

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 387

(The President)(By Request - Office of the Attorney
 General) and Senator Lee

Judicial Proceedings

Judiciary

Public Safety - Untraceable Firearms

This bill, with specified exceptions, (1) requires the Secretary of State Police to maintain a system to register firearms imprinted with serial numbers, as specified, and (2) prohibits a person from purchasing, receiving, selling, offering to sell, or transferring an “unfinished frame or receiver” or a firearm unless imprinted with specified information. The Governor must include at least \$150,000 in the annual State budget to fund registration activities conducted by the Secretary under the bill. The bill also (1) requires the Secretary to suspend or revoke a dealer’s license under specified conditions relating to untraceable firearms; (2) establishes penalties for violations of specified provisions of the bill; and (3) expands the definition of a “firearm” to include an unfinished frame or receiver. The bill must be construed in a manner that is consistent with a specified proposed federal rule regarding privately made firearms. If the proposed federal rule is modified at the time of adoption, the bill must be construed in a manner that is consistent with those modifications. Provisions of the bill are severable. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: No effect in FY 2022. General fund expenditures increase by at least \$150,000 annually beginning in FY 2024 due to the mandated appropriation; although discretionary, this analysis assumes funding is also provided in FY 2023. Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. **This bill establishes a mandated appropriation beginning in FY 2024.**

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	150,000	150,000	150,000	150,000	150,000
Net Effect	(\$150,000)	(\$150,000)	(\$150,000)	(\$150,000)	(\$150,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Untraceable Firearms

A person is prohibited from purchasing, receiving, selling, offering to sell, or transferring an *unfinished frame or receiver* unless it is required by federal law to be, and has been, imprinted with a serial number by a federally licensed firearms manufacturer or federally licensed firearms importer in compliance with all federal laws and regulations applicable to the manufacture and import of firearms. Except as otherwise authorized, a person may not sell, offer to sell, or transfer a *firearm* unless it is imprinted with a specified serial number.

A violator of the provisions relating to required imprinting 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. Each violation is a separate crime.

Beginning March 1, 2023, a person may not possess a firearm unless:

- the firearm has been registered with the Secretary of State Police; and
- (1) the firearm is required by federal law to be, and has been, imprinted by a federally licensed firearms manufacturer or federally licensed firearms importer, or other federal licensee authorized to provide marking services, with a serial number in compliance with all federal laws and regulations applicable to the manufacture and import of firearms or (2) the firearm has been imprinted by a federally licensed firearms dealer, federal firearms manufacturer, or other federal licensee authorized to provide marking services with specified information.

The prohibition that begins March 1, 2023, does not apply to:

- possession of a firearm unless a person knew or reasonably should have known that the firearm was not imprinted with a serial number, as specified;

- possession of a firearm that does not comply with the marking requirements by a person who received the firearm through inheritance, and is not otherwise prohibited from possessing the firearm, for up to 30 days after inheriting the firearm; or
- possession of an unfinished frame or receiver by a person that made or manufactured the unfinished frame or receiver, without the use of any prefabricated parts, and who is not otherwise prohibited from possessing the unfinished frame or receiver for up to 30 days after the person made or manufactured the unfinished frame or receiver.

A violator of the prohibition that begins March 1, 2023, is guilty of a misdemeanor and on conviction is subject to imprisonment for up to two years and/or a fine of up to \$10,000. Each violation is a separate crime.

A federally licensed firearms dealer or other federal licensee authorized to provide marking services who imprints a firearm under the bill's provisions must imprint the firearm in compliance with all federal laws and regulations applicable to affixing serial numbers to firearms, as specified.

The provisions relating to untraceable firearms do not apply to (1) a firearm that was manufactured before October 22, 1968, or is an antique firearm; (2) a sale, an offer to sell, a transfer, or a delivery of a firearm or an unfinished frame or receiver to, or possession of a firearm or unfinished frame or receiver by, a federally licensed firearms dealer, a federally licensed firearms manufacturer, or a federally licensed firearms importer; or (3) a transfer or surrender of a firearm or an unfinished frame or receiver to a law enforcement agency.

Nothing in the bill may be construed in a manner that abridges or otherwise limits a person's right against self-incrimination under the U.S. Constitution or the Maryland Declaration of Rights.

Registration data provided for registration of a firearm under the bill's provisions is not open to public inspection.

The Secretary of State Police may adopt regulations to carry out these provisions.

“Unfinished frame or receiver” means a forged, cast, printed, extruded, or machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm.

Federal Firearms Licensed Dealers

The Secretary of State Police must suspend a dealer's license if the licensee is charged with a crime under the bill's provisions relating to untraceable firearms. The Secretary must revoke a dealer's license if the licensee is convicted of a crime under the same provisions.

Current Law: Generally, State law prohibits a person from manufacturing for distribution or sale a handgun that is not included on the handgun roster in the State. However, law enforcement may not be aware of firearms manufactured within a person's home for personal use until the firearm is used or transferred. The federal Undetectable Firearms Act prohibits a person from manufacturing, importing, selling, shipping, delivering, possessing, transferring, or receiving any firearm that is not as detectable by a walk-through metal detection as a security exemplar containing 3.7 ounces of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. The federal prohibition was first enacted in 1988 and was renewed for 10 years in December 2013.

Background: According to the U.S. Department of Justice, between 2016 and 2020, more than 23,000 ghost guns were recovered by law enforcement from potential crime scenes, including 325 in connection with homicides and attempted homicides. In November 2020, the *Baltimore Sun* reported that between 2016 and 2019, more than 12,000 build kits were shipped to Maryland, with total sales of the kits exceeding \$1.0 million. The *Baltimore Sun* further reported that the Baltimore City Police Department recovered 126 privately made firearms in 2020 compared to 29 recovered in 2019, and that nearly one-quarter of such firearms recovered were from individuals under the age of 21.

Eight states (California, Connecticut, Hawaii, Nevada, New Jersey, New York, Rhode Island, and Washington) and the District of Columbia have enacted laws regulating privately made firearms to varying degrees. California and Connecticut have enacted laws that require privately made firearms to be registered and marked with a serial number obtained from a governmental agency within each state. Nevada and New Jersey require serialization of unfinished frames and receivers by federally licensed firearms manufacturers and importers. The District of Columbia passed legislation in 2020 to ban build kits and specifically the possession of unfinished frames and receivers and untraceable firearms.

Some cities and local jurisdictions have also started to implement laws to address privately made firearms. In August 2021, San Diego became the first city in California to prohibit the sale of unserialized frames and receivers, and San Francisco passed similar legislation shortly thereafter. In Maryland, Montgomery County passed legislation in April 2021 to restrict the access of privately made firearms to minors and in places of public assembly within the county.

State Expenditures: The bill requires the Governor to include in the annual State budget an appropriation of at least \$150,000 to fund registration activities conducted by the Secretary of State Police under the bill. Accordingly, general fund expenditures increase by at least \$150,000 annually beginning in fiscal 2024 due to the mandated appropriation. Because the Department of State Police (DSP) is expected to incur costs in fiscal 2023 (as discussed below), this estimate assumes that \$150,000 in general funds is also provided in fiscal 2023; however, funding in that year is discretionary.

DSP operates a licensing portal to handle registration requirements relating to firearms. In order to track the new registration requirements under the bill, DSP needs to revise the licensing portal at a cost of \$150,000 in fiscal 2023 only. As noted above, although funding is discretionary in fiscal 2023, this analysis assumes that funding is provided in that year so that DSP can upgrade the licensing portal. This analysis further assumes that the mandated funding in subsequent years is used for other DSP registration-related functions resulting from the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 425 (The Speaker)(By Request - Office of the Attorney General) and Delegate Lopez - Judiciary.

Information Source(s): 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; U.S. Department of Justice; *Baltimore Sun*; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2022
fnu2/lgc Third Reader - March 21, 2022
Revised - Amendment(s) - March 21, 2022

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