

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 818
Judiciary

(Delegate Smigiel, *et al.*)

**Regulated Firearms - Licensed Dealer or Secondary Seller - National Instant
Criminal Background (NICS) Check**

This bill authorizes a licensed firearms dealer or a secondary seller that has not received a specified written notice from the Secretary of State Police within seven days of a firearm application to conditionally sell, rent, or transfer a firearm to the applicant if specified conditions are met.

Fiscal Summary

State Effect: None. The Department of State Police (DSP) can accommodate the bill's changes with existing budgeted resources. Any current backlog of firearms applications is expected to be cleared by April 2014.

Local Effect: None.

Small Business Effect: Minimal. As discussed below, any current backlog of firearms applications is expected to be cleared by April 2014.

Analysis

Bill Summary: Specifically, the bill authorizes a licensed firearms dealer or a secondary seller that has not received the specified notice within seven days of a firearm application to conditionally sell, rent, or transfer a firearm to the applicant if the licensee or a designated law enforcement agency on behalf of the secondary seller has:

- requested a National Instant Criminal Background (NICS) check on the applicant by telephone or electronically with the descriptive information provided on the federal ATF Form 4473;
- received a “proceed” or “not disapproved” response from the NICS check on the applicant; and
- recorded the NICS Transaction Number on the ATF Form 4473.

A licensee or secondary seller that receives a “delay” or “disapproved” response to the NICS application may not sell, rent, or transfer a firearm to the applicant unless the licensee or secondary seller subsequently receives an approval of the application from the Secretary of State Police. On receipt of notice that the Secretary has approved the application or after 90 days, whichever is sooner, the licensee must notify the applicant that the conditional sale, rental, or transfer is final.

If, after a conditional sale, rental, or transfer of a firearm, the licensee or secondary seller receives notice that the Secretary of State Police has disapproved the application, the licensee or secondary seller is required to promptly notify the applicant that, unless the applicant returns the firearm to the licensee or secondary seller within 10 days, the licensee or secondary seller will notify the Secretary. The licensee or secondary seller must notify the Secretary of the failure of an applicant to return a firearm within that time period.

A law enforcement agency may confiscate a firearm that is not returned to a licensee or secondary seller as described in the bill.

Current Law: A licensee may not sell, rent, or transfer a regulated firearm until after seven days following the time a firearm application is executed by the firearm applicant, in triplicate, and the original is forwarded by the prospective seller or transferor to the Secretary of State Police.

A licensee must complete the sale, rental, or transfer of a regulated firearm within 90 days after the firearm application was stamped by the Secretary as not being disapproved. If the sale, rental, or transfer of a regulated firearm is not completed within 90 days after the firearm application was stamped by the Secretary as not being disapproved, a licensee must return the firearm application to the Secretary within seven days. The Secretary must void a firearm application returned under this provision.

A licensee who sells, rents, or transfers a regulated firearm in compliance with these provisions must forward a copy of the written notification of the completed transaction to the Secretary of State Police within seven days after delivery of the regulated firearm. The notification must contain an identifying description of the regulated firearm, including its caliber, make, model, any manufacturer’s serial number, and any other

special or peculiar characteristic or marking by which the regulated firearm may be identified.

The Secretary of State Police is required to maintain a permanent record of all notifications received of completed sales, rentals, and transfers of regulated firearms in the State.

Background: During and after the 2013 legislative session, the DSP Licensing Division was overwhelmed with new applications for firearm purchases, including assault weapons and handguns. The unprecedented surge in applications was presumably due to the desire of buyers to purchase certain weapons before new restrictions went into effect. This resulted in a backlog of firearm applications to be processed by DSP that was not fully eliminated by October 1, 2013, the effective date of Chapter 427 of 2013. Applications for regulated firearms received by DSP showed significant increases in calendar 2012 and 2013, then slowed down dramatically after October 1, 2013. Applications increased by 23,760, or 51.3%, from calendar 2011 to 2012. From calendar 2012 to 2013, applications increased by 51,591, or 73.6%. Applications for regulated firearms include licensed firearm dealer applications, secondary or private sale applications, transfer as a gift applications, and voluntary applications.

Although the reasons for fluctuations of applications are likely varied and disparate, historically, increased demand for firearms has followed newsworthy mass shooting occurrences across the country, such as the Newtown, Connecticut school shooting in December 2012. This trend corresponds to the significant increase of firearm applications DSP received in December 2012 (a total of 11,362 applications, which was much higher than the monthly average of 5,295 in all of 2012).

During the first nine months of calendar 2013, 115,012 applications were received by DSP; more than 15,000 of those applications came in the final 10 days of September. In October 2013, handgun sales dropped dramatically, down to 3,654 from a monthly high of 27,840 in September. DSP received a total of 121,690 firearm applications in 2013.

The peak of the backlog was 59,594 applications on October 9, 2013. After that point, the backlog stopped growing, and DSP resumed completing all incoming applications within the seven-day mandate. As of January 2, 2014, there were 31,726 applications remaining in the backlog, and DSP is processing an average of 2,000 to 3,000 new and backlogged applications per week. DSP has permanently assigned its Firearm Registration Unit Staff to train and supervise staff and ensure that the reduction of the backlog stays on track. The backlog is anticipated to be eliminated by March or April 2014.

The Governor's proposed fiscal 2015 budget includes a fiscal 2014 general fund deficiency appropriation of \$7.2 million for DSP, which includes \$3.8 million for the Support Services Bureau to reduce the firearm registration backlog.

Additional Comments: 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 handgun qualification licenses (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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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