

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 161
Judicial Proceedings

(Senator Frosh, *et al.*)

Regulated Firearms - Applications for Dealer's License - Record Keeping and Reporting Requirements

This bill establishes recordkeeping and reporting requirements for State-regulated firearm dealer licensees.

Fiscal Summary

State Effect: Enforcement 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.

Local Effect: The criminal penalty provisions of this bill are not expected to materially affect local finances or operations.

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

Analysis

Bill Summary: The bill requires the Secretary of State Police or the Secretary's designee to disapprove an application for a State-regulated firearms dealer's license if it is determined that the applicant intends that a person not qualified for a license or whose license has been revoked or suspended will participate in the management or operation of the business or hold an interest in the business.

The bill 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. A dealer's license must be suspended if the licensee is not in compliance with the recordkeeping and reporting requirements. The bill provides for the transfer of records to successor licensees. The bill also provides for requests for information from the records to be provided orally or in writing to the State Police upon request. Records currently maintained under federal law requirements may be used to satisfy these provisions.

A violator of the recordkeeping and reporting requirements 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.

The bill requires the Secretary to inspect the inventory and records of a licensed dealer at least once every two years and authorizes the Secretary to inspect the inventory and records of a licensed dealer at any time.

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.

A person must lawfully possess a dealer's license issued by the Secretary 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.

State law 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 242 State-regulated firearm dealer licensees in Maryland. In fiscal 2010, 155 audits of dealers were conducted by the Department of State Police. Many of the recordkeeping 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 recordkeeping system.

Additional Comments: The bill allows a State firearms licensee to satisfy certain requirements with the records already maintained for federal purposes. However, the bill also requires that such records be delivered to the Secretary of State Police if the business is discontinued absolutely and requires records to be delivered to a successor licensee if the business is instead being taken over. Federal law requires that such records be forwarded to the ATF Out-of-Business Records Center; failure to surrender the records is a felony and could result in the licensee being fined up to \$250,000, imprisoned for up to five years, or both. Under federal law, when someone is instead taking over the business, the original licensee has the option of forwarding all records and forms to the successor licensee or to the Out-of-Business Records Center. Thus, a State licensee who elects to use federal records under the bill would be unable to fulfill both the federal and State requirements for disposition of records upon discontinuing the business. To satisfy both the federal and State requirements, a duplicate set of records would have to be maintained.

Additional Information

Prior Introductions: Similar bills were introduced in 2008, 2009, and 2010. SB 167 of 2010 and SB 851 of 2008 received a hearing by the Senate Judicial Proceedings Committee and had no further action taken on them. SB 511 of 2009 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Department of State Police, Department of Legislative Services

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