

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 208

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Public Safety – Rifles and Shotguns – Sales, Rentals, and Transfers

This bill requires, with specified exceptions, that a licensed firearms dealer facilitate the sale, rental, or transfer of a rifle or shotgun. The bill (1) establishes several conditions that apply to such a sale, rental, or transfer and (2) authorizes a dealer to charge a reasonable fee for facilitating such a sale, rental, or transfer. The bill prohibits a licensee or any other person from selling, renting, transferring, or loaning a rifle or shotgun to a purchaser, lessee, transferee, or recipient under specified circumstances. The bill establishes criminal penalties for violations and civil liability protections for dealers under specified conditions.

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 a sale, rental, or transfer of a rifle or shotgun is conducted, the seller, lessor, or transferor and purchaser, lessee, or transferee both request that a licensed firearms dealer facilitate the sale, rental, or transfer. A dealer who agrees to facilitate a sale, rental, or transfer must (1) process the sale, rental, or transfer as though transferring the rifle or shotgun from the dealer's own inventory to the purchaser, lessee, or transferee; (2) conduct a background check on the purchaser, lessee, or 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 sale, rental, or transfer, including all inventory and recordkeeping requirements. The seller, lessor, or transferor may (1) deliver the rifle or shotgun to a dealer or (2) without appearing in person before the dealer, allow another person to deliver the rifle or shotgun to the dealer.

If the results of the background check indicate that the purchaser, lessee, or transferee may not possess the rifle or shotgun, the sale, rental, or transfer may not be completed, and the seller, lessor, or transferor may remove the rifle or shotgun from the premises of the dealer or a gun show unless the seller, lessor, or transferor delivered the rifle or shotgun without appearing in person before the dealer, as specified, or otherwise left the rifle or shotgun in the exclusive possession of the dealer.

If a dealer did not modify or alter a rifle or shotgun, the dealer who processes a sale, rental, or transfer under the bill may not be held civilly liable for the personal injury or property damage resulting from the malfunctioning of the rifle or shotgun.

In general, a person who violates these provisions is guilty of a misdemeanor and on conviction subject to maximum penalties of imprisonment for six months and/or a \$10,000 fine. However, 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 above provisions do not apply to (1) a transfer that occurs 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 or (2) a sale, rental, or 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;
- of an unserviceable rifle or shotgun sold, rented, or transferred as a curio or museum piece;
- of a rifle or shotgun modified to render it permanently inoperative; or

- in which the purchaser, lessee, or transferee has a demonstrable religious belief against taking a portrait photograph and does not possess a license or an identification card of any kind with photographic identification.

The bill also prohibits a licensee or any other person from selling, renting, transferring, or loaning a rifle or shotgun to a purchaser, lessee, transferee, or recipient who the licensee or other person knows or has reasonable cause to believe (1) is prohibited from possession of a rifle or shotgun, as specified; (2) is visibly under the influence of alcohol or drugs; (3) is a participant in a straw purchase; or (4) intends to use the rifle or shotgun to commit a crime or cause harm to the purchaser, lessee, transferee, or recipient or another person. A person who violates this prohibition is guilty of a misdemeanor and on conviction is subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

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 sale, rental, or 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 December 2019 there were approximately 2,900 federal firearms licensees in Maryland. Approximately 500 of the federal firearms licensees in the State are dealers in firearms other than destructive devices and include gunsmiths.

Additional Comments: Although the bill establishes an exemption to the requirement that a licensed firearms dealer facilitate the sale, rental, or transfer of a rifle or shotgun for a purchaser, lessee, or transferee who has a demonstrable religious belief against taking a portrait photograph and does not possess a license or an identification card of any kind with photographic identification, the term "demonstrable religious belief" is not defined under the bill or under existing statute. Thus, it may be unclear to a seller, lessor, or transferor

who is not a licensed dealer if such a sale, rental, or transfer must meet the bill's requirements.

In addition, it is unclear if a seller, lessor, or transferor may remove a rifle or shotgun from the premises of a licensed dealer or gun show without a background check by the dealer when the seller, lessor, or transferor, without appearing in person before the licensee, allowed another person to deliver the rifle or shotgun to the dealer when the results of a background check indicate that the intended purchaser, lessee, or transferee may not possess the rifle or shotgun.

Additional Information

Prior Introductions: HB 786 of 2019, a similar bill, passed with amendments in the House, passed with amendments in the Senate, and had a conference committee appointed, but no further action was taken. Its cross file, SB 737, passed with amendments in the Senate and was referred to the House Judiciary Committee, but no further action was taken.

Designated Cross File: HB 4 (Delegate Atterbeary) - Judiciary.

Information Source(s): Caroline, Howard, Montgomery, and Prince George's counties; 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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