

CITY OF BALTIMORE

SHEILA DIXON, Mayor

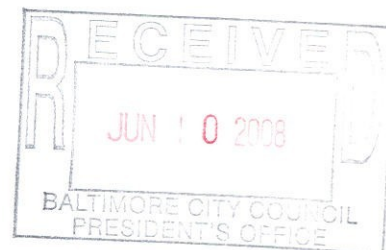


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

June 10, 2008

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202



RE: City Council Bill 08-0046 – Firearms – Reporting Theft or Loss

Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 08-0046. City Council Bill 46 requires that the owner of a firearm report its theft or loss to the police within a specified time period. The bill also defines certain terms and imposes criminal and civil penalties.

The Bill adds the requirement to report lost or stolen firearms to Article 19, Police Ordinances. It defines a "firearm" as "any pistol, revolver, rifle, shotgun, short-barreled rifle, short-barreled shotgun, or other firearm." The Bill requires that the owner or person possessing a firearm that is lost or stolen report the theft or loss to the Baltimore Police Department within 48 hours of discovering that the firearm is lost or stolen. The Bill then provides that violation of the requirement is subject to the civil penalty of \$250 found in subtitle 41 "Civil Citations" of Article 1. Any person who violates the reporting requirement is guilty of a misdemeanor and is subject to a criminal penalty of a maximum of \$250 for each offense.

The Maryland General Assembly has expressly preempted local regulation of "...the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of ...a handgun, rifle or shotgun." Md. Code Ann., Criminal Law § 4 – 209 (a) (1) (2008). There are three exceptions to this preemption which are: (1) laws with respect to minors, (2) laws regarding law enforcement officials and (3) laws regarding the use of handguns within 100 yards of a park, church, school, public building, and other place of public assembly. Md. Code Ann., Criminal Law § 4 – 209 (b) (1) (i) – (iii) (2008). In addition, § 5 – 133 of Maryland's Public Safety Article provides that "... the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm." Md. Code Ann., Public Safety § 5 – 133 (a) (2008). Federal law also regulates the possession and use of handguns, but local laws are permitted to the extent that they can coexist with the Federal law. *New Jersey v. Rackis*, 755 A.2d 649 (2000) (concluding that local governments are not preempted from regulating the

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possession and use of BB guns). The Attorney General has permitted local gun regulations only to the extent that they fall within one of the statutory exceptions; for example, with regard to minors. *See* 76 Md. Op. Atty. Gen. 240 (1991) (permitting County legislation which required safeguards to prevent minors from accessing firearms) and 82 Md. Op. Atty. Gen. 84 (1997) (local regulation requiring gun dealers to provide a trigger lock with the sale of all guns for the purpose of protecting children from the accidental discharge of the handgun not preempted).

Bill 46 requires notification by the owner of a firearm to the Police when it is lost or stolen. Although State law does not expressly address lost or stolen guns, this requirement is arguably relating to the possession of handguns. The issue of preemption in this case is not entirely clear, however, because an argument could be made that the theft or loss of a gun is not regulating *who* may possess a firearm, but rather, the conduct of the owner after he or she acquires it. Regardless, the State has expressed a clear legislative intent to preempt local firearm regulations with few enumerated exceptions. Due to the ambiguity of the preemption issue, the Law Department respectfully recommends requesting an opinion of the Attorney General before proceeding further with Bill 08 - 0046. Therefore, we cannot approve the Bill for legal form and sufficiency at this time.

Sincerely yours,



Ashlea Brown
Assistant Solicitor

cc:

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