

Theodore J Wojtysiak
 SB387 Public Safety - Untraceable Firearms
 Unfavorable
 2/16/2022

I am writing with regards to my opposition to SB 387, cross-filed with HB 425, regarding “Untraceable Firearms”. This proposed law seeks to criminalize Constitutionally protected conduct without meaningful benefit to society, and it unnecessarily and significantly burdens current and future firearms hobbyists within Maryland.

This law would make illegal behavior that has been legal since before Maryland was a state. A Maryland citizen has *always* been able to build, construct, and manufacture firearms for their personal use. However, this bill would remove the ability for citizens to build their own firearms from scratch, as it is impossible to simultaneously build a firearm receiver after the onset of the law and have it registered appropriately. The penalty for the so-called “crime” of building a firearm from scratch is incredibly onerous: **up to 3 years and \$10,000 per violation**. For comparison, here are the penalties compared to driving under the influence:

	1st DUI	2nd DUI	3rd DUI	1 Ghost Gun	2 Ghost Guns
Jail	< 1 year	< 2 years	< 5 years	< 3 years	< 6 years
Fines	< \$1,000	< \$2,000	< \$5,000	< \$10,000	< \$20,000
License Suspension	< 6 months	< 9 months	< 12 months	N/A	N/A
Firearms Rights	N/A	N/A	N/A	Revoked Permanently	Revoked Permanently

To put this in context, someone who has *any non-serialized firearm receiver* - a Polymer 80 frame, any incomplete 80% lower, a home-built shotgun, a machined 1911 frame, even a potato launcher - would **suffer worse penalties than committing two separate DUI instances**. With two such firearms, that person suffers the same as someone with three separate DUI events. **This is egregious**. This bill puts the ownership of Constitutionally protected firearms at the same level as multiple dangerous moving violations. The possessor of the unserialized firearms poses no risk to society, meanwhile the person driving under the influence could easily end people’s lives. Which should Maryland punish more? Why is this bill proposed as such? Why are you punished at all for owning something that you are otherwise legally allowed to own based solely on its serialization? This is absurd. It is even more absurd when you recognize that a serial number can be filed off in moments - removing any potential benefit from this law while leaving a very onerous penalty for regular citizens.

This should clearly prove that the penalties offered in this bill are completely unreasonable. Additionally, the listing of what is considered a "firearm" here is absolutely vague and interpretive to a point of absurdity. At its absolute interpretation, Home Depot and Lowe's would have to serialize every 2x4 and piece of metal and PVC pipe, as these are all commonly used to make improvised firearm frames and are advertised as such on home hobbyist websites. One could say that I am being obtuse here. However, I am not the one writing laws to criminalize people who are otherwise law-abiding citizens for performing Constitutionally protected activities such as "bearing arms" under the guise of improving public safety. I am reading the law as it is written, and it is written such that the above is true.

Rough estimates place "80% firearm" sales in the tens of thousands since 2017. It is easy to imagine that easily 5 times that many firearms exist that would meet the legal definition of "an untraceable firearm". In Maryland, there are a total of 776 Federal Firearms Licensed (FFL) businesses and individuals. Of those, 163 are Licensed as "Manufacturers" of Firearms (Class 7), and a lot of these FFLs are individually owned or large scale businesses dealing in the actual manufacturing of firearms such as Benelli. Of those remaining, a small fraction of them have the capability to make the required markings to these "untraceable firearms". However, there are open questions about the serialization process.

Questions that can be considered nebulous and incredibly important about this proposed law and have no clarification supplied yet by any agency of the state:

1. Is an FFL able to serialize a firearm that they did not produce?
2. Are there liabilities to the FFL for serializing the firearm, such as safety concerns?
3. Is it a firearm "transfer" to get the newly serialized firearm back from the FFL?
4. Do you have to fill out a Maryland 77R on receipt of your newly serialized handgun?
5. Do you have to fill out a US 4473 on receipt of your newly serialized long gun?
6. Is the firearm "new" after serialization?
7. Does the "new" firearm need to be on the handgun roster to return to its owner?
8. Can a now-banned by name or copycat firearm be serialized and received back?
9. Do you need an HQL to receive a handgun back from serialization?
10. How do you safely serialize firearms that don't have a serialization plate?
11. Are there any means for new residents to serialize a homemade firearm post-2023?

All of these are significant questions that have incredibly large implications for the implementation and enforcement of this law. The time it will take for COMAR to implement this law into Maryland code will work against the already short timeline and limited FFLs for compliance, including the fact that the ATF should be heavily engaged in ensuring Maryland is writing a bill that fits into compliance with ATF Regulations for FFLs and firearms.

This law is in response to increasing numbers of homemade firearms being found in Baltimore City and other urban areas. There has never been a dearth of illegal firearms here. This law makes it such that people who were openly willing to commit murder have to source firearms instead from: parts kits out of state; or manufacture them on their own; or continue to steal them from the surrounding area; or buy them from the local black market; or straw purchase them.

This bill will not even begin to stop the crime and violence in the city. What would fix that? Studies have shown that reforming the education system, reducing poverty, improving the prison systems, and reducing the illegal drug trade would remove criminal incentives and improve the general welfare. This bill offers none of that. The people that were willing to commit murder would be similarly willing to commit murder before and after this law's passage, and they will have no problem obtaining tools to perform such acts.

After this law's passage, however, thousands of Maryland's citizens will be considered felons for committing absolutely no danger to society. The timeline for serialization is impossible for even a minority of these individuals to comply with, and the people writing this bill know that with full confidence. Additionally, many who would be non-compliant will not know about this bill at all. These individuals are not prohibited persons, and they do not intend to use their hobby-obtained firearms for ill will, and they do not know about this law coming to fruition.

If anyone listened to Attorney General Frosh talk to the House Judiciary Committee last week, they would also think that many homemade firearms are exempt from this bill as the AG claimed that this only impacts Polymer 80 type handguns. The written law makes no such distinction - and in fact is written in such a way that it is clear the AG was shamefully lying in his testimony. Other lies were put forward by the AG, such as claiming that 80% receivers have moving parts in them, and that this law only impacts fully finished firearms, and that this law does not impact future hobbyists, and that no one needs to make a handgun so it should be no problem to destroy it. His testimony was insulting to people who understand firearm law, and it is worrisome that so many legislators did not openly question his false assertions. And on top of this: no one questioned the severity of the bill's penalties. That is heartbreaking to me, as it shows that Maryland's delegation is okay with penalizing Marylanders significantly for causing no harm to others. And Meanwhile, people who are already disallowed from owning a firearm will suffer no negative consequence from possessing and using a home fabricated firearm, as it has been shown that most minor charges are plead away in an effort to guarantee charges.

I urge a total and complete unfavorable report.

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