

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 731 (Senator Jacobs, *et al.*)
Judicial Proceedings

Department of State Police - Firearms - Prohibition on Provision of Information

This bill requires the Secretary of State Police to keep any information submitted by an individual to the Secretary for any purpose under Title 5 of the Public Safety Article confidential. The Secretary may not provide any of that information to any other agency, entity, or individual, except as necessary to participate in the National Instant Criminal Background Check System (NICS).

Fiscal Summary

State Effect: None. The Department of State Police (DSP) can meet the bill's confidentiality standards with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Title 5 of the Public Safety Article governs regulated firearms (Subtitle 1) and handgun permits (Subtitle 2). Various details establishing an individual's qualifications, standing, and/or background must be submitted to the Secretary of State Police, directly or indirectly, for the following purposes under Title 5:

- a firearms dealer's license and a renewal license;
- the purchase, rental, or transfer of a regulated firearm;
- a handgun qualification license and a renewal license;

- a permit to wear, carry, or transport a handgun;
- a request for a hearing related to the denial or revocation of certain permits or licenses; and
- specified information relevant to ending a disqualification for firearm ownership or possession by the Department of Health and Mental Hygiene.

Generally, the prohibitions that apply to firearms regulation include circumstances when the individual:

- 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.

Background: The Brady Handgun Violence Prevention Act went into effect in 1994. The Brady Act requires that background checks be conducted on individuals before a firearm may be purchased from a federally licensed dealer, manufacturer, or importer – unless an exception applies. It does not apply to private transactions, including those which occur at gun shows. If there are no additional state restrictions, a firearm may be transferred to an individual upon approval by NICS. In some states, proof of a previous background check can be used to bypass the NICS check.

NICS was launched by the Federal Bureau of Investigation (FBI) on November 30, 1998. It is used to quickly determine whether a prospective buyer is eligible to buy firearms or explosives from a licensee. Before a sale may be made, cashiers must call in a criminal history records check to the FBI (or other designated agency) to nationally check criminal records or other ineligibility criteria (such as mental health records). According to the FBI, over the last decade, more than 100 million such checks have been made, leading to more than 700,000 denials.

Additional Comments: Two cases relating to Maryland firearms law are pending:

Kolbe v. O'Malley: This case, originally filed under the name *Tardy v. O'Malley*, is pending in the U.S. District Court for the District of Maryland. The suit seeks to have the assault weapon and high-capacity magazine bans included in Chapter 427 of 2013 declared unconstitutional under the Second Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment. Judge Blake denied plaintiffs' request for a temporary restraining order to prevent those aspects of the law from going into effect on October 1, 2013. The case is currently in the discovery phase with motions for summary judgment due on February 14, 2014.

Doe v. O'Malley: This case anticipated that DSP would be unable to process the new handgun qualification licenses (HQL) mandated for handgun transactions under Chapter 427 in a timely manner and that the result would be a *de facto* moratorium on handgun sales in Maryland. Judge Catherine Blake denied plaintiffs' request for a temporary restraining order to delay the effective date of the HQL requirement for 90 days. Although the case remains active on the court's docket, plaintiffs have entered an agreement deferring the State's obligation to respond to the complaint unless and until it is amended.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police, Department of Legislative Services

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