL for the required background check per Vermont state law. This would be especially true in a nuisance or enforcement context where definitions are read broadly.

What this means to an individual is that private sellers inherit industry-level liability standards, because an individual could be accused of:

- “Contributing” to a public nuisance,
- Failing to implement “reasonable controls,” or
- Engaging in a sale that is alleged to contribute to harm, without any indication of intent to harm.

Unlike Manufacturers or FFLs, private individuals do not have Compliance departments, formal screening protocols, inventory control systems, and commercial-grade liability insurance. This means that a lawful, good-faith private sale could be re-framed after the fact as “unreasonable under all the circumstances.”

It gets worse, however. How do individuals define or satisfy “reasonable controls?” The statute requires “controls” that are designed to prevent straw purchasers, sales to traffickers, or sales to persons the seller may have “*reasonable cause to believe*” are at a substantial risk of harming themselves or others.

For an individual, that raises some important questions:

- What screening is reasonable for a private seller?
- What questions must the seller ask the purchaser?
- What documentation must be kept?
- How is “*reasonable cause to believe*” assessed without the individual having any access to medical, criminal, or mental-health information?

The practical effect of this on an individual is that private sellers are exposed to retroactive judgement based on outcomes that they could not have predicted.

Consider post-sale misuse of a firearm sold by an individual and the litigation risk the seller then assumes. If a firearm is later stolen, trafficked, used in crime, or used in a suicide: A plaintiff could then argue that the original sale:

- “Contributed” to the nuisance,
- Lacked “reasonable controls,” and/or
- Should never have occurred under the seller’s subjective “reasonable cause” obligations.

THAT is precisely how “nuisance theory” works. It shifts causation away from the actor who commits harm onto earlier conduct that was entirely lawful.

And what about insurance and personal financial exposure to an individual who sells a firearm? Unlike manufacturers or FFLs, private individuals:

- Have no “product liability” coverage,
- Will typically find that their homeowner’s insurance excludes firearm-related claims, and
- Face personal asset exposure if sued, such that even a meritless nuisance claim could be financially devastating.

Section 5 allows liability without intent, without proximate causation and even without unlawful conduct. For an individual seller that would mean that even though the sale was lawful, a completely unforeseeable subsequent misuse results in a risk of liability. It means there is no “mens rea” requirement and no clear causal limitation.

Imposing severe civil liabilities on lawful conduct, based on speculative or attenuated causation violates Due Process, with courts repeatedly upholding this. This is especially true when the “liability” is punitive in effect; the standards are retroactive and the seller lacks any ability to prevent whatever harm / nuisance occurred.

Section 5 uses vague terms such as “reasonable” and “contribute”, with no intent required. This combination would enable selective enforcement against sellers in high-profile incidents; frivolous lawsuits designed to drain the defendant’s assets; it could be used against politically disfavored individuals, and it could also be used against estate sales after an unforeseen tragedy occurs.

Constitutional Implications of Section 5

Second Amendment Implications

Section 5 does not ban possession or sale but it does impose open-ended civil liability on anyone who sells a firearm if that sale is later alleged to have “contributed” to a public nuisance. The 2nd Amendment is burdened here not by a ban or prohibition, but by increased liability, even when a sale was completely lawful.

Increasingly, courts have recognized that severe liability exposure that predictably deters the exercise of a protected right is itself a burden on that right, such as:

- Private sellers face industrial-grade liability with no historical analogue,
- Vague terms such as “reasonable controls” and “contribute” are used, with no requirement for intent being seen as a deterrence on otherwise lawful transfers, and
- This proposed law effectively works toward eliminating private sales which were common at the time of the founding.

Because of Bruen, the state must show a well-established historical tradition of imposing civil nuisance liability on lawful firearms sales or otherwise show a historical tradition of holding sellers responsible for downstream misuse by 3rd parties; history which simply does not exist.

Fourteenth Amendment Implications

Section 5 uses problematic terms such as:

- “Reasonable controls,”

- “Reasonable cause to believe,”
- “Substantial risk,”
- “Contribute to a public nuisance,” and
- “Unreasonable under all the circumstances.”

For a private seller, this is fatal as there is no Safe Harbor, no way to know what conduct is required with liability judged after the fact based on outcomes – all of which implicates Due Process.

The Federation believes that a law is vague if it fails to give ordinary people fair notice of what is required and it encourages arbitrary or discriminatory enforcement: Section 5 does both, and this is especially true when vagueness is attached to constitutionally protected conduct and is enforced through civil penalties.

The VTFSC stands against H.606 for the above stated reasons.