

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised
 (Delegate Moon, *et al.*)

House Bill 162
 Judiciary

Judicial Proceedings

Firearms - Maryland Voluntary Do Not Sell Firearm Registry - Establishment

This bill requires the Maryland Department of Health (MDH), by December 31, 2023, to create and maintain the Maryland Voluntary Do Not Sell Firearm Registry in which a person may voluntarily enroll for the purpose of being prohibited from obtaining a firearm. The bill establishes (1) requirements for applications into and removal from the registry and (2) prohibitions relating to the registry and penalties for associated violations. Further, the bill prohibits a dealer or other person from selling, renting, loaning, or transferring a firearm to a purchaser, lessee, borrower, or transferee who the dealer or other person knows or has reason to believe is registered on the registry. In addition, the bill establishes the circumstances under which a custodian of records must deny or allow inspection of an application to be enrolled into or removed from the registry and any other personal identifying information contained in or related to the registry. The Secretary of Health must adopt regulations. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: No fiscal effect anticipated in FY 2023. General fund expenditures increase by \$275,000 in FY 2024. Future year expenditures are not anticipated to be materially affected. Revenues are not anticipated to be materially affected.

| (in dollars) | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|----------------|---------|-------------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 0 | 275,000 | 0 | 0 | 0 |
| Net Effect | \$0 | (\$275,000) | \$0 | \$0 | \$0 |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill’s penalty provision is not anticipated to materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Registry: A registry applicant must be at least age 18 and submit to MDH a registry application on the form that the Secretary provides. A registry application must contain specified identifying information. Within five days after receiving a properly completed registry application, the Secretary must (1) in coordination with the Motor Vehicle Administration (MVA) and the Comptroller, beginning with MVA's records, verify the identity of the applicant; (2) approve the application; (3) issue to the applicant written confirmation of approval; and (4) notify the Central Repository and the Department of State Police (DSP) of the applicant's placement on the registry.

The registry application form must inform the applicant of the process for removal from the registry. To be removed from the registry, a person must submit to MDH a request for removal from the registry on the form that the Secretary provides. Promptly, but not sooner than 21 days after receiving a properly completed request for removal from the registry, the Secretary must (1) in coordination with MVA and the Comptroller, beginning with MVA's records, verify the identity of the applicant; (2) approve the request; (3) issue to the requestor written confirmation of removal; and (4) notify the Central Repository and DSP of the requestor's removal from the registry.

A person is prohibited from (1) knowingly giving false information with the intent of enrolling or removing another person from the registry and (2) discriminating against any person with respect to health care services, employment, education, housing, insurance, governmental benefits, or contracting because that person is enrolled on the registry, is not enrolled on the registry, or has previously been enrolled on the registry. A violator is guilty of a misdemeanor and on conviction is subject to maximum penalties of one year imprisonment and/or a \$1,000 fine.

Record Inspection: With specified exceptions, a custodian must deny inspection of an application to be enrolled into or removed from the registry and any other personal identifying information contained in or related to the registry. A custodian must allow inspection of such a record by the individual named in the record or the attorney of record of the individual named in the record. These provisions may not be construed to prohibit:

- a law enforcement agency or a police officer from accessing records relating to the registry in the performance of official duty; or
- the disclosure that a person is or is not listed on the registry in connection with a law enforcement firearm transfer background check.

Tax Information: Tax information may be disclosed to MDH solely to verify through the Comptroller the name and address of applicants to the registry.

Current Law:

Regulation of Firearms: DSP regulates firearms and regulated firearms dealer licensees under provisions of the Public Safety Article. Before a person purchases, rents, or transfers a regulated firearm in the State, the person must submit to DSP or other designated law enforcement agency a firearm application that identifies the applicant and the firearm that is the subject of the transaction. Applications are investigated by DSP and are subject to a seven-day waiting period before the transaction may take place. Chapter 11 of 2021 requires that before a sale, rental, or transfer of a rifle or shotgun is conducted, the seller, lessor, or transferor and purchaser, lessee, or transferee both request that a licensed firearms dealer facilitate the sale, rental, or transfer.

A person must lawfully possess a regulated firearms 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.

Reports of sales of all regulated firearms must be forwarded to DSP within seven days of the completed sale. A dealer must also forward all disapproved applications which are being held. A dealer must maintain the dealer's copy of the application form for a minimum of three years. The prospective seller, lessor, or transferor must keep one copy of the firearm application for at least three years. These records must be open for inspection by any law enforcement officer during normal business hours or as specifically requested by the Secretary.

State licensees must also have a federal firearms license issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Prohibitions for Regulated Firearms: A dealer or other person is prohibited from selling, renting, or transferring a regulated firearm to a purchaser, lessee, or transferee who the dealer or other person knows or has reasonable cause to believe:

- is younger than age 21;
- 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;
- is addicted to a controlled dangerous substance or is a habitual user;
- suffers from a mental disorder and has a history of violent behavior, 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;
- 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 a disqualifying crime if committed by an adult;
- is visibly under the influence of alcohol;
- is a participant in a straw purchase; or
- has not completed a specified certified firearms safety training course.

A violator is guilty of a misdemeanor and on conviction subject to maximum penalties of imprisonment for five years and/or a \$10,000 fine. Each violation is a separate crime.

Prohibitions for Rifles and Shotguns: A licensee or any other person may not sell, rent, transfer, or loan 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 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;
- 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 purchaser, lessee, transferee, recipient, or another;
- has been found incompetent to stand trial;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;

- is a respondent against whom a current non *ex parte* civil protective order has been entered in this State or an order for protection has been issued by a court of another state or a Native American tribe and is in effect;
- 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 a disqualifying crime if 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, or recipient or another person.

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

Prohibitions on Possession: Generally, a person is prohibited from possessing regulated firearms, rifles, and shotguns if the person:

- has been convicted of a disqualifying crime;
- 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;
- 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;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom a current non *ex parte* civil protective order has been entered in this State or an order for protection 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.

In addition, a person is prohibited from possessing a regulated firearm if the person was previously convicted of (1) a crime of violence; (2) a violation of specified controlled dangerous substances laws; or (3) an offense under the laws of another state or the United States that would constitute one of these crimes if committed in this State.

Generally, prohibited possession of a regulated firearm is a misdemeanor and subject to maximum penalties of five years imprisonment and/or \$10,000 fine. However, prohibited possession of a rifle or shotgun is a misdemeanor and subject to maximum penalties of three years imprisonment and/or a \$1,000 fine.

State Fiscal Effect: No fiscal effect is anticipated in fiscal 2023, despite the bill's June 1, 2023 effective date. General fund expenditures increase by a total of \$275,000 in fiscal 2024 for MDH to develop the registry (\$100,000) and for DSP to update an existing computer portal system (\$175,000), as discussed below. Future year expenditures are not anticipated to be materially affected, as discussed below.

Maryland Department of Health

In 2020, Virginia established a Voluntary Do Not Sell Firearms List similar to the registry established under the bill. Based on Virginia's experience, MDH estimates that approximately 60 transactions annually are likely through the registry, including both additions to and removals from the registry. As a result, general fund expenditures increase by \$100,000 in fiscal 2024 only for MDH to build a database for the registry. MDH staff can manually validate the identity of individuals through MVA and the Comptroller's Office with existing resources. Accordingly, future year expenditures are not anticipated to be materially affected. However, to the extent that more than 60 transactions occur annually, general fund expenditures may increase in future years for additional staff and an expanded database.

Department of State Police

DSP currently receives information from MDH and the courts through a secure portal regarding each individual who (1) has been found incompetent to stand trial; (2) has been found not criminally responsible; (3) has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders; or (4) has been involuntarily committed to a facility that provides treatment or other services for mental disorders. As a result of such information, DSP is authorized to seize regulated firearms from a prohibited individual. However, DSP is not authorized to seize firearms from an individual on the registry established by the bill; thus, DSP needs to modify its licensing portal in order to differentiate between individuals prohibited from possessing a firearm and individuals who have applied to the registry. Thus, general fund

expenditures increase by \$175,000 in fiscal 2024 only for updates to the DSP licensing portal.

Other Agencies

It is anticipated that MVA and the Comptroller's Office can handle the bill's requirements with existing budgeted resources.

Penalty Provision

The bill's penalty provision is not anticipated to materially affect State finances.

Small Business Effect: The bill may have a meaningful impact on owners of small businesses with federal firearms licenses to the extent that they are prohibited from facilitating the sale, rental, or transfer of rifles and shotguns as a result of the bill. Under the bill, a dealer or other person is prohibited from selling, renting, loaning, or transferring a firearm, rifle, or shotgun to a purchaser, lessee, borrower, or transferee who the dealer or other person *knows or has reason to believe* is on the registry. However, the bill generally limits inspection of the registry *to the individual named in the record and the individual's attorney*. Although the bill allows access to the registry in connection with a law enforcement firearm transfer background check, a background check involving law enforcement is not required for the transfer of a rifle or shotgun. Accordingly, it is unclear how a licensed dealer would determine if a purchaser is on the registry or not.

Additional Comments: The Secretary of Health must notify the Central Repository of an applicant's placement on or removal from the registry; however, the Department of Public Safety and Correctional Services advises that such notification is not a reportable event and cannot be included in the criminal history record of an individual.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 159 (Senator Hettleman) - Judicial Proceedings.

Information Source(s): 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; Maryland Department of Health; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2023
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