

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 60 (Delegate Smigiel)
 Judiciary and Health and Government
 Operations

Repeal of the Firearm Safety Act of 2013

This bill repeals in its entirety the provisions of the Firearm Safety Act of 2013 (Chapter 427), which significantly modified and expanded the regulation of firearms, firearms dealers, and ammunition in the State and made significant changes to related mental health restrictions on the possession of firearms.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: General fund revenues decrease by \$3.7 million in FY 2015 due to the termination of handgun qualification licenses (HQL) and specified registrations and anticipated revenues from associated fees. General fund expenditures decrease by \$783,200 due to the termination of 31 contractual employees at the Department of State Police (DSP) at the end of FY 2014. Reprogramming costs for the Judiciary increase by \$10,700 in FY 2015 only. Changes to civil and criminal penalty provisions are not expected to have a significant operational or fiscal impact. It is assumed that State finances are not affected in FY 2014, despite the bill’s June 1, 2014 effective date.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	(\$3,670,700)	(\$3,967,400)	(\$4,264,100)	(\$4,560,800)	(\$4,874,800)
GF Expenditure	(\$772,500)	(\$825,500)	(\$861,800)	(\$899,700)	(\$939,300)
Net Effect	(\$2,898,200)	(\$3,141,900)	(\$3,402,200)	(\$3,661,000)	(\$3,935,400)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: The provisions of Chapter 427 of 2013 are described below.

Assault Weapons and Detachable Magazines

With specified exceptions, Chapter 427 prohibits the transporting, possessing, selling, offering for sale, transferring, purchasing, or receiving of any assault weapon. An “assault weapon” is defined as an assault long gun, an assault pistol, or a copycat weapon. An “assault long gun” is defined as any of the 45 regulated firearms that are not handguns under current law provisions of the Public Safety Article. A “copycat weapon” is defined as specified semiautomatic rifles, pistols, and shotguns, as well as shotguns with a revolving cylinder. A “copycat weapon” does not include an assault long gun or assault pistol.

Chapter 427 allows a person who lawfully possessed, had a purchase order for, or completed an application to purchase an assault long gun or a copycat weapon before October 1, 2013, to continue to possess and transport the assault long gun or copycat weapon or, if carrying a court order requiring surrender of the weapon, transport the unloaded weapon directly to a law enforcement unit, having notified the unit of the transport. A number of specified persons and circumstances are exempt from the prohibitions related to the possession of assault weapons and detachable magazines. Among other things, the Act clarified that certain assault weapon possession prohibitions do not apply to those received by inheritance, if the inheriting person is not otherwise disqualified from possessing a regulated firearm.

Chapter 427 also includes within the definition of “convicted of a disqualifying crime” a case in which a person received probation before judgment for a crime of violence or a domestically related crime. “Convicted of a disqualifying crime” does not include a case in which a person received probation before judgment for an assault in the second degree or that was expunged.

Chapter 427 reduced the allowable detachable magazine capacity that may be manufactured, sold, purchased, received, or transferred in the State from 20 to 10 rounds of ammunition for a firearm. The Act similarly reduced referenced limits on magazine capacities under penalty provisions applicable to use of an assault weapon in the commission of a felony or crime of violence.

Ammunition

Chapter 427 prohibits a person, during and in relation to the commission of a crime of violence, from possessing or using “restricted firearm ammunition,” sometimes called

“cop killer bullets.” “Restricted firearm ammunition” is defined as a cartridge, shell, or any other device that (1) contains explosive or incendiary material designed and intended for use in a firearm and (2) has a core constructed, excluding traces of other substances, entirely from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, depleted uranium, or an equivalent material of similar density or hardness. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000.

The Act also prohibits possession of “ammunition” by a person prohibited from possessing a regulated firearm. “Ammunition” is defined as a cartridge, shell, or any other device containing explosive or incendiary material designed and intended for use in a firearm. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

Handguns

Chapter 427 modified exceptions to the prohibition against wearing, carrying, or transporting handguns without a State permit by eliminating the active assignment requirement from being applicable to federal, State, or local law enforcement personnel; certain military personnel; out-of-state law enforcement personnel temporarily in Maryland on official business; and State correctional officers and wardens.

The Act also created a new licensing scheme for handguns under the licensing authority of DSP. DSP recently adopted regulations to implement the Act’s provisions related to this new license. An HQL authorizes a person to purchase, rent, or receive a handgun. A licensed firearms manufacturer, a specified active or retired law enforcement officer, a member or retired member of the U.S. Armed Forces or the National Guard, and a person purchasing, renting, or receiving an antique, curio, or relic firearm (as defined under federal law) are exempt from the requirements of the licensing provisions. The Secretary of State Police is required to apply for a State and national criminal history records check for each applicant. As part of the application for a criminal history records check, the Secretary must submit one complete set of fingerprints of the applicant.

An individual whose fingerprints have been submitted pursuant to a license application, but whose application has been denied, may request that the record of the fingerprints be expunged by obliteration, in accordance with specified current law provisions. The individual may not be charged a fee for such an expungement.

The application fee for an HQL is specified to be for the purpose of covering administrative costs and may be up to \$20. The term of the license is 10 years. The Act delineates the identifying information and documentation that are required for the issuance of the license. Among other things, the application must also have a signed

statement from the applicant, under penalty of perjury, that the applicant is not prohibited under federal or State law from possessing a handgun. The applicant must also show proof of completion of an approved firearms safety training course, as specified. An applicant is not required to complete an approved firearms safety training course if the applicant has previously completed a certified firearms training course, has completed a hunting safety course prescribed by the Department of Natural Resources, is currently a qualified handgun instructor, is an honorably discharged member of the U.S. Armed Forces or the National Guard, is a certain employee of an armored car company, or lawfully owns a regulated firearm. Renewal applicants are not required to complete the firearms safety training course or submit to a State and national criminal history records check.

The Act requires written approval or denial by DSP, as specified, within 30 days. A denial must specify the reason that the application was denied. Chapter 427 details the required approval and denial processes, and provides specified license renewal and revocation procedures.

Unless the applicant is otherwise disqualified, the Secretary is required to replace a lost or stolen HQL on receipt of a written request and nonrefundable fee of up to \$20.

The Secretary may issue an HQL without an additional application or fee to a person who meets the requirements for the issuance of a handgun permit who does not already have an HQL.

The Act requires transmission of a firearms application by any electronic means approved by the Secretary.

Firearms Dealers – License Qualifications and Recordkeeping

Chapter 427 requires the Secretary of State Police 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 holds an interest in the business. If the Secretary disapproves an application for a dealer's license, the Secretary must notify the applicant of the reason the application was denied.

The Act 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 specified information. Among other things, the records must include 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. Records maintained under federal law may be used to satisfy the requirements of Chapter 427, provided that the Secretary is granted access to those records.

Chapter 427 provides for the transfer of records to successor licensees. It also provides for requests for information from the records to be provided orally or in writing to DSP upon request.

The Act 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 at any time during the normal business hours of the licensed dealer's business.

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. These penalties are not intended to apply to inconsequential or inadvertent errors. In addition, a dealer's license may be suspended if the licensee is not in compliance with the recordkeeping and reporting requirements. The Secretary may lift a suspension after the licensee provides evidence that the recordkeeping violation has been corrected.

Mental Health Provisions

Under Chapter 427, a person may not possess a regulated firearm, rifle, or shotgun if the person:

- suffers from a mental disorder as defined in § 10-101(f)(2) of the Health-General Article and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial or not criminally responsible in a criminal case;
- has been voluntarily admitted for more than 30 consecutive days to a facility as defined in § 10-101 of the Health-General Article;
- has been involuntarily committed to a facility as defined in § 10-101 of the Health-General Article; or
- is under the protection of a court-appointed guardian of the property or guardian of the person, except for cases in which the appointment of a guardian is solely a result of a physical disability.

If a hearing officer enters an order for involuntary commitment to a facility and the hearing officer determines that the individual cannot safely possess a firearm based on credible evidence of dangerousness to others, the hearing officer must order the

individual who is subject to the involuntary commitment to surrender to law enforcement authorities any firearms in the individual's possession and refrain from possessing a firearm unless the individual is granted relief from firearms disqualification in accordance with § 5-133.3 of the Public Safety Article.

The Act requires a court to promptly report to the National Instant Criminal Background Check System (NICS), through a secure portal approved by the Department of Public Safety and Correctional Services (DPSCS), the date of the court determination or finding, and the name and identifying information of a person:

- determined to be not criminally responsible;
- found to be incompetent to stand trial; or
- found to be in need of the protection of a guardian 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.

A mental health care facility must similarly report to NICS the name and identifying information of a person admitted or committed to the facility, the date of admission or commitment, and the name of the facility to which the person was voluntarily admitted, if the person has been admitted to a facility for 30 consecutive days or more, or if the person has been involuntarily committed.

The Act authorizes a person seeking relief from firearms disqualification to file an application with the Department of Health and Mental Hygiene (DHMH). An application for relief from a firearms disqualification must include, along with any other information required by DHMH, (1) a statement explaining why the applicant is prohibited from possessing a regulated firearm, rifle, or shotgun; (2) a statement why the applicant should be relieved from that prohibition; (3) a signed authorization allowing DHMH to access specified health and criminal records; (4) three statements related to the applicant's reputation and character; and (5) if the applicant is prohibited from possessing a firearm for certain mental health reasons, a certificate issued within 30 days of the submission of the application on a form signed by an individual licensed in the State as a physician who is board certified in psychiatry or as a psychologist stating:

- the length of time that the applicant has not had symptoms that cause the applicant to be a danger to self or others;
- the length of time that the applicant has been compliant with the treatment plan for the applicant's mental illness; and
- an opinion as to whether the applicant, because of mental illness, would be a danger to the applicant or to another person if allowed to possess a firearm.

Additional information is required to be included in the application for individuals who are prohibited on the basis of guardianship orders.

DHMH may not approve an application if a determination is made that (1) the applicant supplied incomplete or false information; (2) the application is not properly completed; or (3) the applicant has not shown by a preponderance of the evidence that the applicant will be unlikely to act in a manner dangerous to self or public safety and that granting a permit to possess a regulated firearm or authorizing the possession of a rifle or shotgun would be contrary to the public interest.

Within 60 days from the receipt of a completed application, DHMH must provide the applicant with a certificate affirming the applicant's mental competence to possess a regulated firearm or a written statement that the applicant is not mentally competent to possess a firearm. An aggrieved applicant may request a hearing in accordance with the Administrative Procedure Act, and judicial review may be sought.

A physician or psychologist who acts in good faith and with reasonable grounds in providing the statements and opinions required by the restoration process may not be held civilly or criminally liable for those actions.

Moving into the State

A person who moves into the State with the intent of residency must register all regulated firearms with DSP within 90 days of establishing residency, using application forms prepared and provided by DSP. The Act requires that an application for registration under this provision must contain (1) the make, model, manufacturer's serial number, caliber, type, barrel length, finish, and country of origin of each regulated firearm and (2) the firearm applicant's name, address, Social Security number, place and date of birth, height, weight, race, eye and hair color, signature, driver's or photographic identification Soundex number, and occupation. The total registration fee is \$15, regardless of the number of firearms registered. The registration data is not open to public inspection.

Rifles and Shotguns – Prohibited Ownership

Under provisions relating to the possession of rifles and shotguns, with the exception of an antique firearm, the Act prohibits a person from possessing a rifle or a shotgun 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.

Any statutory restrictions on the possession of rifles or 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 the restoration provisions of the bill.

Lost or Stolen Firearms

A dealer or any other person who sells or transfers a regulated firearm must notify the purchaser or recipient of the firearm at the time of purchase or transfer that the purchaser or recipient is required to report a lost or stolen firearm to the local law enforcement agency. If a regulated firearm is lost or stolen, the owner of the firearm must report the loss or theft to the local law enforcement agency within 72 hours after the owner first discovers the loss or theft. On receipt of a report of a lost or stolen firearm, a local law enforcement agency must report to the Secretary and enter into the National Crime Information Center database, to the extent known, the caliber, make, model, manufacturer, and serial number of the firearm and any other distinguishing number or identification mark on the firearm. A knowing and willful first time violation is a civil offense punishable by a fine not exceeding \$500. A second or subsequent violation is a

misdemeanor punishable by imprisonment not exceeding 90 days and/or a fine not exceeding \$500.

Carrying a Firearm on School Property

The Act exempts from the prohibition against carrying a firearm, knife, or other deadly weapon on public school property an off-duty law enforcement officer who is a parent, guardian, or visitor of a student attending the school, provided that the officer is displaying the officer's badge or credential and the weapon is concealed.

Hunting Near Schools

A person, while hunting for any wild bird or mammal, may not shoot or discharge any firearm within 300 yards of any school during school hours or at a time when a school-approved activity is taking place.

Access to Public Records

A custodian must deny inspection of all records of a person authorized to (1) sell, purchase, rent, or transfer a regulated firearm or (2) carry, wear, or transport a handgun. However, a custodian must allow inspection of firearm or handgun records by the individual named in the record or the individual's attorney. These provisions may not be construed to prohibit DSP or DPSCS from accessing firearm or handgun records in the performance of that department's official duty.

Investigation and Reporting

DSP must investigate illegal transfers, possession, and transport of firearms within the State, including the number and types of firearms seized by DSP and the best information available as to the source of the seized firearms. DSP must report its findings to the Governor and General Assembly by December 31, 2015. These provisions terminate September 30, 2016.

Background: Two cases relating to Maryland firearms law are pending:

Kolbe v. O'Malley: This case, originally filed under the name *Tardy v. O'Malley*, is pending in the U.S. District Court for the District of Maryland. The suit seeks to have the assault weapon and high-capacity magazine bans included in Chapter 427 of 2013 declared unconstitutional under the Second Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment. Judge Blake denied plaintiffs' request for a temporary restraining order to prevent those aspects of the law from going

into effect on October 1, 2013. The case is currently in the discovery phase with motions for summary judgment due on February 14, 2014.

Doe v. O'Malley: This case anticipated that DSP would be unable to process the new HQL mandated for handgun transactions under Chapter 427 in a timely manner and that the result would be a *de facto* moratorium on handgun sales in Maryland. Judge Catherine Blake denied plaintiffs' request for a temporary restraining order to delay the effective date of the HQL requirement for 90 days. Although the case remains active on the court's docket, plaintiffs have entered an agreement deferring the State's obligation to respond to the complaint unless and until it is amended.

State Revenues: Since the October 1, 2013 effective date of Chapter 427, a total of 5,133 HQL applications have been received and 4,943, or 96.3%, have been approved. Although this initial flow of licenses is relatively low compared to projections made in 2013, it is assumed that fiscal 2015, the first full year of HQL requirements, projections made during the 2013 session are met in the absence of the bill.

Accordingly, beginning in fiscal 2015, this bill results in the loss of all revenues from initial HQL licensing fees (\$50) and new resident registrations (\$15). Based upon information provided by DSP and the estimate made in the fiscal and policy note for SB 281 of 2013 (enacted as Chapter 427), general fund revenues decrease as shown in **Exhibit 1**. However, these estimates do not account for any possible exemptions from the license or fee requirements. Under current law, there is no revenue from license renewals until fiscal 2025.

Exhibit 1
Estimated Decrease in General Fund Revenues under the Bill

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Handgun Qualification Licenses (\$50)	(\$3,595,700)	(\$3,892,400)	(\$4,189,050)	(\$4,485,750)	(\$4,799,750)
New Resident Registrations (\$15)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)
Total	(\$3,670,700)	(\$3,967,400)	(\$4,264,050)	(\$4,560,750)	(\$4,874,750)

Source: Department of Legislative Services

Stat Expenditures:

Department of State Police

The fiscal 2014 State budget included \$4.2 million in general funds to implement Chapter 427 and cover related costs, which included 35 new positions, contractual services, and supplies and materials. The Governor's proposed fiscal 2015 budget carries over costs for the 35 new positions and 31 contractual employees, but one-time start-up funding for technology and equipment is eliminated. DSP also received a \$400,000 general fund deficiency appropriation in fiscal 2013 and \$450,000 in general funds in the fiscal 2014 State budget to automate and streamline the current and new firearm application processes. It is assumed that under this bill, DSP retains and reassigns all 35 permanent positions, but ends contracts for the 31 contractual positions at the end of fiscal 2014. The savings in salaries and fringe benefits for these 31 contractual employees total approximately \$783,200 in fiscal 2015 and \$939,323 by fiscal 2019. Even though the bill has an effective date of June 1, 2014, it is assumed that DSP is obligated to pay the contractual employees through the current fiscal year.

Judiciary

The Administrative Office of the Courts (AOC) reports that data on the number of violations of Chapter 427 that have occurred since its October 1, 2013 effective date is not readily available from the circuit courts or the District Court. As a result, the exact impact that this bill has on court caseloads is unknown. The costs for reprogramming to meet the requirements of Chapter 427 were approximately \$160,000. The Judicial Information System (JIS) estimates that implementing the changes resulting from the bill requires 180 hours of reprogramming and costs about \$10,700 in fiscal 2015 only. However, AOC does not anticipate that bill has a significant fiscal or operational impact on the trial courts.

Department of Health and Mental Hygiene

Chapter 427 required DHMH to establish a process for reviewing firearm applications for individuals who would be prohibited from possessing firearms due to mental illness. DHMH advises that the process is in place and would continue operations because disqualifiers for firearm possession continue in statute even with the repeal of Chapter 427. Thus, the bill has no fiscal impact on DHMH.

Other State Agencies

DPSCS and the Department of Natural Resources report that the bill has no operational or fiscal impact.

Small Business Effect: The repeal of Chapter 427 likely leads to an increase in firearm and ammunition sales in the State. However, such an effect cannot be readily quantified at this time. The bill's changes could also lead to a decrease in the demand for any small businesses that provide firearms training or electronic fingerprint services.

Additional Comments: On January 1, 2013, DSP opened a Maryland Gun Center as a component of the department's firearms enforcement program. The center operates around the clock, seven days per week. It is designed to provide immediate substantive assistance and guidance to local law enforcement agencies on a variety of cases where firearms may be an issue. The center's responsibilities include real-time background checks, tracking and coordinating cross-jurisdictional cases, evidence coordination, guidance on the removal of firearms from a crime scene, forensic recommendations, and case tracking, among other activities. The bill does not significantly affect the continuing operation of the center.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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