

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 398 (Senators Stone and Hughes)
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Criminal Law - Machine Gun Act - Revision

This bill alters specified provisions regarding the regulation of machine guns.

Fiscal Summary

State Effect: The bill's changes to provisions governing the regulation of machine guns in the State are not expected to alter machine gun enforcement operations of the State Police or to measurably impact State correctional operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill repeals a prohibition against the possession or use of a machine gun for an offensive or aggressive purpose.

The bill also provides that a person may not possess an unregistered machine gun. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$5,000 and/or imprisonment for five years. The State may institute a prosecution at any time for this misdemeanor and a person convicted under these provisions may reserve a point or question for an in banc judicial review, as provided under the Maryland Constitution.

A person who has been convicted of a crime under the laws of another state or the U.S. that would be a crime of violence if committed in this State may not use or possess a

machine gun. A violator of this provision is guilty of a misdemeanor and subject to a nonsuspendable sentence of five years (without the possibility of parole, unless sentenced to the Patuxent Institution) and not more than ten years.

In addition, the bill repeals a requirement that the presence of a machine gun in a room, boat, or vehicle is evidence of the possession or use of the machine gun by anyone in that location. The bill expands the circumstances under which possession of a machine gun is not prohibited by including under the exception: (1) possession of a machine gun by a member of a military force or a law enforcement officer of the U.S., a state, or a political subdivision of a state in the course of official business; or (2) possession of a machine gun that is permanently inoperative. The bill repeals from the exception provisions: (1) the possession of a machine gun as a curiosity, ornament, or keepsake that cannot be used as a weapon; and (2) the possession of a machine gun for a purpose that is manifestly not aggressive or offensive. The bill does not prohibit or interfere with the possession of a firearm.

Finally, the bill increases, from \$100 to \$1,000, the maximum monetary fine for a violation relating to the requirement that a manufacturer of machine guns maintain a register of each machine gun manufactured or handled by the manufacturer.

The bill repeals the provision that allows this subtitle to be referred to as the “Uniform Machine Gun Act.”

Current Law: Under the Uniform Machine Gun Act, “machine gun” means a loaded or unloaded weapon that is capable of automatically discharging more than one shot or bullet from a magazine by a single function of the firing device. The presence of a machine gun in a room, boat, or vehicle is evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle.

The act does not prohibit or interfere with: (1) the manufacture, sale, and transportation of a machine gun for or to a military force or peace officer of the United States, a state, or a political subdivision of a state; (2) the possession of a machine gun for a scientific purpose; (3) the possession, as a curiosity, ornament, or keepsake, of a machine gun that cannot be used as a weapon; or (4) the possession of a machine gun for a purpose that is manifestly not aggressive or offensive.

A manufacturer of a machine gun must keep a register of each machine gun manufactured or handled by the manufacturer. The register is required to contain: (1) the method of manufacture and serial number of the machine gun; (2) the date of manufacture, sale, loan, gift, delivery, and receipt of the machine gun from the manufacturer; and (3) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom the machine gun was received, and the purpose for which the machine gun was acquired. A violator is guilty of a misdemeanor and subject to a maximum penalty of a fine of \$100.

On demand, a manufacturer of a machine gun must allow a marshal, sheriff, or police officer to inspect the manufacturer's entire stock of machine guns, parts, and supplies and the required register. A violator is guilty of a misdemeanor and subject to a maximum penalty of a fine of \$100.

A person who acquires a machine gun must register the machine gun with the Secretary of the State Police within 24 hours after acquiring the machine gun and annually during the month of May.

An application for machine gun registration must contain: (1) the make, model, serial number, caliber, type, barrel length, finish, and country of origin of the machine gun; (2) the name, address, race, gender, date of birth, Maryland driver's license number, and occupation of the person in possession of the machine gun; and (3) the name of the person from whom the machine gun was acquired and the purpose for acquiring the machine gun. The nonrefundable application fee is \$10. Registration data provided under this section is not open to public inspection.

A person may not use or possess a machine gun in the commission or attempted commission of a crime of violence. A violator is guilty of a felony and subject to a maximum penalty of imprisonment for 20 years.

A person may not possess or use a machine gun for an offensive or aggressive purpose. A violator is guilty of a misdemeanor and subject to maximum imprisonment of ten years.

Possession or use of a machine gun is presumed to be for an offensive or aggressive purpose when the machine gun: (1) is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun is found; (2) is in the possession of, or used by, an unnaturalized foreign-born person or a person who has been convicted of a crime of violence in any state or federal court of the U.S.; or (3) is not registered.

Possession or use of a machine gun is also presumed to be for an offensive or aggressive purpose when empty or loaded shells that have been used or are susceptible of being used in the machine gun are found in the immediate vicinity of the machine gun.

Background: The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary,

destructive devices, disorderly conduct, escape, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims' rights.

In making a recommendation on this subtitle, the Criminal Law Article Review Committee noted that although Maryland adopted the Machine Gun Act as a uniform law, the act is no longer designated as such by the National Conference of Commissioners on Uniform State Laws. In fact, the Uniform Machine Gun Act was never widely adopted by the states.

The Criminal Law Article Review Committee went on to say that it is unclear to what extent there has ever been an occasion to construe any provision of this subtitle "uniformly" with regard to the corresponding statute of any other adopting state. The committee suggested that the General Assembly may wish to consider removing the "uniform" designation of this subtitle, and perhaps the uniform construction provision of the subtitle.

In addition, upon a request from the committee, the Attorney General opined that the presumption of offensive or aggressive purpose based on alienage in the law violates the Equal Protection and Due Process Clauses of the U.S. Constitution. The Attorney General also found that the presumption of offensive or aggressive purpose based on conviction of a crime of violence is of "doubtful validity."

Additional Information

Prior Introductions: None.

Cross File: HB 671 (Delegates Doory and Getty) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

Information Source(s): Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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