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LD 1696

I am writing to you today in advance of your work session to urge you to vote OUGHT NOT TO PASS on LD 1696, “An Act to Create a Civil Cause of Action for Persons Suffering Damages Arising from the Sale of Abnormally Dangerous Firearm.” Why this bill was carried over is hard to imagine, but in any case the reasons for OUGHT NOT TO PASS are outlined below.

1. There is simply NO basis or evidence that some form of ‘bypass’ or ‘evasion’ of the Protection of Lawful Commerce in Arms Act (PLCAA) serves any legitimate public purpose for the people of the State of Maine. On that basis alone the bill should be OUGHT NOT TO PASS.

2. The most fundamental tenet of our legal system is that liability and punishment can only be predicated on an offense that is described in a precise and clear manner and too whom it applies. The key prohibited activity in the bill is providing an “abnormally dangerous” product. Commonly used language and existing statutory definitions give no help on what that means. The underlying attempt to define it using “assaultive purposes” provides no help. This whole concept is sufficiently nebulous that it fails to define that which is supposed to be illegal. Its vague and if its vague its void as a matter of legal construction. No reasonable person could know what it means in advance and no court should enforce it.

3. Similarly I defy anyone to be able to define, in advance, “reasonable controls” in the context of firearm and firearm accessory sales. This fails the same test of vagueness. No one should be subject to civil action for a statute that is so completely undefined as to be unknowable.

4. The definition of “firearms industry member” is so broad it would encompass any sale of any firearm or firearm accessory anywhere by anyone. Its absurd.

5. The prohibition of 3.A.3 has already been deemed unconstitutional by the 9th and 5th Circuits and will most assuredly will be found the same by the 1st.

6. The activities of straw purchasing, conversion of legal to illegal products, complying with Federal and State law are already covered under existing statutes and the inclusion of them here is just completely inappropriate.

7. Lastly the prohibitions of defenses is completely contrary to basic tort law in this State.

I would also point out that the sponsor of this bill in her written support of it shows a fundamental misunderstanding of how gun sales work. Retail gun sales are controlled by a vast number of existing laws that include mandatory federal background checks run by the FBI. There are no sales made without “proper vetting”, no guns flowing directly to “shady customers”, no criminal dealers. All these are easy to determine as untrue. Its also untrue when she asserts that anyone who just sells a gun cannot be sued under this bill.

It is completely and totally wrong that the mfg. or seller of a completely legal product sold in complete compliance with a huge number of existing and comprehensive laws should be liable for the criminal use of its product.

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