

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 786
Judiciary

(Delegate Atterbeary, *et al.*)

Judicial Proceedings

Public Safety – Rifles and Shotguns – Secondary Transactions

This bill requires, with specified exceptions, that a licensed firearms dealer facilitate the “transfer” of a rifle or shotgun and establishes penalties for violations of the bill’s provisions. “Transfer” means a sale, a rental, a furnishing, a gift, a loan, or any other delivery, with or without consideration. A dealer may charge a reasonable fee for facilitating a transfer of a rifle or shotgun. The bill establishes penalties for violations.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that, before the transfer of a rifle or shotgun is conducted, the transferor and transferee meet jointly with a licensed firearms dealer and request that the dealer facilitate the transfer. A dealer who agrees to facilitate the transfer must (1) process the transfer as though transferring the rifle or shotgun from the dealer’s own inventory to the transferee; (2) conduct a background check on the transferee through the Federal Bureau of Investigation’s National Instant Criminal Background Check System (NICS Index); and (3) comply with all federal and State law that would apply to the transfer, including all inventory and recordkeeping requirements. If the results of the

background check indicate that the transferee is prohibited from possessing the rifle or shotgun, the transfer may not be completed, and the transferor may remove the rifle or shotgun from the premises of the dealer or a gun show.

A person who violates the bill's provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to five years and/or a fine of up to \$10,000. A person who provides false information while conducting a transaction under the bill is guilty of a misdemeanor and on conviction is subject to imprisonment for up to three years and/or a fine of up to \$5,000.

The bill's provisions do not apply to a transfer:

- involving a licensed firearms dealer or a federally licensed gun manufacturer, dealer, or importer;
- between specified immediate family members;
- involving law enforcement personnel of any unit of the federal government, a member of the U.S. Armed Forces, a member of the National Guard, or law enforcement personnel of the State or any local agency in the State, while acting in the scope of official duty;
- of a curio or relic firearm between collectors, as specified;
- that is temporary and necessary to prevent imminent death or serious bodily harm if the transfer lasts as long as necessary to prevent imminent death or serious bodily harm;
- occurring by operation of law on the death of a person for whom the transferee is an executor, an administrator, a trustee, or a personal representative of an estate or a trust created in a will;
- of an unserviceable rifle or shotgun transferred as a curio or museum piece;
- of a rifle or shotgun modified to render it permanently inoperative; or
- that is temporary, as specified, and takes place exclusively at a specified established sport shooting range or gun club, during a lawfully organized competition, during a performance or a practice, while the transferee is hunting or trapping, as specified, or in the actual presence of the transferor.

Current Law: Maryland regulates the sale, transfer, rental, and possession of regulated firearms, which consist of handguns and assault weapons. However, Maryland generally does not regulate the sale of rifles or shotguns.

A resident of Maryland who is eligible to purchase a rifle or shotgun under the laws of an adjacent state may purchase a rifle or shotgun from a federally licensed gun dealer in the adjacent state. Likewise, a resident of an adjacent state who is eligible to purchase a rifle

or shotgun under the laws of Maryland may purchase a rifle or shotgun from a federally licensed gun dealer in Maryland.

Generally, a person is prohibited from possessing a rifle or a shotgun, with the exception of an antique firearm, 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.

Statutory restrictions on the possession of rifles and 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 restoration provisions of statute.

In addition, a person may not possess a rifle or shotgun if the person was previously convicted of (1) a crime of violence under § 5-101 of the Public Safety Article; (2) a violation of specified felonies involving a controlled dangerous substance; or

(3) an offense under the laws of another state or the United States that would constitute one of the crimes listed in the provisions of (1) or (2) if committed in this State.

The NICS Index, which was established under the federal Brady Handgun Violence Prevention Act of 1993, is a national system that checks available records on persons who may be disqualified from receiving firearms under federal or state law.

Small Business Effect: The bill has a potential meaningful impact on small business owners with federal firearms licenses to the extent they facilitate the transfer of rifles and shotguns under the bill's provisions and charge a reasonable fee for doing so. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives, as of January 2018 there were approximately 710 federal firearms licensees in Maryland.

Additional Information

Prior Introductions: None.

Cross File: SB 737 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Bureau of Alcohol, Tobacco, Firearms and Explosives; Department of Legislative Services

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