

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 834
Judiciary

(Delegate Howard, *et al.*)

Public Safety – Assault Weapons – Replacements
(Legally Owned Firearms Replacement Act)

This bill authorizes a person to replace a lost or broken assault weapon that the person lawfully possessed on or before certain dates, if the replacement is registered with the Secretary of State Police.

Fiscal Summary

State Effect: None. The bill’s authorization can be accommodated with the existing budgeted resources of the Department of State Police (DSP).

Local Effect: None.

Small Business Effect: Minimal or none.

Analysis

Current Law: The Firearm Safety Act of 2013 (Chapter 427) modified and expanded the regulation of firearms, firearms dealers, and ammunition in Maryland and made changes to related mental health restrictions on the possession of firearms. Among other things, the Act extended the scope of assault pistol prohibitions to all assault weapons, created a new licensing scheme for handguns under the authority of DSP, and imposed restrictions on ammunition.

Among its many provisions, the Act created a definition of “assault weapon,” encompassing assault pistols, assault long guns, and copycat weapons. The Act applied existing prohibitions relating to assault pistols to all assault weapons. With specified exceptions, transporting, possessing, selling, offering to sell, transferring, purchasing, or

receiving any assault weapon is prohibited. A person who lawfully possessed an assault pistol before June 1, 1994, and who registered the pistol with DSP before August 1, 1994, may continue to possess and transport the assault pistol. 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, is allowed to continue to possess and transport the weapon. A licensed firearms dealer may continue to possess, sell, offer for sale, or transfer an assault long gun or a copycat weapon that the dealer lawfully possessed on or before October 1, 2013. Chapter 427 also clarified when the inheritance of a prohibited assault weapon is permitted.

Chapter 427 had no specific provisions addressing a lost or broken assault weapon. However, 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.

Background: During and after the 2013 session, the Licensing Division of DSP was overwhelmed with new applications for firearm purchases, including assault weapons and handguns. The backlog was not eliminated by the October 1, 2013 effective date of the new law but was fully eliminated by June 2014. Two separate suits challenging Maryland's new law on a variety of grounds were filed in federal District Court shortly before the law went into effect. On October 1, 2013, a District Court judge denied the plaintiffs' request to enjoin implementation of the Firearm Safety Act pending the outcome of the litigation.

Doe v. O'Malley, 13-cv-2861, U.S. District Court, Maryland (Baltimore), anticipated that DSP would be unable to process the new Handgun Qualification Licenses (HQLs) in a timely manner and that the result would be a *de facto* moratorium on handgun sales in Maryland. Plaintiffs' request for a temporary restraining order to delay the effective date of the HQL requirement for 90 days was denied. The case was voluntarily dismissed without prejudice.

In *Kolbe v. Hogan* (formerly *Kolbe v. O'Malley*), 13-cv-2841, U.S. District Court, Maryland (Baltimore), a group of individual and organizational plaintiffs challenged the assault weapons and large-capacity magazine bans enacted as part of the Act. The plaintiffs

contended that the bans violate the Second Amendment by precluding the plaintiffs from possessing commonly owned firearms for self-defense purposes. The plaintiffs also contended that the bans violate their due process rights because the definition of assault long guns is imprecise and vague and that the exemption in the law applicable to retired law enforcement officers violates the equal protection clause. On August 12, 2014, the District Court awarded summary judgment in favor of the defendants on all of the plaintiffs' claims. On September 9, 2014, the plaintiffs filed a notice of appeal. On February 4, 2016, a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit concluded that the semiautomatic weapons and high-capacity magazines banned by the Firearm Safety Act "are in common use by law-abiding citizens." As a result, the panel concluded that they do not fall under the exception to the right to bear arms that applies to "unusual" weapons such as machine guns and hand grenades. On February 16, 2016, the defendants filed a petition for rehearing *en banc*. On March 4, 2016, the Fourth Circuit issued an order granting the motion for the full hearing. Arguments before the full court in Richmond, Virginia, were heard on May 11, 2016. A divided panel of the Fourth Circuit affirmed the judgment of the District Court. On July 21, 2017, the plaintiffs filed a petition for writ of certiorari with the U.S. Supreme Court. The petition was denied November 27, 2017.

Additional Information

Prior Introductions: HB 1551 of 2018 received a hearing in the House Judiciary Committee, but no further action was taken. HB 59 of 2017 received a hearing in the House Judiciary Committee, but no further action was taken. HB 317 of 2016 received a hearing in the House Judiciary Committee, but no further action was taken. HB 25 of 2015 received a hearing in the House Judiciary Committee, but no further action was taken on the bill.

Cross File: SB 706 (Senator Ready, *et al.*) - Judicial Proceedings.

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

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