

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 113

(Senators Waldstreicher and Lee)

Judicial Proceedings

**Civil Actions - Public Nuisances - Firearm Industry Members (Gun Industry
Accountability Act of 2023)**

This bill (1) prohibits a “firearm industry member” from knowingly or recklessly creating, maintaining, or contributing to harm to the public through the sale, manufacture, distribution, importation, or marketing of a firearm-related product by engaging in conduct that is unlawful or unreasonable under the totality of the circumstances; (2) requires a firearm industry member to establish and implement “reasonable controls” regarding the sale, manufacture, distribution, importation, marketing, possession, and use of the firearm industry member’s firearm-related products; (3) establishes that a violation of these provisions is a public nuisance; and (4) establishes that notwithstanding any intervening actions, as specified, the conduct of a firearm industry member is a proximate cause of harm to the public if the harm is a reasonably foreseeable effect of the conduct. In addition, the bill authorizes (1) the Attorney General to bring an action against a firearm industry member for a public nuisance caused by a violation of the bill’s provisions, as specified and (2) a person, who sustained an injury or loss as a result of a violation of the bill’s provisions, to bring an action for damages against a firearm industry member, as specified. The bill’s provisions are severable. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: Potential increase in general fund expenditures for the Office of the Attorney General (OAG) to pursue actions as authorized under the bill. Potential increase in general fund revenues to the extent specified relief is awarded to the State.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: In an action brought under the bill's provisions, the Attorney General may seek injunctive relief, restitution, compensatory and punitive damages, reasonable attorney's fees and costs, and any other appropriate relief.

A person who brings an action under the bill's provisions must (1) notify the Attorney General that the person has brought the action within five days after filing the complaint and (2) provide the Attorney General with a copy of the complaint and any other documents or pleadings filed with the complaint. The person may also seek and be awarded injunctive relief, compensatory damages, punitive damages, and reasonable attorney's fees and costs.

A party seeking relief under the bill's provisions is not required to prove that a firearm industry member acted with the intent to violate the bill's provisions.

Nothing in the bill may be construed to affect (1) any other common law or statutory cause of action or (2) any other obligation or restriction imposed on a firearm industry member under State or federal law.

"Firearm industry member" means a person engaged in the sale, manufacture, distribution, importation, or marketing of a firearm-related product.

"Reasonable controls" means policies that are designed:

- to prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law, and a person who the firearm industry member has reasonable cause to believe intends to use the firearm-related product to commit a crime or to cause harm to the person or another person;
- to prevent the loss or theft of a firearm-related product from a firearm industry member; and
- to ensure that the firearm industry member complies with all provisions of State and federal law and does not otherwise promote the unlawful sale, manufacture, importation, marketing, possession, or use of a firearm-related product.

Current Law:

Regulation of Firearms: The Department of State Police (DSP) regulates firearms and regulated firearms dealer licensees under provisions of the Public Safety Article. Before a person purchases, rents, or transfers a regulated firearm in the State, the person must submit

to DSP or other designated law enforcement agency a firearm application that identifies the applicant and the firearm that is the subject of the transaction. Applications are investigated by DSP and are subject to a seven-day waiting period before the transaction may take place. Chapter 11 of 2021 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 person must lawfully possess a regulated firearms dealer's license issued by the Secretary of State Police before the person engages in the business of selling, renting, or transferring regulated firearms. One dealer's license is required for each place of business where regulated firearms are sold.

Reports of sales of all regulated firearms must be forwarded to DSP within seven days of the completed sale. A dealer must also forward all disapproved applications which are being held. A dealer must maintain the dealer's copy of the application form for a minimum of three years. The prospective seller, lessor, or transferor must keep one copy of the firearm application for at least three years. These records must be open for inspection by any law enforcement officer during normal business hours or as specifically requested by the Secretary.

State licensees must also have a federal firearms license issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Prohibitions for Regulated Firearms: A dealer or other person is prohibited from selling, renting, or transferring a regulated firearm to a purchaser, lessee, or transferee who the dealer or other person knows or has reasonable cause to believe:

- is younger than age 21;
- has been convicted of a disqualifying crime;
- has been convicted of a conspiracy to commit a felony;
- 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, as specified;
- has been confined for more than 30 consecutive days to a mental health facility, as specified;
- is a respondent against whom a current non *ex parte* civil protective order has been entered;

- if younger than age 30 at the time of the transaction, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult;
- is visibly under the influence of alcohol;
- is a participant in a straw purchase; or
- has not completed a specified certified firearms safety training course.

A violator is guilty of a misdemeanor and on conviction subject to maximum penalties of imprisonment for five years and/or a \$10,000 fine. Each violation is a separate crime.

Prohibitions for Rifles and Shotguns: A licensee or any other person may not sell, rent, transfer, or loan a rifle or shotgun to a purchaser, lessee, transferee, or recipient who the licensee or other person knows or has reasonable cause to believe:

- 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 purchaser, lessee, transferee, recipient, 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;
- if younger than age 30 at the time of the transaction, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult;
- is visibly under the influence of alcohol or drugs;
- is a participant in a straw purchase; or

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

Prohibitions on Possession: Generally, a person is prohibited from possessing regulated firearms, rifles, and shotguns 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.

State/Local Fiscal Effect: OAG advises the need for two assistant Attorney Generals and one part-time support staff to file civil actions as contemplated under the bill, with estimated general fund expenditures of \$352,788 in fiscal 2024 (which assumes a hiring date of October 1, 2023), and at least \$423,000 annually thereafter. However, OAG did not provide details regarding how it derived its estimate and, without experience under the bill, the Department of Legislative Services (DLS) advises it is unable to reliably predict the extent to which civil actions may be filed (and the corresponding need for any additional staff). It is likely that a small number of additional actions can be accommodated without hiring new staff; however, to the extent that OAG uses its authority under the bill to pursue more robust enforcement of violations, general fund expenditures increase. *For illustrative purposes only*, general fund expenditures associated with the hiring of one assistant Attorney General are a minimum of \$120,000 annually. Although the bill takes effect June 1, 2023, it is assumed that any potential expenditures are not incurred until fiscal 2024.

Although the bill may result in additional civil actions filed, the bill is not anticipated to materially impact the workloads of the circuit courts and the District Court.

Because OAG may seek specified relief under the bill, including compensatory and punitive damages and reasonable attorney's fees and costs, general fund revenues may increase to the extent that such relief is awarded by the courts and allocated to the State. However, DLS is unable to reliably estimate the magnitude of any potential revenues in advance. This analysis does not account for how (or if) any such awards received by the State may be further directed to other entities.

Small Business Effect: The bill has a potential meaningful effect on small businesses that encounter additional litigation, liability, and potential increased costs for insurance coverage as a result of the bill's provisions.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 259 (Delegates Atterbeary and Rosenberg) - Judiciary.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

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