



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Support: HB1104- Public Safety- Regulated Firearms- Transfer

Chairman Clippinger, Vice-Chair Atterbeary and Members of the House Judiciary Committee:

For nearly a quarter-century, the Maryland code has sought to keep handguns, assault weapons and other regulated firearms out of the hands of people with dangerous histories—people the laws of Maryland and the United States prohibit from having them. Our law accomplishes this by requiring a background check on all sales and transfers of regulated firearms. But since 2006, when the Court of Appeals decided Chow v. State,¹ the meaning of our comprehensive background check law has been inappropriately narrowed and the enforcement of that dangerously undermined. I rise today to urge a favorable vote on HB 1104, a bill that would clearly announce the scope of Maryland’s background check requirement and—as our colleagues intended nearly 25 years ago—require a background check on all transfers of regulated firearms.

Federal law requires a background check **on all “transfers”**² of firearms. Under federal law, a federally licensed gun dealer cannot transfer ANY firearm—be it a handgun, rifle or shotgun—without conducting a background check on the transferee. This federal law applies to all handgun transfers—permanent and temporary, with or without consideration. But that requirement only applies to licensed gun dealers, and not to unlicensed sellers. This General Assembly passed the Maryland Gun Violence Act of 1996—created what is now section §5-124 of the Public Safety Article—with the express purpose of closing this dangerous loophole. Our law was intended to make it illegal for any unlicensed person to “sell, rent, transfer or purchase” a regulated firearm until 7 days the person seeking the firearm submits a firearm application to the State Police. The State Police then conduct state and federal background checks to ensure that the transferee is not legally prohibited from having guns. These background checks are the surest way to keep guns out of dangerous hands.

¹ Chow v. State, 393 Md. 431 (2006).

² 18 USC §922(t), 26 USC §5845

Since 1994, over 3.5 million sales to violent criminals and other prohibited people have been blocked by the federal background check system.

By holding that the language of 5-124 applies only to *permanent* transfers of ownership, the *Chow* court significantly narrowed the scope of our background check law. Though the state argued that the requirement was intended to be comprehensive and the term “transfer” broadly understood—to include loans and other temporary gratuitous transfers—the court ruled that it had a far more limited meaning. The result of the court’s narrow interpretation has been disastrous for the implementation and enforcement of that law. State’s Attorneys now face the often-insurmountable challenge of proving not only that a handgun or other regulated firearms was transferred in violation of §5-124, but also proving that the transfer wasn’t temporary. To put it plainly, criminal defendants can avoid a background check and subsequent prosecution simply by claiming “it was just a loan.” If prosecutors cannot prove, beyond a reasonable doubt, that such claims are false, they cannot prosecute those who illegally sell and traffic regulating firearms.

Though I disagree with much of the *Chow* court’s analysis, the Court of Appeals did rightly point out the solution to this problem—adding a clear and complete definition of the term “transfer” to the statute. That’s what HB 1104 would do. It would finally fix the ambiguity in §5-124 and make clear that anytime a regulated firearms changes hands—with the exception of temporary transfers in the presence of the firearm owner—the transferee must undergo a background check. This simple change will close the gap in our law created by the *Chow* decision and make sure our background check can achieve the purpose for which it was intended, keeping regulated firearms out of dangerous hands. I urge the committee to issue a favorable report.

Sincerely,

A handwritten signature in cursive script that reads "Lesley Lopez". The signature is written in black ink on a light-colored background.

Delegate Lesley Lopez, D-39