

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 175
Judiciary

(Delegate Henson)

Public Safety - Ammunition - Sales and Transfers

This bill generally requires an ammunition vendor, before the sale or transfer of ammunition, to confirm the identification of and conduct a NICS Index background check on the purchaser or transferee, as specified. If the results of the background check indicate that the purchaser or transferee is prohibited from possessing a firearm under federal law, the ammunition vendor may not complete the sale or transfer of ammunition. The bill also requires an ammunition vendor to, at the time of delivery of the ammunition, make an electronic record relating to the sale that includes specified information. This information must be electronically submitted to the Secretary of State Police. The Secretary must (1) adopt regulations relating to the information the records must contain and (2) retain the information it receives from an ammunition vendor in an electronic database. The Secretary may inspect the electronic records of an ammunition vendor at any time during the normal business hours of the business. The bill establishes a civil penalty for violations and specifies items the court must consider when assessing the amount of a fine. The bill does not apply to sales or transfers of ammunition to specified entities.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's civil penalty provision. The extent to which the bill affects State expenditures is unclear, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Without the express written consent of the purchaser or transferee, an ammunition vendor may not use, sell, disclose, or share the information obtained from the sale or transfer of ammunition for any purpose other than the submission required by the bill.

The Secretary must adopt regulations specifying the information that the records must contain and the time period for which the records must be kept. In addition, the Secretary must retain the information received in an electronic database that remains confidential and may be used only for law enforcement purposes.

A violator is guilty of a civil offense and on conviction must be fined at least \$1,000 for each violation. The court must assess the amount of the fine with consideration given to (1) the seriousness and willfulness of the violation; (2) the extent to which the person or entity charged with the violation is likely to offend in the future, has previously been convicted of a violation under the bill's provisions, or has previously had a prosecution for a violation under the bill's provisions suspended; and (3) any other relevant factors.

The bill does not apply to the sale or transfer of ammunition by an ammunition vendor to any of the following:

- an ammunition vendor;
- a person who holds a federal firearms license;
- a person who holds a handgun qualification license;
- a person who purchases or receives ammunition at a target facility holding a business or other regulatory license, if the ammunition is at all times kept within the facility's premises;
- a gunsmith;
- a licensed firearm wholesaler;
- a specified manufacturer or importer of firearms or ammunition; and
- a specified properly identified law enforcement officer or a properly identified sworn federal law enforcement officer who is authorized to carry a firearm in the course and scope of the officer's duties.

Current Law:

Ammunition

Generally, a person may not possess ammunition if the person is prohibited from possessing a regulated firearm. A violator is guilty of a misdemeanor and is subject to maximum penalties of one year imprisonment and/or a \$1,000 fine.

Regulated Firearms

Generally, a person is prohibited from possessing a regulated 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 a term of imprisonment 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;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;
- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom a current non *ex parte* civil protective order has been entered in this State or an order for protection 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.

In addition, a person is prohibited from possessing a regulated firearm if the person was previously convicted of (1) a crime of violence; (2) a violation of specified controlled dangerous substances laws; or (3) an offense under the laws of another state or the United States that would constitute one of these crimes if committed in this State.

Generally, a violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or \$10,000 fine.

Federal Law

Under federal law, a person is prohibited from possession of a firearm if the person:

- has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (this does not include a State offense classified as a misdemeanor that is punishable by a term of imprisonment of less than two years);
- is a fugitive from justice;
- is an unlawful user of or addicted to any controlled dangerous substance;
- has been adjudicated as a mental defective or has been committed to a mental institution;
- is an alien that is illegally or unlawfully in the United States or has been admitted to the United States under a nonimmigrant visa (with exceptions);
- has been dishonorably discharged from the U.S. Armed Forces;
- has, as a citizen of the United States, renounced citizenship;
- is, after a hearing, subject to a court order restraining that person from harassing, stalking, or threatening an intimate partner or child; or
- has been convicted in any court of a misdemeanor crime of domestic violence.

On conviction, a prohibited person that possesses a firearm is subject to imprisonment not exceeding 10 years or a \$250,000 fine, or both.

NICS Index

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. Under federal law, federal firearms licensees may initiate a NICS background check only in connection with a proposed firearm transfer; they are strictly prohibited from initiating a NICS background check for any other purpose.

State Expenditures: The extent to which the bill affects State expenditures is unclear because, as drafted, it is unclear if the bill can be implemented. The bill is premised on the fact that ammunition vendors can use the NICS Index to conduct background checks on purchasers and transferees of *ammunition*. However, federal law prohibits the use of the NICS Index for any purpose other than in connection with a proposed *firearm* transfer. Accordingly, an ammunition vendor could not use the NICS Index with respect to sales and transfers of *ammunition only*. Although unclear, it may be possible for an ammunition

vendor to use the NICS Index with respect to sales and transfers of ammunition if the sale/transfer of ammunition also involves a proposed firearm transfer.

To the extent vendors are able to access the NICS Index for sales and transfers of ammunition (because they occur in connection with proposed firearms transfers), general fund expenditures for DSP increase in fiscal 2022 only for computer programming changes necessary to retain the information submitted by vendors in an electronic database, as required by the bill. A reliable estimate of any such costs cannot be made at this time.

State Revenues: General fund revenues may increase minimally from fines imposed in the District Court for violations of the bill.

Small Business Effect: Requiring an ammunition vendor to conduct a background check on the purchaser or transferee of ammunition through the NICS Index before the sale or transfer likely has a meaningful economic impact on small businesses that sell and transfer ammunition. As noted above, federal law prohibits the use of the NICS Index for any purpose other than in connection with a proposed firearm transfer; accordingly, vendors will not be able to conduct the required background check through the NICS Index for ammunition that is not purchased or transferred at the same time as the sale or transfer of a firearm. As such, outside of sales and transfers of ammunition conducted in connection with sales or transfers of firearms (or sales and transfers that are exempt from the bill's provisions), sales and transfers of ammunition likely decrease under the bill. It should be noted that not all ammunition vendors are licensed firearms dealers.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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rh/lgc

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