

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 879
Judiciary

(Delegate Carter)

Public Safety - Imitation Firearms - Prohibition

This bill generally prohibits the sale, offer of sale, possession, use, attempt to use, or transfer of an “imitation firearm.” An exception is provided for the possession, use, or display of an imitation firearm as part of a television program, theatrical production, or motion picture. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000 for each violation.

The Attorney General may file a civil action to enforce the bill’s provisions in the circuit court for the county in which a person is alleged to be in violation. A circuit court may issue a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a violation of the bill’s provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s criminal penalty provision. It is assumed that the Attorney General can implement the bill’s injunction authorization with existing budgeted resources.

Local Effect: Potential minimal increase in local revenues due to the bill’s civil action provision from cases heard in the circuit courts. Potential minimal increase in local expenditures due to the bill’s criminal penalty provision. The circuit courts can implement the bill with existing budgeted resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: An “imitation firearm” means a toy, device, or object that substantially duplicates or can reasonably be perceived to be a firearm or a handgun. It does not include a toy, a device, or an object that (1) has an entire exterior surface area of color, as specified, either singly or as the predominant color in combination with other colors in any pattern; (2) has a barrel that is closed for a distance of not more than one-half inch from the front end of the barrel with the same material as the toy, device, or object; (3) has legibly stamped on the exterior the name of the manufacturer or some trade name, mark, or brand by which the manufacturer can be readily identified; or (4) is a nonfiring collectors replica of an antique firearm.

Current Law: State law does not currently directly address imitation firearms.

A person may not knowingly manufacture, sell, rent, or offer for sale any toy that is designed to depict torture or to resemble any instrument that is designed specifically for torture. This prohibition does not apply to any toy gun or any model of an aircraft, ship, motor vehicle, railroad engine, car, rocket ship, or other spacecraft or any part of the model.

A person may not use a firearm in the commission of a crime of violence, or any felony, whether the firearm is operable or inoperable at the time of the crime. A violator is guilty of a misdemeanor and, in addition to any other penalty imposed for the crime of violence or felony, must be sentenced to imprisonment for not less than 5 years and not exceeding 20 years. The court may not impose less than the minimum sentence of 5 years and, with a certain exception, the person is not eligible for parole in less than 5 years. For each subsequent violation, the sentence must be consecutive to and not concurrent with any other sentence imposed for the crime of violence or felony.

A law enforcement officer may make an inquiry and conduct a limited search of a person if the officer, in light of the officer’s observations, information, and experience, reasonably believes that (1) the person may be illegally wearing, carrying, or transporting a handgun; (2) because the person possesses a handgun, the person is or presently may be dangerous to the officer or to others; (3) under the circumstances, it is impracticable to obtain a search warrant; and (4) to protect the officer or others, swift measures are necessary to discover whether the person is wearing, carrying, or transporting a handgun.

The Firearm Safety Act of 2013 (Chapter 427) modified and expanded the regulation of firearms, firearms dealers, and ammunition in Maryland. Among its many provisions, the Act created a definition of “assault weapon,” encompassing assault pistols, assault long guns, and copycat weapons. The Act applied existing prohibitions relating to assault pistols to all assault weapons. With specified exceptions, transporting, possessing, selling, offering to sell, transferring, purchasing, or receiving any assault weapon is prohibited. A

person who lawfully possessed an assault pistol before June 1, 1994, and who registered the pistol with the Department of State Police before August 1, 1994, may continue to possess and transport the assault pistol. A person who lawfully possessed, had a purchase order for, or completed an application to purchase an assault long gun or a copycat weapon before October 1, 2013, was allowed to continue to possess and transport the weapon. A licensed firearms dealer may continue to possess, sell, offer for sale, or transfer an assault long gun or a copycat weapon that the dealer lawfully possessed on or before October 1, 2013. Chapter 427 also clarified when the inheritance of a prohibited assault weapon is permitted.

Background: Federal law prohibits a person from manufacturing, entering into commerce, shipping, transporting, or receiving any toy, “look-alike,” or imitation firearm unless it contains (or has affixed) a specified marking approved by the U.S. Secretary of Commerce. A “look-alike firearm” means any imitation of an original firearm that is manufactured, designed, and produced since 1898, including and limited to guns, water guns, replica nonguns, and airguns firing nonmetallic projectiles. It does not include any look-alike, nonfiring, collector replicas of an antique firearm developed since 1898, or traditional BB, paintball, or pellet-firing guns that operate by air pressure.

Additional Information

Prior Introductions: HB 269 of 2004, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken on the bill.

Cross File: Although designated as a cross file, SB 742 (Senator Muse, *et al.* – Judicial Proceedings) is not identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2016
min/lgc

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