

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 737

(Senator Lee, *et al.*)

Judicial Proceedings

Public Safety - Rifles and Shotguns - Transactions

This bill establishes requirements and prohibitions, similar to regulated firearms, for the transfer, sale, and rental of a rifle or shotgun and establishes penalties for violations of the bill's provisions.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$3.4 million in FY 2020 and potentially significantly thereafter. Although general fund revenues increase from registration fees and license fees, sales tax revenues from the sale of rifles and shotguns in the State likely decrease. The bill's penalty provisions are not anticipated to materially affect State finances.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Transfer of Rifle or Shotgun

The bill requires that, before the transfer of a rifle or shotgun is conducted, the transferor and transferee meet jointly with a licensed firearms dealer and request that the dealer facilitate the transfer. A dealer who agrees to facilitate the transfer must (1) process the

transfer as though transferring the rifle or shotgun from the dealer's own inventory to the transferee and (2) comply with all federal and State law that would apply to the transfer, including all background check and recordkeeping requirements. A dealer may charge a reasonable fee for facilitating a transfer of a rifle or shotgun.

A violator of the bill's provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to five years and/or a fine of up to \$10,000. A person who provides false information while conducting a transaction under the bill is guilty of a misdemeanor and on conviction is subject to imprisonment for up to three years and/or a fine of up to \$5,000.

The transferor may remove the rifle or shotgun from the premises of the dealer or a gun show while a background check is being conducted but must subsequently deliver the rifle or shotgun to the dealer to complete the transfer. If the results of the background check indicate that the transferee is prohibited from possessing the rifle or shotgun, the transfer may not be completed, and the transferor may remove the rifle or shotgun from the premises of the dealer or a gun show.

These provisions do not apply to a transfer:

- involving a licensed firearms dealer or a federally licensed gun manufacturer, dealer, or importer;
- between specified immediate family members;
- involving law enforcement personnel of any unit of the federal government, a member of the U.S. Armed Forces, a member of the National Guard, or law enforcement personnel of the State or any local agency in the State, while acting in the scope of official duty;
- of a curio or relic firearm between collectors, as specified;
- that is temporary and necessary to prevent imminent death or serious bodily harm if the transfer lasts as long as necessary to prevent imminent death or serious bodily harm;
- occurring by operation of law on the death of a person for whom the transferee is an executor, an administrator, a trustee, or a personal representative of an estate or a trust created in a will;
- of an unserviceable rifle or shotgun transferred as a curio or museum piece;
- of a rifle or shotgun modified to render it permanently inoperative; or
- that is temporary, as specified, and takes place exclusively at a specified established sport shooting range, during a lawfully organized competition, during a performance or a practice, while the transferee is hunting or trapping, as specified, or in the actual presence of the transferor.

The bill prohibits a licensee or any other person from selling, renting, or transferring a rifle or shotgun, other than a regulated firearm, until seven days after a federal firearms transaction record is executed by the transferee and the licensee or transferor begins to process the transaction in accordance with State and federal law. A licensee or any other person who sells, rents, or transfers a rifle or shotgun other than a regulated firearm must forward a copy of the written notification of the completed transaction to the Secretary of State Police within seven days after delivery of the rifle or shotgun. The notification must contain specified information, and the Secretary of State Police must maintain a permanent record of all such notifications.

Purchases within 30 Days

Generally, with specified exceptions, a person may not purchase more than one rifle or shotgun other than a regulated firearm in a 30-day period. A violator is guilty of a misdemeanor and on conviction subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

Registration of Rifles and Shotguns When Moving into the State

A person who moves into the State with the intent of residency must register all rifles and shotguns with the Department of State Police (DSP) within 90 days of establishing residency, as specified. An application for registration must contain (1) the make, model, manufacturer's serial number, caliber, type, barrel length, finish, and country of origin of each rifle and shotgun other than a regulated firearm and (2) the owner's name, address, Social Security number, place and date of birth, height, weight, race, eye and hair color, signature, driver's or photographic identification Soundex number, and occupation. The total registration fee is \$15, regardless of the number of firearms registered. The registration data is not open to public inspection.

Long Gun Qualification License

The bill also creates a new licensing scheme for rifles and shotguns, similar to handguns, under the licensing authority of DSP. DSP is authorized to adopt regulations to carry out the bill's provisions related to this new license. A "long gun qualification license" authorizes a person to purchase, rent, or receive a rifle or shotgun. A licensed firearms manufacturer, a specified active or retired law enforcement officer, a member or retired member of the U.S. Armed Forces or the National Guard, and a person purchasing, renting, or receiving an antique, curio, or relic firearm (as defined under federal law or in determinations published by the Bureau of Alcohol, Tobacco, Firearms and Explosives) are exempt from the requirements of the licensing provisions. The Secretary of State Police must apply for a State and national criminal history records check (CHRC) for each

applicant. As part of the application for a CHRC, the Secretary must submit one complete set of fingerprints of the applicant and specified fees.

An individual whose fingerprints have been submitted pursuant to a license application, but whose application has been denied, may request that the record of the fingerprints be expunged by obliteration, in accordance with specified current law provisions. The individual may not be charged a fee for such an expungement.

The application fee for a long gun qualification license is to cover administrative costs and may be up to \$50. The term of the license is 10 years. License renewal fees are set at up to \$20. The bill delineates the identifying information and documentation that are required for the issuance of the license. Among other requirements, the application must have a signed statement from the applicant, under penalty of perjury, that the applicant is not prohibited under federal or State law from possessing a rifle or shotgun other than a regulated firearm. The applicant must also show proof of completion of an approved firearms safety training course, as specified. An applicant is not required to complete an approved firearms safety training course if the applicant has previously completed a certified firearms training course, has completed a hunting safety course prescribed by the Department of Natural Resources, is currently a qualified firearm instructor, is an honorably discharged member of the U.S. Armed Forces or the National Guard, is a certain employee of an armored car company, or lawfully owns a firearm. Renewal applicants are not required to complete the firearms safety training course or submit to a State and national CHRC.

The bill requires written approval or denial of an application by DSP, as specified, within 30 days. A denial must specify the reason that the application was denied. The bill details the required approval and denial processes and establishes provisions regarding license renewal and the revocation of licenses.

Unless the applicant is otherwise disqualified, the Secretary must replace a lost or stolen long gun qualification license on receipt of a written request and a nonrefundable fee of up to \$20.

Knowing Participation

A dealer or other person may not knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a rifle or shotgun other than a regulated firearm in violation of the bill's provisions. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of five years imprisonment and/or a \$10,000 fine. Each violation is a separate crime.

Current Law: Maryland regulates the sale, transfer, rental, and possession of regulated firearms, which consist of handguns and assault weapons. However, Maryland generally does not regulate the sale of rifles or shotguns, and no permit is required to purchase a rifle or shotgun that is able to be purchased in the State.

Possession of a Rifle or Shotgun

A resident of Maryland who is eligible to purchase a rifle or shotgun under the laws of an adjacent state may purchase a rifle or shotgun from a federally licensed gun dealer in the adjacent state. Likewise, a resident of an adjacent state who is eligible to purchase a rifle or shotgun under the laws of Maryland may purchase a rifle or shotgun from a federally licensed gun dealer in Maryland.

Generally, a person is prohibited from possessing a rifle or a shotgun, with the exception of an antique firearm, if the person:

- has been convicted of a disqualifying crime;
- has been convicted of a violation classified as a common law crime and received an imprisonment term of more than two years;
- is a fugitive from justice;
- is a habitual drunkard;
- is addicted to a controlled dangerous substance or is a habitual user;
- suffers from a mental disorder and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial or has been found not criminally responsible in a criminal case;
- has been voluntarily admitted for more than 30 consecutive days to a facility;
- has been involuntarily committed to a facility;
- is under the protection of a guardian appointed by a court under specified provisions of the Estates and Trusts Article relating to the protection of minors and disabled persons, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom (1) a current non ex parte civil protective order has been entered or (2) a protective order has been issued by a court of another state or a Native American tribe and is in effect; or
- if younger than age 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

Statutory restrictions on the possession of rifles and shotguns do not apply to a person transporting a rifle or shotgun if the person is carrying a civil protective order requiring the surrender of the weapon and (1) the rifle or shotgun is unloaded; (2) the person has notified a law enforcement unit that it is being transported in accordance with the protective order; and (3) the person transports it directly to the law enforcement unit. A person who is disqualified from owning a rifle or shotgun for mental health reasons may seek relief under restoration provisions of statute.

In addition, a person may not possess a rifle or shotgun if the person was previously convicted of (1) a crime of violence under § 5-101 of the Public Safety Article; (2) a violation of specified felonies involving a controlled dangerous substance; or (3) an offense under the laws of another state or the United States that would constitute one of the crimes listed in the provisions of (1) or (2) if committed in this State.

Purchase, Rental, or Receipt of a Handgun

Chapter 427 of 2013 (the Firearm Safety Act of 2013) created a new licensing scheme for handguns under the licensing authority of DSP. A handgun qualification license (HQL) authorizes a person to purchase, rent, or receive a handgun. A licensed firearms manufacturer, a specified active or retired law enforcement officer, a member or retired member of the U.S. Armed Forces or the National Guard, and a person purchasing, renting, or receiving an antique, curio, or relic firearm (as defined under federal law) are exempt from the requirements of the licensing provisions.

The Secretary of State Police must apply for a State and national CHRC for each applicant. As part of the application for a CHRC, the Secretary must submit one complete set of fingerprints of the applicant.

The application fee for an HQL is to cover administrative costs and may be up to \$50. The term of the license is 10 years. License renewal fees are set at up to \$20. Generally, the Secretary of State Police must issue an HQL to a person who (1) is at least age 21; (2) is a State resident; (3) has completed a firearms safety training course; and (4) is not prohibited by federal or State law from purchasing or possessing a handgun. An applicant is not required to complete an approved firearms safety training course under specified conditions. Renewal applicants are not required to complete the firearms safety training course or submit to a State and national CHRC.

The Secretary may issue an HQL without an additional application or fee to a person who meets the requirements for the issuance of a handgun permit who does not already have an HQL.

A person must lawfully possess a dealer's license issued by the Secretary of State Police before the person engages in the business of selling, renting, or transferring regulated firearms. One dealer's license is required for each place of business where regulated firearms are sold.

Background: DSP does not regulate or track the sale of rifles and shotguns in the State; thus, the department is not able to provide a reliable estimate regarding the number of annual sales that occur or the number of individuals moving into the State that possess rifles and shotguns. However, DSP advises that, in 2018, the Licensing Division received 53,544 firearms registration applications for regulated firearms. As there are fewer federal and State laws regulating the purchase of rifles and shotguns, and the legal age to obtain a rifle or shotgun is 18 (for a regulated firearm, the minimum age is 21), sales of rifles and shotguns in the State are likely higher than sales of regulated firearms.

State Revenues: While general fund revenues increase from registration fees and application fees for long gun qualification licenses, sales tax revenue from the sale of rifles and shotguns may decrease. Under federal and State law, a resident of Maryland who is eligible to purchase a rifle or shotgun under the laws of an adjacent state may purchase a rifle or shotgun from a federally licensed gun dealer in the adjacent state. The bill does not prohibit such purchases; thus, sales of rifles and shotguns in the State decrease to the extent individuals choose to purchase rifles and shotguns in adjacent states instead of purchasing them in Maryland.

State Expenditures: A reliable estimate of the number of applications for long gun qualification licenses that are submitted under the bill cannot be made. Although it is assumed that many individuals may purchase rifles and shotguns in an adjacent state to avoid the new license requirement, DSP advises that some residents likely apply for the new license in order to avoid potential problems. Regardless of the number of rifles and shotguns sold in the State after the bill's effective date, DSP must update current firearms tracking systems for the Licensing Division and create a new system to track the new license as well as rifle and shotgun transfers and sales. As a result, general fund expenditures for DSP increase by at least \$3,420,097 in fiscal 2020 for computer programming costs.

DSP reports that its Licensing Division had overtime expenditures of approximately \$945,000 in fiscal 2018 and that overtime has increased by more than 11% in fiscal 2019. DSP asserts that with the current level of regulated firearm applications and HQL applications, the Licensing Division does not have the capacity to absorb the workload resulting from the bill (issuing new licenses, tracking rifle and shotgun sales, handling background checks, etc.) As a result, DSP advises that it needs to hire 30 permanent employees and 25 contractual employees in order to implement the bill. In addition, although the building in which the Licensing Division operates was recently renovated,

DSP advises that additional office space is necessary for the additional staff at a cost of \$10,000 monthly. The Department of Legislative Services concurs that, if applications for the new license are even moderate in number, DSP likely needs additional staff. However, without actual experience under the bill, the number of additional staff needed, and the need for any additional office space, is unclear. Thus, a reliable estimate of the increase in general fund expenditures for staffing (and potentially for office space) cannot be made at this time.

DSP also reports that since the enactment of Chapter 427, due to storage restraints, the department has moved toward automation of all applications processed through the Licensing Division; however, the bill requires DSP to maintain a permanent record of all *written copies* of notifications regarding a completed sale, rental, or transfer of a rifle or shotgun in the State. DSP advises that additional storage space is needed as a result; however, without actual experience under the bill, a reliable estimate of any increase in costs for storage space cannot be made.

The bill also impacts the workload of the State's Criminal Justice Information System operated within the Department of Public Safety and Correctional Services, as the bill expands the category of persons required to obtain State and national CHRC. However, any new CHRC expenditures are offset by the costs of the checks (\$51.25 for State and federal).

In addition, the bill's criminal penalty provisions may increase the workload of the courts and the Office of the Public Defender. Although such impacts cannot be reliably quantified, they are not expected to be significant.

Small Business Effect: A State firearms dealer license is only required for the sale, rental, or transfer of regulated firearms. Rifles and shotguns may be sold by a person with only a federal firearms license issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives. DSP does not regulate holders of a federal firearms license who do not also possess a State firearms dealer license. However, the bill requires that a State firearms dealer facilitate all transfers relating to rifles and shotguns. To the extent that small business owners with only federal firearms licenses are unable to continue selling rifles and shotguns in the State, the bill has a meaningful impact on small business. In addition, as discussed above, in order to avoid the requirement to obtain a long gun qualification license, some individuals may choose to purchase rifles and shotguns in an adjacent state, thus decreasing the demand for Maryland businesses that sell rifles and shotguns.

Additional Comments: Although the bill requires DSP to collect the Social Security number of a person registering rifles and shotguns upon moving into the State with the intent of becoming a resident, DSP advises that such practice is prohibited under federal law.

Additional Information

Prior Introductions: None.

Cross File: HB 786 (Delegate Atterbeary, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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