

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 454 (Senator Waugh, *et al.*)
Judicial Proceedings

Handgun Permits - Reciprocity

This bill specifies that a permit issued by another state to an individual to carry a handgun, including a concealed handgun, is valid in Maryland.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Federal law does not regulate the carrying of firearms, concealed or otherwise. All 50 states allow the carrying of firearms to some extent. Currently, the District of Columbia does not permit citizens to carry concealed firearms under any circumstances. Details of concealed weapons laws vary greatly among jurisdictions, but most approaches fall into two categories. One of these categories is a discretionary system called “may issue” licensing, where legal authorities grant licenses only to those citizens who can establish a compelling need for carrying a concealed handgun. The other system is a nondiscretionary one called “shall issue” licensing. Under this system, legal authorities must provide a license to any applicant who meets specific criteria.

Generally, with certain exceptions, to be issued a permit to carry a handgun by the Secretary of State Police, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than

one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if the person is younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to the applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding that the permit is necessary as a reasonable precaution against apprehended danger. The Secretary may limit the geographic area; circumstances; or times of day, week, month, or year in which a permit is effective.

A handgun permit application costs \$75; two years after the initial permit and every three years thereafter, a \$50 renewal fee is due. In addition, the applicant must pay for fingerprint-based federal and State criminal history background checks for initial applications and renewals.

Maryland’s permit to carry a handgun does not make reference to concealed carry and does not extend to all regulated firearms. A “regulated firearm” means a handgun or any one of 45 specific assault weapons, or their copies, regardless of which company produced and manufactured the weapon.

Chapter 427 of 2013 (the Firearm Safety Act of 2013) created a new licensing scheme for handguns under the licensing authority of the Department of State Police (DSP). DSP has adopted regulations to implement the Act’s provisions related to this license. A “handgun qualification license” (HQL) authorizes a person to purchase, rent, or receive a handgun. The Secretary of State Police is required to apply for a State and national criminal history records check for each applicant. As part of the application for a criminal history records check, the Secretary must submit one complete set of fingerprints of the applicant. From the October 1, 2013 effective date of the Firearm Safety Act of 2013 through the 2014 calendar year, DSP received 21,081 applications for an HQL.

The number of states allowing concealed carry permits is increasing, and states broadly differ in eligibility requirements and the extent to which reciprocity agreements are applied or recognized. Some agreements apply to firearms in general, while others apply to certain types of weapons (such as handguns or pistols).

According to a July 2012 report by the U.S. Government Accountability Office, “Shall issue” states – in which issuing authorities are required to issue a permit to an applicant that fulfills the objective statutory criteria – generally issue more permits than states with greater discretion in granting permits (“may-issue” states). Because of differing eligibility

requirements, some states would issue a permit to an applicant, while others would not.” Maryland is a may-issue state.

An interactive map of each state’s reciprocity provisions can be found [here](#).

Constitutional Concealed Carry Reciprocity Act of 2015

Federal legislation has been introduced in both houses of U.S. Congress that would amend federal criminal law to authorize a person who is not prohibited from possessing, transporting, shipping, or receiving a firearm under federal law, who is entitled and not prohibited from carrying a concealed firearm in his or her state of residence, or who is carrying a valid state license or permit to carry a concealed weapon, *and* who is carrying a government-issued photographic identification document, to carry a concealed handgun (which has been shipped or transported in interstate or foreign commerce, other than a machine gun or destructive device) in any state in accordance with the restrictions of that state.

The proposed legislation, entitled the Constitutional Concealed Carry Reciprocity Act of 2015, provides that in a state that allows the issuing authority for licenses or permits to carry concealed firearms to impose restrictions on the carrying of firearms by individual license or permit holders, an individual carrying a concealed handgun must be permitted to carry it according to the same terms authorized by an unrestricted license or permit issued by such state. Similar federal legislation has been introduced in prior years.

Additional Information: In *Woollard v. Gallagher* (No. 12-1437), the U.S. Court of Appeals for the Fourth Circuit considered the constitutionality of Maryland’s “good and substantial reason” handgun permit requirement. On March 21, 2013, the Fourth Circuit reversed the District Court opinion and Maryland’s “good and substantial” requirement was upheld as constitutional.

Two separate suits challenging the Firearm Safety Act of 2013 on a variety of grounds were filed in federal District Court shortly before the law went into effect. On October 1, 2013, a District Court judge denied the plaintiffs’ request to enjoin implementation of the Firearm Safety Act pending the outcome of the litigation.

Doe v. O’Malley, 13-cv-2861, U.S. District Court, Maryland (Baltimore), anticipated that DSP would be unable to process HQLs in a timely manner and that the result would be a de facto moratorium on handgun sales in Maryland. Plaintiffs’ request for a temporary restraining order to delay the effective date of the HQL requirement for 90 days was denied. The case was voluntarily dismissed without prejudice.

In *Kolbe v. O'Malley*, 13-cv-2841, U.S. District Court, Maryland (Baltimore), a group of individual and organizational plaintiffs challenged the assault weapons and large-capacity magazine bans enacted as part of the Act. The plaintiffs contended that the bans violate the Second Amendment by precluding the plaintiffs from possessing commonly owned firearms for self-defense purposes. The plaintiffs also contended that the bans violate their due process rights because the definition of assault long guns is imprecise and vague, and that the exemption in the law applicable to retired law enforcement officers violates the equal protection clause. On August 12, 2014, the court awarded summary judgment in favor of the defendants on all of the plaintiffs' claims. On September 9, 2014, the plaintiffs filed a notice of appeal. Oral arguments in the case have been scheduled for March 2015 by the U.S. Court of Appeals for the Fourth Circuit (*Kolbe et al. v. O'Malley et al.*, No. 14-1945). According to published news accounts in November 2014, 21 states have filed briefs in support of overturning the Firearm Safety Act on grounds that the Maryland statute was written too broadly and violates the Second Amendment rights of their citizens.

Additional Information

Prior Introductions: Similar bills granting reciprocity for carry permits generally or with neighboring states were introduced in the 2014, 2013, 2012, 2011, and 2010 sessions. HB 62 of 2014 received a hearing in the House Judiciary Committee, but no further action was taken. SB 660 of 2013 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 1421 of 2013 received a hearing in the House Judiciary Committee, but no further action was taken. HB 256 of 2012 received a hearing in the House Judiciary Committee, but no further action was taken. HB 9 of 2011 received a hearing in the House Judiciary Committee, but no further action was taken. HB 52 of 2010 received an unfavorable report from the House Judiciary Committee.

Cross File: HB 464 (Delegate Rey, *et al.*) - Judiciary.

Information Source(s): Department of State Police, U.S. Government Accountability Office, Library of Congress, Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2015
md/lgc

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510