

A MODEL HANDGUN SAFETY STANDARD ACT

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THE JOHNS HOPKINS CENTER FOR GUN POLICY AND RESEARCH is dedicated to reducing gun-related injuries and deaths through the application of a public health perspective to the issue of gun violence prevention. Its faculty and affiliated experts have pioneered innovative strategies for reducing gun violence, and achieved a national reputation for high-quality, unbiased policy-relevant research. The Center examines the public health effects of guns in society and serves as an objective resource for the media, policy makers, advocacy groups, and attorneys. In 1995, the Center was formally established with funding from The Joyce Foundation of Chicago. For more information, contact the Center at 410.614.3243 or jhcgpr@jhsph.edu.

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Introduction

Notwithstanding 32,000 gun-related deaths per year in the United States,¹ little attention has been paid to altering the design of guns. Focusing on the user of the potentially deadly product and ignoring the product itself parallels the initial attempts at preventing and reducing motor vehicle deaths and injuries. Interventions were aimed almost exclusively at the driver -- largely through the passage of laws requiring safe driving behaviors and providing stiff penalties for infractions. The steady decline in motor vehicle-related deaths and injuries over the last several decades has been the result, however, of a more comprehensive approach that includes changing the design of the car. Changes to the car itself, such as laminated windshields, collapsible steering assemblies, dashboard padding, improved door locks, and air bags, have saved many lives and prevented serious injuries. This change in strategy was implemented by the National Highway Traffic Safety Administration (NHTSA), a federal agency created by the U.S. Congress to promulgate motor vehicle safety standards. While drivers are still encouraged to buckle-up and drive safely, the federal government has successfully saved lives and money by adopting the more immediately and consistently effective and feasible strategy of regulating the design of motor vehicles.²

The federal government has similarly saved the lives of many Americans with its creation of the U.S. Consumer Product Safety Commission (CPSC).³ The CPSC is the federal agency charged with protecting the public from unreasonable risks of injury and death associated with most consumer products. The CPSC, however, is expressly prohibited from regulating firearms or ammunition⁴ and no other federal agency regulates the design of guns for safety. Regulation of the design of guns can save lives and prevent serious injuries. In the absence of a federal initiative, states and localities have the opportunity and the responsibility to safeguard the lives of their citizenry by enacting legislation that will require safer gun designs.

Safer gun technology exists, but most manufacturers, not required by law to incorporate safety into their designs, have been reluctant to make use of it. The technology to manufacture child-resistant handguns has existed since the late 1800s when Smith & Wesson produced a handgun with a safety grip, and claimed that “no ordinary child under eight years of age [could] possibly discharge it.”⁵ Also, technology exists to “personalize” a gun so that only the authorized user can operate it. Methods for personalization include low-technology devices such as combination locks and high-technology electric, radio frequency, or magnetic sensory devices.⁶ Colt’s Manufacturing Company, Inc. (Colt) has developed working prototypes of a personalized gun which use radio frequency technology. Also, in 1996, Sandia National Laboratories released a report of its work on personalized gun technologies. Funded by the National Institute of Justice, Sandia studied the feasibility of law enforcement use of personalized gun technology.⁷

The model legislation offered below is presented as a blueprint for states and localities to require safer handguns. Modifications to the proposed legislation can be made by advocates and legislators to account for local statutory requirements and political exigencies. Personalization is the intervention strategy promoted in the legislation because its protection extends beyond that offered the small child by childproofing. Personalized guns would also be inoperable by the despondent teenager contemplating suicide and the criminal who steals the gun. Handguns are targeted because of their presence in about a quarter of households in the U.S.⁸ and because they are most often the firearm of choice for people purchasing a gun for self-defense, for the suicide victim, and for the criminal.⁹

State and local regulation addressing public health problems, such as firearm injury and death, is an appropriate use of the state's or locality's "police power" -- the general power to provide for the health and safety of the people. The police power of the locality (i.e., a city or county), however, is delegated to it by the state. At the discretion of the state legislature, a state may retain its police power with regard to a particular public health problem and thereby prohibit or preempt a locality from enacting laws addressing the problem. Many state laws preempt all or some types of local gun legislation. Therefore, the existence and extent of state preemption would help determine if the legislation offered below would be appropriate for consideration by a locality.¹⁰

What follows are the language of the model law, presented in the **bold** typeface, and for each section of the law, an analysis of the section's purpose and effect, presented in *italicized* typeface. A text only version of the model law is included as Appendix A.

Short Title

**A Bill Entitled
Handgun Safety Standard Act**

Analysis: The short title provides a concise characterization of the bill. This characterization can play a role in determining the legislative committee to which the bill is assigned for initial review and vote. The short title is also the shorthand way to which the bill is referred by the media and others. Therefore, the short title of this bill focuses on the safety aspects of the legislation.

Purpose Paragraph

For the purpose of establishing the State Handgun Standard Commission; requiring the Commission to promulgate a safety performance standard for the manufacture of handguns; providing for the performance standard to require that all handguns manufactured are “personalized” so that only authorized users can operate them; providing that handguns not meeting this standard four years from the date the Commission’s original standard is adopted may not be manufactured, sold, offered for sale, traded, transferred, or acquired in this State except as provided in this Act ; defining certain terms; providing for the forfeiture of handguns and for the enforcement of this Act; and generally relating to a safety standard for handguns.

Analysis: The purpose paragraph provides a brief summary of the bill and explains the intent of the legislature.

Function Paragraph

**By adding to
Article XX — Health and Safety
Section XX through XX, inclusive, to be under the new Subtitle
“Handgun Safety Standard”
Code of X**

Analysis: The function paragraph describes where the bill, if passed, would fit into the codified or statutory law of the state. This varies from state to state and may involve political considerations, but if the bill is characterized as a safety measure, it is arguably most appropriately placed among the state health and safety statutes.

Section 1. Preamble

WHEREAS, The legislature finds that there are no current laws or regulations creating a safety standard for personalized guns; and

WHEREAS, In 1995, there were nearly 36,000 gun deaths nationwide; 51 percent of all gun deaths were suicides and 44 percent were homicides; and

WHEREAS, In 1996 in the U.S., 87 percent of all firearm homicides, in which the type of gun was known, were caused by handguns; and

WHEREAS, A homicide of a household member is almost three times more likely to occur in homes with guns than in homes without guns and the risk of suicide is increased by nearly five times in homes with guns; the risk is higher still for adolescents and young adults; and

WHEREAS, In 1995, there were 1,225 unintentional firearm deaths nationwide; and

WHEREAS, In the state of X, xx children under the age of x were killed by gunfire in 199x; and

WHEREAS, The legislature believes many firearm deaths and injuries are needless and can be prevented by a safety performance standard for handguns; and

WHEREAS, The legislature further finds that existing technology makes possible personalized guns, which can only be fired by the authorized user(s); and

WHEREAS, The legislature believes that a handgun safety performance standard is necessary to protect the public health, safety and welfare, therefore

Analysis: The preamble provides information that justifies the need and rationale for the legislation. The findings emphasize the public health and safety focus of the legislation, the need for prevention, and the appropriateness of the legislature's role in safeguarding the lives of its citizenry.

The number of gun deaths per year and the breakdown of those deaths by homicide, suicide, and unintentional deaths are data provided by the National Center for Health Statistics (NCHS). NCHS provides final mortality data annually in its Report of Final Mortality Statistics. National firearm fatality data can also be obtained electronically on the NCHS web site at <http://www.cdc.gov/ncipc/osp/data.htm> and by using CDC Wonder (available on the Internet at <http://wonder.cdc.gov>). State firearm fatality data and morbidity data may be available from several local sources including state or local health

departments, state trauma registries, local hospitals, and academic centers. State firearm fatality data can also be obtained electronically through CDC Wonder and on the NCHS web site. In addition, state-by-state childhood firearm deaths are included in a report entitled, *Injury to Children and Teenagers: State-by-State Mortality Facts*, compiled by The Johns Hopkins Center for Injury Research and Policy (February, 1996). The percentage of firearm homicides caused by handguns is found in the Federal Bureau of Investigation's (FBI) *Uniform Crime Reports for the United States* which is prepared on an annual basis. The data relating the risks of homicide and suicide associated with guns in the home are from several articles authored by Dr. Arthur Kellermann and his colleagues which appeared in the *New England Journal of Medicine*.¹¹

Section 2. Enactment Clause

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF X,
That the Laws of X read as follows:**

Article XX - Health and Safety

Handgun Safety Standard

Analysis: Each state will have its own required language for the enactment clause of proposed legislation. This is often true of other sections of the bill as well. A legislative aide or the state's legislative reference bureau can be of assistance in drafting a bill to ensure that it meets all the state's drafting requirements. Some states also provide written guidelines for drafting legislation.

Section 3. Definitions

For the purposes of this Act:

"Handgun" means:

- (a) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and**
- (b) any combination of parts from which a firearm described in subsection (a) can be assembled.**

"Authorized user" means the person who owns the handgun or a person to whom the owner has given consent to use the handgun.

"Antique firearms" means:

- (a) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and
- (b) any replica of any firearm described in subsection (a) if such replica
 - (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

“Handgun manufacturer” is any person engaged in the business of manufacturing handguns for the purpose of sale or distribution.

“Person” includes any individual, corporation, company, association, firm, partnership, society, or joint stock company.

“Seller” or **“Dealer”** is any person:

- (a) engaged in the business of selling firearms at wholesale or retail;
- (b) engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or
- (c) any person who is a pawnbroker.

“Pawnbroker” is any person whose business or occupation includes the taking or receiving, by the way of pledge or pawn, of any firearm as security for the payment or repayment of money.

Analysis: The definitions determine who and what falls within the purview of the legislation. The federal Gun Control Act of 1968, as amended (18 U.S.C. §921 et seq.) is the source for most of the definitions in this model law, but a state may also have existing laws that can provide definitions.

Section 4. Creation of the State Handgun Standard Commission

(a) The State Handgun Standard Commission [hereinafter Commission] will be established within six months following the passage of this law in order to promulgate an appropriate performance standard that responds to the need for the improved safety of handguns.

(b) The Commission, where possible, shall be composed of seven members:

the Attorney General or the Attorney General's designee, the State Police Commissioner or the Commissioner's designee, the Director of the State Department of Health or the Director's designee, an injury prevention specialist, a handgun industry representative, a mechanical engineer, and a citizen-at-large. The members will be appointed by the Governor. The chair of the Commission will be selected from among the members by the Governor.

(c) Commission members will be reimbursed for reasonable and necessary expenses including, but not limited to, travel, but shall not otherwise be compensated.

(d) Staff services for the Commission shall be provided by the Attorney General's Office.

(e) The Commission will exist for the period during which the standard is promulgated. Once the Commission has ceased to exist, the Governor, if he/she deems necessary, may reestablish the Commission for a period of time designated by the Governor.

(f) In addition to promulgating a performance standard, the Commission shall designate the existing state government agency that will be responsible for administering, advertising, implementing, and enforcing the standard. The Commission's designation of an agency requires approval of the Governor.

Analysis: Six months should provide enough time for the governor to appoint the Commission members but, at the same time, does not unduly delay the implementation of the law. This time period, of course, can be shortened or lengthened depending upon the legal, bureaucratic, and political circumstances specific to each state.

The number and composition of the Commission involve both practical and political considerations. This model bill provides for an odd number of Commission members to prevent deadlock and delay. The bill is written, however, to provide some flexibility as to the number of Commissioners so that if one or more of the seven categories of people are not available, implementation of the law is not frustrated. The goal in choosing the categories of people who will be appointed to the Commission is to bring together a group representing a variety of perspectives and offering the expertise needed to facilitate formulation of a workable performance standard. A representative from the state health department and an injury prevention specialist are needed to promote the safety aspects of the law and advocate for a protective performance standard. A representative of the gun industry provides the needed knowledge about the mechanics of handguns, the technicalities and intricacies of the gun manufacturing process, and about marketing guns. A mechanical engineer would assist with the technical aspects of the standard. A citizen-at-large would represent the layperson's view. Depending upon the political forces at work in the state, it is possible that the governor could appoint a citizen-

at-large who is a pro-gun advocate or a gun control advocate.

The cost of implementing the law could be a concern and a potential obstacle to its passage. It is common for ad hoc Commission members, appointed under state law, to be uncompensated for their service to the state. Often though, expenses such as travel, incurred by the Commission members in the performance of their service, are paid by the state. In addition to the expenses of the Commission members, there may be administrative, research, and secretarial costs involved in carrying out the Commission's work (the Commission may actually decide that it wants to hold hearings throughout the state which could be costly). If the staff of the Attorney General or any other agency appointed by law to provide services for the Commission is overworked and understaffed, and if the Attorney General's office or other agency is struggling financially, the issue of which agency will provide the services may be politically sensitive.

The Commission, by the next Section, is given one year from the time it is established to promulgate the standard. This should provide enough time for the Commission's work, and limits the time commitment required by the Commission members who are unpaid volunteers. The law authorizes the Governor, however, to reestablish the Commission. It is conceivable that the Commission would be reestablished to reconsider and update the standard.

The law requires the Commission to appoint another agency to administer, advertise, implement, and enforce the standard over the long term. Because the Commission would have performed the work of promulgating the standard, its knowledge of the issue would put it in a good position to determine which agency is best suited to follow through with the implementation of the standard. The appointment of this agency, however, may also be a politically sensitive issue because of the financial and human resource costs involved for the appointed agency. Therefore, the law requires approval by the Governor. In the alternative, if it is determined that the legislature should designate the agency, this law could be modified to include the name of the agency that would implement the standard.

Section 5. Promulgation of a Safety Standard

(a) On or before one year after the establishment of the Commission, the Commission shall adopt a handgun safety performance standard for all handguns manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired within this State. The standard shall require, but need not be limited to, the following:

- (1) A handgun must be personalized so that it can only be fired when operated by that handgun's authorized user;**

- (2) The technology creating personalized handguns shall be incorporated into the design of the handgun and be part of its original equipment and not an accessory;**
- (3) Personalized handguns shall not be manufactured so as to permit the personalized characteristics to be readily deactivated.**

Analysis: The verbs supplied in Section 5(a) describe the different activities which are affected by this bill. They are meant to be as inclusive as possible.

This model law provides for the promulgation of a performance standard as opposed to a design standard. The performance standard is the more flexible of the two because it does not require that a specific design be used to achieve the desired result. Certain important minimum requirements for the performance standard, however, are included in the model law in an effort to ensure its effectiveness. Section 5(a)(1) provides a basic definition of a personalized gun as one that only the authorized user can operate. If the gun is designed in such a way that only the authorized user can operate it, then a small child, a despondent teenager contemplating suicide, or a criminal who steals the gun cannot shoot it, and thus deaths and injuries would be prevented.

Section 5(a)(2) requires that the technology personalizing the handguns be incorporated into the gun's design and not be an accessory. This increases the effectiveness of the technology because it provides automatic protection. Automatic or passive protection is far more effective in preventing injuries than those measures which require action on the part of the individual to be protected. For example, air bags, which inflate automatically upon impact in crashes, do not require occupants to always remember to take action (such as buckling a seat belt) in order to acquire protection. Similarly, if an accessory is required for personalization of a gun, several actions would be required by the authorized user -- the purchase of the accessory, the use of the accessory every time the gun is fired, and the correct application of the accessory. Requiring these actions potentially reduces the amount of protection afforded.

Section 5(a)(3), requires that the technology be designed in such a way that it cannot readily be deactivated. The purpose of this requirement is to ensure that the protection afforded by a personalized gun cannot be undermined by making it easy for an authorized user to deactivate the protective technology. Even a temporary deactivation of the technology would not be ideal. For example, a combination lock designed into the gun that did not automatically reset itself to a locked position after being unlocked for firing would not offer consistent protection. It would require the authorized user to reactivate the lock.

(b) The Commission shall formulate the necessary testing procedure to determine if a handgun complies with the Commission's standard.

(c) The Commission shall designate one or more independent laboratories for determining whether handguns comply with the Commission’s standard. The laboratories shall use the test method formulated by the Commission to determine compliance.

Analysis: Subsection (c) provides that the laboratory or laboratories selected are independent of the state and do not have any affiliation with the gun industry or gun control advocates. This is meant to safeguard the objectivity and fairness of the testing. Fairness also requires that each of the designated laboratories uses a uniform testing procedure. It is important, however, to note that independent laboratories have falsified data and manipulated test results in some other cases where they have been used to certify compliance with safety standards. Providing the state with some inspection or oversight authority may be appropriate for dealing with this concern.

(d) In accordance with the standard promulgated by the Commission, handgun manufacturers wishing to manufacture, sell, offer for sale, or transfer handguns in the State must submit a prototype of the handgun model for testing, at the manufacturers’ cost, to one of the independent laboratories designated by the Commission.

- (1) The laboratory will issue a report directly to the agency designated by the Commission to oversee the administration and implementation of the standard, and a copy to the manufacturer indicating whether the submitted handgun met or did not meet the safety standard. If the submitted handgun did not meet the safety standard, the report will describe the reasons therefor.**
- (2) If the handgun model fails to meet the standard it cannot be manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired by anyone in the State until it has been modified to meet the Commission’s standard and has passed the independent laboratory test on resubmission.**
- (3) If the handgun model meets the standard, the designated agency will issue a certificate stating that the handgun model meets the Commission’s standard, and the words, “certified personalized handgun” or an equivalent label, as established by the Commission, shall be imprinted on the approved handguns at the manufacturer’s expense.**
- (4) Once the handgun model is deemed to meet the standard, the manufacture, seller or possessor shall not alter the design of**

the handgun in any manner affecting the safety of the handgun.

Analysis: This subsection sets up a system whereby a prototype of a manufacturer's personalized handgun is submitted for certification to an independent laboratory. The laboratory determines if the handgun complies with the standard. The manufacturer is required to bear the cost of the testing since it ultimately profits from the sale of its handguns. The procedure is meant to be fair and allows for the handgun to be resubmitted for certification if it fails to meet the standard upon its first submission. The manufacturer is provided with written test results that explain why the handgun failed to meet the standard. If the handgun model meets the standard, a certificate is issued by the agency overseeing the process. This approval protects the manufacturer by providing proof of compliance.

(e) In promulgating and amending the standard, the procedures as delineated in the administrative procedure act shall be followed.

(f) The handgun safety standard and any rules or orders issued by the Commission or the designated agency shall be subject to review in accordance with the administrative procedure act.

Analysis: A state may have rules of administrative procedure (sometimes codified among the state's statutes as an administrative procedure act) that govern the promulgation of state standards. The procedure may require, among other things, official publication of the proposed standard, a specified time for the acceptance of comments, and public hearings. Rules may also be provided for the amendment of the standard. These administrative rules may also include a review process for those who dispute the promulgation, implementation, or enforcement of the standard.

Section 6. Enforcement

(a) On or after four years from the date of the adoption of the Commission's original standard, handguns that do not meet the standard prescribed by the Commission pursuant to this Act may not be manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired in this state.

(b) If any police officer, during the course of official duties and operating within existing constitutional constraints on police searches and seizures, discovers any handgun which under the provisions of this Subtitle does not meet the Commission's standard as promulgated in this state, that officer shall take

possession of the handgun. The handgun shall be forfeited to the state and shall be destroyed.

(c) The Attorney General may bring an action on behalf of the state against sellers, manufacturers, or possessors of handguns to enjoin further violations of this Subtitle and for such other relief as may be appropriate.

Analysis: According to this provision, manufacturers and others are required to comply with the standard four years from the date on which the Commission's original standard is adopted. This time period acknowledges the gun manufacturers' need for time to research the technology and to retool. It is likely that the time line created by this model law (within six months of passage, the State Handgun Standard Commission is established; within one year of the Commission's establishment, the performance standard is adopted; and within four years of the adoption of the standard, manufacturers and others must comply with the standard) will be altered by advocates and legislators in order to accommodate bureaucratic requirements and circumstances specific to the state or to enhance the bill's political feasibility.

This provision of the law also provides for enforcement strategies. It authorizes law enforcement officials to take possession of handguns that do not meet the standard and also creates a cause of action that can be used by the Attorney General to ensure compliance with the legislation.

Section 7. Exemptions

(a) The following handguns are exempt from this Act:

- (1) Antique handguns legally purchased or acquired in accordance with current laws.**
- (2) Handguns manufactured prior to four years from the date of the adoption of the Commission's original standard. However, such handguns may not be sold, offered for sale, traded, transferred, shipped, leased, or distributed by dealers after four years from the date of the adoption of the Commission's original standard.**
- (3) Handguns purchased by police departments, sheriffs and law enforcement officers and members of the armed forces of the State and the United States; handguns possessed by law enforcement officers on official assignment in this State from any State which by agreement permits police officers from this**

State while on assignment in that State to carry firearms without registration.

(4) Handguns that are a part of the official equipment of any federal agency.

Analysis: It is common for antique firearms to be exempt from the requirements of firearm legislation because typically they are purchased and kept as collector's items and not for use. Handguns manufactured prior to the compliance date (four years from the date of the adoption of the Commission's original standard) are also exempt under this provision because of the political infeasibility of outlawing those guns already made. After the compliance date, however, dealers are prohibited from selling or otherwise transferring those handguns manufactured prior to the compliance date. This prohibition is intended to prevent dealers and manufacturers from stockpiling handguns that do not comply with the safety standard. Law enforcement and military personnel are also exempt from the requirements of the law. Although law enforcement officials are often killed or injured with their own firearms and would benefit from personalized guns, they may require guns with slightly different technology than guns for domestic use.

It is likely that some gun owners will want to dispose of their non-compliant, but exempt, handguns when personalized guns become available. If it is politically feasible, an additional provision of the law could devise a process to ensure safe disposal. Perhaps the opportunity for "trading-in" a handgun at local police departments (or at an alternative site with the cooperation of the local police) could be offered and advertised periodically throughout at least the first year following passage of the law. A handbook published by the Handgun Epidemic Lowering Plan (HELP) Network entitled, The HELP Handgun Disposal Handbook: A Prescription for Safety, outlines various approaches for safely removing a gun from the home.¹²

Section 8. Penalties

(a) Any person who violates this Subtitle by manufacturing, possessing, selling, offering for sale, trade, transfer, or acquiring a handgun that has not been certified by an independent testing laboratory as meeting the standard, and does not fall within the exemptions stated in this Act, shall be guilty of a class X felony and shall be imprisoned for a term of X years and fined \$X.

(b) Any person who violates this Subtitle by altering the personalized characteristics of a handgun manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired after four years from the date of the adoption of the Commission's original standard shall be guilty of a class X felony and shall be imprisoned for a term of X years and fined \$X.

(c) These penalties apply to all public and private manufacturers, possessors, sales, offers for sale, trades, transfers, shipments, leases, distributions, or acquisitions of handguns.

Analysis: Appropriate penalties can be devised by comparing the infractions in this law to others in the state's criminal code. Characterizing the crime as a felony and providing stiff penalties could serve as a deterrent and would demonstrate the legislature's commitment to reducing firearm injury and death. If it is politically infeasible to provide such strong penalties, categorizing the infractions as misdemeanors, for example, may be necessary.

Section 9. Liability

(a) Any person who discharges a handgun that does not meet the Commission's standard, and does not fall within the exemptions stated in this Act, and thereby causes personal injury to any person, shall be absolutely liable for such damages that resulted from the handgun not meeting the Commission's standard.

(b) Any person who owns a handgun that does not meet the Commission's standard, and that is discharged by an unauthorized person, and does not fall within the exemptions stated in this Act, and thereby causes personal injury to any person, shall be absolutely liable for such damages that resulted from the handgun not meeting the Commission's standard.

(c) This section shall apply whether the discharge of the handgun was legally justified or not, except when the discharge of the handgun was by a law enforcement officer in the line of duty or when the discharge is for self-defense as defined by state or federal law.

(d) Compliance with any safety standard issued under this law, does not exempt any person from liability under common law.

Analysis: This section enables individuals who are injured or the legal representatives of those killed by the discharge of handguns not meeting the standard to bring an action against the person who fires the handgun and the owner of the handgun. This section is intended to provide a strong incentive not to keep or acquire a handgun that is made illegal under this law. Liability in this case is absolute. If the circumstances described in this section are met, then there is no question that the person sued is liable for the damage done. Subsection (c) allows for the defense that the handgun was being used by a law enforcement officer in the line of duty or for self-protection as defined by law. Subsection (d) ensures that this law would not preclude a person from bringing a suit based on state tort law.

Section 10. Severability

Each provision of this bill is severable so that if any part of this bill is held to be invalid or unconstitutional, or the implementation or application thereof is declared invalid or unconstitutional, the validity or constitutionality of the remainder of the Act shall not be affected.

Analysis: This provision is typical of many laws and prevents the entire piece of legislation from being disregarded if one part or an application of it is ruled to be unconstitutional or otherwise invalid.

Section 11. Effective Date

And be it further enacted, that this Act shall take effect upon passage.

Analysis: As with many of the other provisions of this model law, state guidelines should be consulted for any rule regarding the determination of the effective date.

Conclusion

Guns are dangerous consumer products. But changing the design of the gun can reduce the likelihood of certain gun-related injuries. Most gun manufacturers have not adequately taken the initiative to research and implement design changes that can save lives and prevent injury. Legislation is needed to require gun manufacturers to build safety into their handguns.

This model law is a starting point for crafting legislation that can be an effective prevention measure in states and localities. It is a flexible tool that is meant to be molded by legislators to conform to state or local drafting requirements, the substantive requirements of other relevant state and local laws, and the political exigencies of the state or locality.

Education of the media, the public, and legislators is needed to create a receptive political climate for this legislation. The reasonableness of the legislation and its conservative approach to safeguarding lives, especially those of young children and teenagers, can make it politically feasible. Other products have been successfully modified by legislation and regulation to prevent injury -- handguns should follow these examples.

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Appendix A

A Model Handgun Safety Standard Act (Text Only)

A Model Handgun Safety Standard Act

A BILL ENTITLED

HANDGUN SAFETY STANDARD ACT

For the purpose of establishing the State Handgun Standard Commission; requiring the Commission to promulgate a safety performance standard for the manufacture of handguns; providing for the performance standard to require that all handguns manufactured are “personalized” so that only authorized users can operate them; providing that handguns not meeting this standard four years from the date the Commission’s original standard is adopted may not be manufactured, sold, offered for sale, traded, transferred, or acquired in this State except as provided in this Act ; defining certain terms; providing for the forfeiture of handguns and for the enforcement of this Act; and generally relating to a safety standard for handguns.

By adding to

Article XX — Health and Safety

**Section XX through XX, inclusive, to be under the new Subtitle
“Handgun Safety Standard”
Code of X**

SECTION 1. PREAMBLE

WHEREAS, The legislature finds that there are no current laws or regulations creating a safety standard for personalized guns; and

WHEREAS, In 1997, there were over 32,400 gun deaths nationwide; 54 percent of all gun deaths were suicides and 42 percent were homicides; and

WHEREAS, In 1998 in the U.S., 86 percent of all firearm homicides, in which the type of gun was known, were caused by handguns; and

WHEREAS, A homicide of a household member is almost three times more likely to occur in homes with guns than in homes without guns and the risk of suicide is increased by nearly five times in homes with guns; the risk is higher still for adolescents and young adults; and

WHEREAS, In 1997, there were 981 unintentional firearm deaths nationwide; and

WHEREAS, In the state of X, xx children under the age of x were killed by gunfire in 199x; and

WHEREAS, The legislature believes many firearm deaths and injuries are needless and can be prevented by a safety performance standard for handguns; and

WHEREAS, The legislature further finds that existing technology makes possible personalized guns, which can only be fired by the authorized user(s); and

WHEREAS, The legislature believes that a handgun safety performance standard is necessary to protect the public health, safety and welfare, therefore

SECTION 2. ENACTMENT CLAUSE

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF X,
That the Laws of X read as follows:**

Article XX - Health and Safety

Handgun Safety Standard

SECTION 3. DEFINITIONS

For the purposes of this Act:

“Handgun” means:

- (a) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and**
- (b) any combination of parts from which a firearm described in subsection (a) can be assembled.**

“Authorized user” means the person who owns the handgun or a person to whom the owner has given consent to use the handgun.

“Antique firearms” means:

- (a) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and**
- (b) any replica of any firearm described in subsection (a) if such replica**

- (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
- (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

“Handgun manufacturer” is any person engaged in the business of manufacturing handguns for the purpose of sale or distribution.

“Person” includes any individual, corporation, company, association, firm, partnership, society, or joint stock company.

“Seller” or “Dealer” is any person:

- (a) engaged in the business of selling firearms at wholesale or retail;
- (b) engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or
- (c) any person who is a pawnbroker.

“Pawnbroker” is any person whose business or occupation includes the taking or receiving, by the way of pledge or pawn, of any firearm as security for the payment or repayment of money.

SECTION 4. CREATION OF THE STATE HANDGUN STANDARD COMMISSION

(a) The State Handgun Standard Commission [hereinafter Commission] will be established within six months following the passage of this law in order to promulgate an appropriate performance standard that responds to the need for the improved safety of handguns.

(b) The Commission, where possible, shall be composed of seven members: the Attorney General or the Attorney General’s designee, the State Police Commissioner or the Commissioner’s designee, the Director of the State Department of Health or the Director’s designee, an injury prevention specialist, a handgun industry representative, a mechanical engineer, and a citizen-at-large. The members will be appointed by the Governor. The chair of the Commission will be selected from among the members by the Governor.

(c) Commission members will be reimbursed for reasonable and necessary expenses including, but not limited to, travel, but shall not otherwise be compensated.

(d) Staff services for the Commission shall be provided by the Attorney General's Office.

(e) The Commission will exist for the period during which the standard is promulgated. Once the Commission has ceased to exist, the Governor, if he/she deems necessary, may reestablish the Commission for a period of time designated by the Governor.

(f) In addition to promulgating a performance standard, the Commission shall designate the existing state government agency that will be responsible for administering, advertising, implementing, and enforcing the standard. The Commission's designation of an agency requires approval of the Governor.

SECTION 5. PROMULGATION OF A SAFETY STANDARD

(a) On or before one year after the establishment of the Commission, the Commission shall adopt a handgun safety performance standard for all handguns manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired within this State. The standard shall require, but need not be limited to, the following:

- (1) A handgun must be personalized so that it can only be fired when operated by that handgun's authorized user;**
- (2) The technology creating personalized handguns shall be incorporated into the design of the handgun and be part of its original equipment and not an accessory;**
- (3) Personalized handguns shall not be manufactured so as to permit the personalized characteristics to be readily deactivated.**

(b) The Commission shall formulate the necessary testing procedure to determine if a handgun complies with the Commission's standard.

(c) The Commission shall designate one or more independent laboratories for determining whether handguns comply with the Commission's standard. The laboratories shall use the test method formulated by the Commission to determine compliance.

(d) In accordance with the standard promulgated by the Commission,

handgun manufacturers wishing to manufacture, sell, offer for sale, or transfer handguns in the State must submit a prototype of the handgun model for testing, at the manufacturers' cost, to one of the independent laboratories designated by the Commission.

- (1) The laboratory will issue a report directly to the agency designated by the Commission to oversee the administration and implementation of the standard, and a copy to the manufacturer indicating whether the submitted handgun met or did not meet the safety standard. If the submitted handgun did not meet the safety standard, the report will describe the reasons therefor.
- (2) If the handgun model fails to meet the standard it cannot be manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired by anyone in the State until it has been modified to meet the Commission's standard and has passed the independent laboratory test on resubmission.
- (3) If the handgun model meets the standard, the designated agency will issue a certificate stating that the handgun model meets the Commission's standard, and the words, "certified personalized handgun" or an equivalent label, as established by the Commission, shall be imprinted on the approved handguns at the manufacturer's expense.
- (4) Once the handgun model is deemed to meet the standard, the manufacture, seller or possessor shall not alter the design of the handgun in any manner affecting the safety of the handgun.

(e) In promulgating and amending the standard, the procedures as delineated in the administrative procedure act shall be followed.

(f) The handgun safety standard and any rules or orders issued by the Commission or the designated agency shall be subject to review in accordance with the administrative procedure act.

SECTION 6. ENFORCEMENT

(a) On or after four years from the date of the adoption of the Commission's original standard, handguns that do not meet the standard prescribed by the Commission pursuant to this Act may not be manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired in this state.

(b) If any police officer, during the course of official duties and operating within existing constitutional constraints on police searches and seizures, discovers any handgun which under the provisions of this Subtitle does not meet the Commission's standard as promulgated in this state, that officer shall take possession of the handgun. The handgun shall be forfeited to the state and shall be destroyed.

(c) The Attorney General may bring an action on behalf of the state against sellers, manufacturers, or possessors of handguns to enjoin further violations of this Subtitle and for such other relief as may be appropriate.

SECTION 7. EXEMPTIONS

(a) The following handguns are exempt from this Act:

- (1) Antique handguns legally purchased or acquired in accordance with current laws.**
- (2) Handguns manufactured prior to four years from the date of the adoption of the Commission's original standard. However, such handguns may not be sold, offered for sale, traded, transferred, shipped, leased, or distributed by dealers after four years from the date of the adoption of the Commission's original standard.**
- (3) Handguns purchased by police departments, sheriffs and law enforcement officers and members of the armed forces of the State and the United States; handguns possessed by law enforcement officers on official assignment in this State from any State which by agreement permits police officers from this State while on assignment in that State to carry firearms without registration.**
- (4) Handguns that are a part of the official equipment of any federal agency.**

SECTION 8. PENALTIES

(a) Any person who violates this Subtitle by manufacturing, possessing, selling, offering for sale, trade, transfer, or acquiring a handgun that has not been certified by an independent testing laboratory as meeting the standard, and does not fall within the exemptions stated in this Act, shall be guilty of a class X felony and shall be imprisoned for a term of X years and fined \$X.

(b) Any person who violates this Subtitle by altering the personalized characteristics of a handgun manufactured, possessed, sold, offered for sale, traded, transferred, shipped, leased, distributed, or acquired after four years from the date of the adoption of the Commission's original standard shall be guilty of a class X felony and shall be imprisoned for a term of X years and fined \$X.

(c) These penalties apply to all public and private manufacturers, possessors, sales, offers for sale, trades, transfers, shipments, leases, distributions, or acquisitions of handguns.

SECTION 9. LIABILITY

(a) Any person who discharges a handgun that does not meet the Commission's standard, and does not fall within the exemptions stated in this Act, and thereby causes personal injury to any person, shall be absolutely liable for such damages that resulted from the handgun not meeting the Commission's standard.

(b) Any person who owns a handgun that does not meet the Commission's standard, and that is discharged by an unauthorized person, and does not fall within the exemptions stated in this Act, and thereby causes personal injury to any person, shall be absolutely liable for such damages that resulted from the handgun not meeting the Commission's standard.

(c) This section shall apply whether the discharge of the handgun was legally justified or not, except when the discharge of the handgun was by a law enforcement officer in the line of duty or when the discharge is for self-defense as defined by state or federal law.

(d) Compliance with any safety standard issued under this law, does not exempt any person from liability under common law.

SECTION 10. SEVERABILITY

Each provision of this bill is severable so that if any part of this bill is held to be invalid or unconstitutional, or the implementation or application thereof is declared invalid or unconstitutional, the validity or constitutionality of the remainder of the Act shall not be affected.

SECTION 11. EFFECTIVE DATE

And be it further enacted, that this Act shall take effect upon passage.