

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 737

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Public Safety – Rifles and Shotguns – Sales, Rentals, Transfers, and Loans

This bill requires, with specified exceptions, that a licensed firearms dealer facilitate the sale of a rifle or shotgun. In addition, the bill prohibits a licensed firearms dealer or other person from selling, renting, transferring, or loaning a rifle or shotgun to a purchaser, lessee, transferee, or recipient who the dealer or other person knows or has reasonable cause to believe is not able to possess a rifle or shotgun, as specified. The bill establishes penalties for violations of the bill's provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Transfer of Rifle or Shotgun

The bill requires that, before the sale of a rifle or shotgun is conducted, the seller and purchaser meet jointly with a licensed firearms dealer and request that the dealer facilitate the sale. With specified exceptions, a dealer who agrees to facilitate the sale must conduct

a background check on the purchaser through the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS Index). A background check through NICS Index is not required if the purchaser (1) has a religious belief against taking a photograph; (2) presents proof of identity, legal presence, residency, and Social Security number or nonwork authorized status; (3) presents a signed and approved Internal Revenue Service (IRS) Form 4029 or an affidavit, as specified; and (4) does not possess a license or an identification card of any kind with a photographic identification. A purchaser exempt from an NICS Index background check must apply for, at the purchaser's expense, a background check that includes State and national criminal history information and present proof of the completed background check to the dealer.

A violator of these 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.

If the results of the background check indicate that the purchaser is prohibited from possessing the rifle or shotgun, the sale may not be completed, and the seller may remove the rifle or shotgun from the premises of the dealer or a gun show. A dealer may charge a reasonable fee for facilitating a sale of a rifle or shotgun.

These provisions do not apply to a sale by a dealer or to a sale of an antique firearm.

Prohibited Sale, Rental, Transfer, or Loan of Rifle or Shotgun

A dealer or other person is prohibited from selling, renting, transferring or "loaning" a rifle or shotgun to a purchaser, lessee, transferee, or recipient who the licensee or other person knows or has reasonable cause to believe:

- has been convicted of a disqualifying crime;
- has been convicted of a conspiracy to commit a felony;
- has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years;
- is a fugitive from justice;
- is a habitual drunkard, as specified;
- is addicted to a controlled dangerous substance or is a habitual user, as specified;
- suffers from a mental disorder and has a history of violent behavior, as specified, unless the purchaser lessee, transferee, or recipient possesses a physician's certificate, as specified;

- has been confined for more than 30 consecutive days to a mental health facility, as specified;
- is a respondent against whom a current non-ex parte civil protective order has been entered, as specified;
- if younger than age 30 at the time of the transaction, has been adjudicated delinquent by a juvenile court for an act that would be committed by an adult;
- is visibly under the influence of alcohol or drugs;
- is a participant in a straw purchase; or
- intends to use the rifle or shotgun to commit a crime or cause harm to the purchaser, lessee, transferee, recipient, or another person.

A violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

These provisions supersede any restriction that a local jurisdiction in the State imposes on the transfer by a private party of a rifle or shotgun, and the State preempts the right of any local jurisdiction to regulate the transfer of a rifle or shotgun.

“Loan” includes a temporary gratuitous exchange of a regulated firearm between two individuals.

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.

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.

The NICS Index, which was established under the federal Brady Handgun Violence Prevention Act of 1993, is a national system that checks available records on persons who may be disqualified from receiving firearms under federal or state law.

Background: IRS Form 4029 is used by members of recognized religious groups to apply for an exemption from Social Security and Medicare taxes. Requirements for exemption include that the religious organization has been in existence since December 31, 1950, and can illustrate that it has continuously offered its members a fair standard of living since that date. Examples of qualifying religious groups include the Amish and the Mennonites.

Small Business Effect: The bill has a potential meaningful impact on small business owners with federal firearms licenses to the extent they facilitate the transfer of rifles and shotguns under the bill's provisions and charge a reasonable fee for doing so. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives, as of January 2018, there were approximately 710 federal firearms licensees in Maryland.

In addition, the bill has a potential meaningful impact on small business owners who facilitate background checks for purchasers exempt from a NICS Index background check and charge a fee for doing so.

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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