

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 645 (Senator Frosh)
Judicial Proceedings

Firearm Safety Act of 2010

This bill establishes new requirements for the sale or transfer of firearms, provides for record-keeping and reporting requirements for State-regulated firearm dealer licensees, and makes other changes relating to firearms in Maryland.

Fiscal Summary

State Effect: General fund expenditures increase by about \$1.7 million in FY 2011. Future years reflect annualization and inflation. General fund revenues increase by about \$770,100 in FY 2011. Future years reflect an annual growth rate of about 2% in permit applications. Enforcement of record-keeping requirements can be handled with the existing budgeted resources of the State Police. The civil and criminal penalty provisions of this bill are not expected to materially affect State finances or operations.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$770,100	\$842,000	\$913,900	\$985,700	\$1,057,600
GF Expenditure	\$1,675,800	\$1,686,200	\$1,763,200	\$2,058,400	\$1,929,000
Net Effect	(\$905,700)	(\$844,200)	(\$849,400)	(\$1,072,700)	(\$871,400)

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

Local Effect: None.

Small Business Effect: Potential meaningful impact on the costs of doing business for certain firearm dealers.

Analysis

Bill Summary: Specifically, the bill:

- establishes a new handgun sale or transfer scheme involving the issuance of a handgun purchase permit from the Department of State Police (DSP), as specified;
- requires an applicant for a handgun purchase permit to meet specified criteria and submit specified documentation to the State Police, including the payment of a nonrefundable fee set by the Secretary of State Police, proof of satisfactory completion of an approved firearms safety training course, and any other identifying information or documentation set required by the Secretary;
- details the requirements for the renewal of handgun purchase permits, grounds for the revocation of a permit, and the rights of an applicant whose application has been denied to have a hearing on the matter;
- authorizes an investigative or law enforcement officer acting in a criminal investigation or another person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence of the commission of offenses relating to the sale, rental, purchase, or transfer of a regulated firearm under certain circumstances;
- requires the Secretary of State Police or the Secretary's designee to disapprove an application of a State-regulated firearms dealer's license if it is determined that the applicant intends an ineligible person or a person whose dealer's license has been suspended or revoked to participate or hold a legal or equitable interest in the management or operation of the business for which the license is sought;
- authorizes the suspension of a dealer's license if the licensee is not in compliance with specified record-keeping and reporting requirements within a 3-year period;
- requires that a licensed dealer keep records of all receipts, sales, and other dispositions of firearms affected in connection with the dealer's business. The Secretary must adopt regulations governing the form in which the records are to be kept, the time period for keeping the records, and the contents of the records, which must include certain information including the name and address of each person from whom the dealer acquires a firearm and to whom the dealer sells or disposes of a firearm;

- provides for the transfer of records to successor licensees;
- specifies that a violator of the dealer record-keeping provisions is subject to a civil penalty not exceeding \$1,000. For a second or subsequent offense, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$10,000;
- requires a licensee to report that a firearm has been lost or stolen within 72 hours after discovery of the loss or theft and specifies that a licensee who fails to comply with this provision may not raise the fact of the loss or theft as a defense in any criminal proceeding or license revocation or denial or in any judicial review;
- authorizes the Secretary to inspect the inventory and records of a licensed dealer at any time;
- redefines the term “habitual drunkard” under provisions governing regulated firearms to mean a person found guilty of two specified driving while intoxicated or impaired offenses, rather than three violations of any such offense, if the offense occurred within the past 5 years, rather than the last year;
- applies current law prohibitions and restrictions on the possession of firearms to all firearms and establishes a maximum imprisonment penalty for such offenses at 15 years;
- establishes specified new misdemeanor penalties relating to the sale of firearms, ammunition, or deadly weapons to a person under the age of 21 and increases the penalties for the knowing participation in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm; and
- authorizes a person fined for specified firearm violations to request a hearing.

Current Law: The State Police regulate firearms and firearms dealer licensees under provisions of the Public Safety Article. A regulated firearm means any handgun or specified assault weapon. The provisions of the subtitle do not apply to:

- the transfer or possession of a regulated firearm or detachable magazine for testing or experimentation authorized by the Secretary and by a federally licensed gun manufacturer, dealer, or importer;
- the sale, transfer, or possession of an antique firearm;

- an unserviceable firearm sold, transferred, or possessed as a curio or museum piece;
- law enforcement personnel of any unit of the federal government, members of the armed forces of the United States or the National Guard, or law enforcement personnel of the State or any local agency in the State, while those personnel or members are acting within the scope of their official duties;
- a regulated firearm modified to render it permanently inoperative;
- purchases, sales, and transportation to or by a federally licensed gun manufacturer, dealer, or importer;
- an organization that is required or authorized by federal law governing its specific business or activity to maintain firearms;
- the receipt of a regulated firearm by inheritance, if the heir forwards to the Secretary a completed application to purchase or transfer that regulated firearm; or
- a signal pistol or other visual distress signal that the U.S. Coast Guard approves as a marine safety device.

The subtitle does not affect: (1) a sale or transfer for bona fide resale in the ordinary course of business of a licensee; or (2) a sale, rental, transfer, or the use of a regulated firearm by a person authorized or required to do so as part of the person's duties as a member of an official police force or other law enforcement agency, the U.S. armed forces, including all official reserve organizations, or the Maryland National Guard.

To be issued a permit to wear, carry, or transport a handgun by the Secretary of State Police, an applicant: (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if the person is younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to the applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. "Good and substantial reason" includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

A handgun permit application costs \$75; two years after the initial permit, a \$50 renewal fee is due and every three years thereafter.

Issuance of Dealer's License

A person must lawfully possess a 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.

An applicant for a dealer's license must submit an application, pay an application fee of \$50 (payable to the Comptroller), and submit to a State and national criminal history records check. The Secretary must conduct an investigation to determine the truth or falsity of the information provided by the applicant. A refund or proration of the application fee is prohibited. An application for a dealer's license must contain the following information:

- the applicant's name, address, Social Security number, place and date of birth, height, weight, race, eye and hair color, and signature;
- a clear and recognizable photograph of the applicant, unless the photograph has been submitted with a prior year's application;
- a set of the applicant's fingerprints, unless the fingerprints have been submitted with a prior year's application; and
- a statement by the applicant that the applicant is a citizen of the United States, is at least age 21, has never been convicted of a disqualifying crime, has never been convicted of a common law crime and received a term of imprisonment of more than two years, is not a fugitive from justice, is not a habitual drunkard, is not addicted to a controlled dangerous substance or is not a habitual user, and has never spent more than 30 consecutive days in a medical institution for treatment of a mental disorder, unless a physician's certificate issued within 30 days before the date of application is attached to the application, certifying that the applicant is capable of possessing a regulated firearm without undue danger to the applicant or to another. Each application for a dealer's license must contain the following statement:

“Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than 3 years, or a fine of not more than \$5,000 or both.”

If an applicant is a corporation, a corporate officer who is a resident of the State must complete and execute the application.

The subtitle requires the disapproval of an application or the suspension or revocation of a license under specified circumstances. A person whose license has been suspended or

revoked or is aggrieved by the action of the Secretary may request a hearing under provisions of the Administrative Procedures Act, which may be subject to judicial review. A dealer's license is not transferable.

A person may not possess, sell, transfer, or otherwise dispose of a stolen regulated firearm if the person knows or has reasonable cause to believe that the firearm has been stolen.

A dealer or other person may not knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000. Each violation is a separate crime.

Reports of sales of all regulated firearms must be forwarded to the Firearms Registration Section of the State Police within seven days of the completed sale. An application to purchase or transfer a regulated firearm that is not disapproved is valid for a period of 90 days from the date the application was stamped by the Secretary as not being disapproved. After the 90 days has expired, the application is void and the dealer must return the application to the Firearms Registration Section with a notation that the sale was not made. After expiration of the 90-day limit, the prospective purchaser may submit another application.

A dealer must forward to the Firearms Registration Section, with the proper notation, all disapproved applications which are being held. A dealer must maintain the dealer's copy of the application form in an alphabetical or chronological file 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.

Federal licensees are regulated under provisions of the Gun Control Act of 1968 and the McClure-Volkmer Act of 1986 (also known as the Firearms Owners' Protection Act). Federal firearms licensees must maintain records of all gun sales, make those records available to law enforcement for inspection, report multiple sales, and report the theft or loss of a firearm from a licensee's inventory.

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

Background: There are 235 State-regulated firearm dealer licensees in Maryland. In fiscal 2009, 167 audits of dealers were conducted by the State Police. Many of the record-keeping requirements under this bill mirror those for federal firearms licensees,

who are already required to maintain bound acquisition/disposition records as well as many other types of forms and records of transactions. At the federal level, licensees may be granted a variance to use a computerized record-keeping system.

In 2009, the State Police received 43,114 applications for the purchase of regulated firearms. There is a seven-day processing requirement for each application. The current Firearms Registration Section of the department’s licensing division is staffed as follows: one Section Commander (First Sergeant), Four Sergeants, one Corporal, one Trooper First Class, and nine civilian administrative aids.

State Revenues: Based on current regulated firearms purchase applications, and assuming an annual growth rate of about 2%, the State Police projects regulated firearms sales, collectors applications, and net handgun purchase permit applications (all regulated firearms sales less collectors permits) under the bill from fiscal 2011 through 2015 to be as follows:

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Regulated Firearms Sales	52,999	57,941	62,883	67,826	72,768
Collectors Applications	1,657	1,808	1,959	2,110	2,261
Net Handgun Purchase Permit Applications	51,342	56,133	60,924	65,716	70,507

The State Police advises that the fee for a handgun purchase permit will be \$15, which is \$5 above the current \$10 firearms purchase application fee to help offset increased costs from additional staffing requirements for the licensing division. Accordingly, revenue under the new purchase scheme is expected to be:

<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
\$770,130	\$841,995	\$913,860	\$985,740	\$1,057,605

State Expenditures: General fund expenditures increase by \$1.7 million in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring 2 corporals, 7 troopers first class, and 11 civilian administrative aids to process handgun purchase permits and conduct criminal history records checks. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- handgun purchases will continue at an annual growth rate of about 2%;
- identification card printing equipment will need to be replaced annually; and

- the current Firearms Registration Section of DSP's licensing division will be combined with a new Handgun Purchase Permit Unit.

Salaries and Fringe Benefits	\$1,106,207
Police Automobile Purchase Costs	386,289
ID Card Equipment and Supplies	105,828
Other Equipment	19,306
Other Operating Expenses	<u>58,201</u>
Total FY 2011 State Expenditures	\$1,675,831

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; automobile replacement costs in fiscal 2014, and 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 820 (Delegate Rosenberg) - Judiciary.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Maryland Department of Transportation, Department of Legislative Services

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