

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 995
Judiciary

(Delegate Dwyer, *et al.*)

Firearms Freedom Act

This bill makes unenforceable specified federal laws, rules, regulations, and orders created or effective on or after a specified date that relate to restrictions on and registration of firearm accessories. The bill prohibits specified “public servants” or dealers from enforcing or attempting to enforce an act, a law, a statute, a rule, or a regulation of the U.S. government on a personal firearm, a firearm accessory, or ammunition that is owned or manufactured under specified circumstances and remains exclusively within the State. The bill requires the Attorney General to defend a State citizen who is prosecuted by the U.S. government for specified federal violations under specified circumstances.

The bill establishes a new criminal offense prohibiting an official, agent, or employee of the U.S. government from enforcing or attempting to enforce an act, an order, a law, a statute, a rule, or a regulation of the U.S. government on a personal firearm, a firearm accessory, or ammunition that is owned or manufactured under specified circumstances and remains exclusively within the State. A violator is guilty of a felony, punishable by up to five years imprisonment and/or a \$5,000 fine.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Office of the Attorney General (OAG) due to the bill’s citizen defense requirement. Potential minimal increase in general fund expenditures due to the bill’s incarceration penalty provision. Revenues are not affected.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit course cases. Expenditures are not expected to be materially affected.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: The bill makes unenforceable in the State any federal law, rule, regulation, or order created or effective on or after January 1, 2013, if the federal law, rule, regulation, or order purports to (1) ban or restrict ownership of a semiautomatic firearm or a magazine of a firearm or (2) require a firearm, a magazine, or any other firearms accessory to be registered in any manner.

The bill prohibits a public servant or dealer in the State from enforcing or attempting to enforce an act, a law, a statute, a rule, or a regulation of the U.S. government relating to a personal firearm, a firearm accessory, or ammunition that is owned or manufactured commercially or privately in the State and remains exclusively within the borders of the State. A “public servant” is an officer or employee of State or local government, and includes a legislator or a judge, and any person participating as juror, witness, advisor, consultant, or otherwise in performing a governmental function.

The State Attorney General is required to defend a citizen of the State who is prosecuted by the U.S. government for a violation of a federal law relating to the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition owned or manufactured and retained exclusively within the borders of the State.

The bill establishes a new offense prohibiting an official, agent, or employee of the U.S. government from enforcing or attempting to enforce an act, an order, a law, a statute, a rule, or a regulation of the U.S. government relating to a personal firearm, a firearm accessory, or ammunition that is owned or manufactured commercially or privately in the State and remains exclusively within the borders of the State. A violator is guilty of a felony, punishable by up to five years imprisonment and/or a maximum fine of \$5,000.

Current Law/Background: Under the Supremacy Clause of the U.S. Constitution, federal law overrides (preempts) state law. Preemption can be express (*i.e.*, the federal law states that it preempts state law) or implied, such as when there is an actual conflict between the two laws, when the state law presents an obstacle to the enforcement or intent of the federal law, or when the state law involves a subject matter that is so pervasively regulated by the federal government that the federal government is thought to “occupy the field” of that area of law.

Nullification refers to an action of a state in abrogating federal law by declaring federal law void and unenforceable in that state. The theory of nullification has never been

legally upheld by the U.S. Supreme Court. *See Cooper v. Aaron*, 358 U.S. 1 (1958). The court has held that, under the Supremacy Clause, federal law is superior to state law, and under Article III of the Constitution, the federal judiciary has the final power to interpret the Constitution. Consequently, federal courts, not the states, are vested with the authority to make final decisions about the constitutionality of federal laws, and states may not nullify federal laws. Thus, while a state may challenge the constitutionality of federal laws by filing a lawsuit in federal court, the Supreme Court has held that states do not have the unilateral power to pass state laws that invalidate federal law. Accordingly, it is unclear if this bill can even be implemented.

Background: According to the National Conference of State Legislatures, nine states (Alaska, Arizona, Idaho, Kansas, Montana, South Dakota, Tennessee, Utah, and Wyoming) have passed legislation regarding firearms freedom acts. As of January 31, 2013, similar legislation has been introduced in approximately 16 states.

State Expenditures: OAG advises that it needs additional personnel to comply with the bill's requirement that OAG defend a citizen of the State who is prosecuted by the U.S. government for a violation of a federal law relating to the manufacture, sale, transfer, or possession of a firearm, a firearm accessory, or ammunition owned or manufactured and retained exclusively within the borders of the State. OAG advises that two assistant attorneys generals and an administrative aide are needed to implement this bill at a cost of \$262,489 in fiscal 2015 (due to the bill's October 1, 2014 effective date) and \$341,448 in fiscal 2016. By fiscal 2019, OAG estimates that costs increase to \$390,620.

While the Department of Legislative Services concurs that the bill could result in an increase in OAG's caseload, the need for additional staff is unclear without knowing the number of State citizens that need defense counsel. To the extent that OAG needs to hire additional staff to implement the bill, however, general fund expenditures may increase significantly in future years.

Additional Information

Prior Introductions: HB 589 of 2013 was withdrawn prior to receiving a hearing in the House Judiciary Committee.

Cross File: None.

Information Source(s): City of Bowie, Town of Elkton, Office of the Attorney General, Baltimore City, Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Montgomery County, Department of State Police,

Office of the Public Defender, Department of Public Safety and Correctional Services,
National Conference of State Legislatures, Department of Legislative Services

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