

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 873

(Senators Waldstreicher and Smith)

Judicial Proceedings

Public Safety – Firearm Industry Members – Public Nuisance

This bill prohibits a “firearm industry member” from knowingly and recklessly engaging in conduct that (1) is unlawful or (2) under the totality of the circumstances, is unreasonable and creates, maintains, or contributes to a condition in the State that endangers the health and safety of the public through the sale, manufacturing, importing, or marketing of a “qualified product.” A firearm industry member that engages in specified activities related to a qualified product must establish and use “reasonable controls and procedures” to prevent a qualified product from being possessed, used, marketed, or sold unlawfully in Maryland. A violation that results in harm to the public is a public nuisance, and the conduct of the firearm industry member constitutes a proximate cause of the public nuisance, notwithstanding any intervening actions, as specified. The bill authorizes (1) the Attorney General, for suspected violations or if believed to be in the public interest, to investigate, as specified, and (2) if it has been determined that there has been a violation, specified parties to seek injunctive relief and/or to recover for damages. The court may award compensatory and punitive damages. Provisions of the bill are severable. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: Although the Office of the Attorney General did not respond to repeated requests for information regarding the potential fiscal effect of the bill, the bill’s changes are not anticipated to materially affect State finances.

Local Effect: The bill’s changes are not anticipated to materially affect local finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: If the Attorney General suspects that a firearm industry member has violated or will imminently violate the bill's provisions, or believes it is in the public interest that an investigation should be made to ascertain whether a firearm industry member has violated or will imminently the bill's provisions, the Attorney General may:

- require the firearm industry member to file a written statement or report under oath concerning the facts and circumstances of the violation or possible violation as the Attorney General considers necessary;
- examine under oath the firearm industry member concerning the violation or possible violation;
- examine any record, object, book, document, account, or paper relating to the violation or possible violation as the Attorney General considers necessary; and
- in accordance with an order of the Court of Appeals, impound and retain in the Attorney General's possession any record, book, document, account, object, or paper that is produced until the completion of all proceedings in connection with the impounded items.

If the Attorney General determines that there has been a violation, the following parties may bring an action against the firearm industry member for injunctive relief and/or to recover for damages, in the Court of Appeals or in a federal court sitting in the State:

- the Attorney General on behalf of the State;
- a city corporation counsel on behalf of the locality; or
- a person that suffered damage as a result of the violation.

The court may award compensatory and punitive damages to a prevailing plaintiff, and the prevailing party is entitled to an award for court costs, reasonable attorney's fees, and any other relief the court considers proper.

"Firearm industry member" means a person engaged in the sale, manufacturing, distribution, importing, or marketing of a qualified product. "Qualified product" means: (1) a firearm, as defined in 18 U.S.C. § 921(a)(3)(A) and (B); (2) an antique firearm, as defined in 18 U.S.C. § 921(a)(16); (3) ammunition, as defined in 18 U.S.C. § 921(a)(17)(A); or (4) a component part of a firearm or ammunition.

“Reasonable controls and procedures” means policies that include screening and security measures to:

- prevent the theft of a qualified product by or sale of a qualified product to (1) a straw purchaser; (2) a trafficker; (3) a person prohibited from possessing a firearm under State or federal law; or (4) a person at risk of injuring the person or others; or
- prevent deceptive acts or practices.

Current Law: Chapter 427 of 2013 requires that a licensed dealer keep records of all receipts, sales, and other dispositions of firearms affected in connection with the dealer’s business. The Secretary of State Police must adopt regulations governing the form in which the records are to be kept, the time period for keeping the records, and the contents of the records, which must include specified information. Among other things, the records must include the name and address of each person from whom the dealer acquires a firearm and to whom the dealer sells or disposes of a firearm. Records maintained under federal law may be used to satisfy the requirements of Chapter 427, provided that the Secretary is granted access to those records.

Chapter 427 provides for the transfer of records to successor licensees. It also provides for requests for information from the records to be provided orally or in writing to the Department of State Police upon request.

The Secretary must inspect the inventory and records of a licensed dealer at least once every two years, and the Secretary may inspect the inventory and records at any time during the normal business hours of the licensed dealer’s business.

A violator of the recordkeeping and reporting requirements is subject to a civil penalty not exceeding \$1,000. For a second or subsequent offense, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$10,000. These penalties are not intended to apply to inconsequential or inadvertent errors. In addition, a dealer’s license may be suspended if the licensee is not in compliance with the recordkeeping and reporting requirements. The Secretary may lift a suspension after the licensee provides evidence that the recordkeeping violation has been corrected.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1396 (Delegate Atterbeary) - Rules and Executive Nominations.

Information Source(s): Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

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