

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 62 **(Delegate Smigiel)**
Judiciary

Regulated Firearms - License Issued by Delaware, Pennsylvania, Virginia, or West Virginia - Reciprocity

This bill specifies that a license issued by Delaware, Pennsylvania, Virginia, or West Virginia authorizing an individual to carry a regulated firearm, including a concealed regulated firearm, is valid in Maryland.

Fiscal Summary

State Effect: None. The bill's requirements do not impose any additional responsibilities for units of government.

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 recently adopted regulations to implement the Act’s provisions related to this new license. A “handgun qualification license” 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.

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.

Delaware is a “may-issue” state for handguns, while Pennsylvania, Virginia, and West Virginia are “shall-issue” states.

Delaware

Delaware gives full faith and credit to all state-authorized licenses/permits issued to the citizens of other states where the issuing states also give full faith and credit to licenses issued by Delaware, and where those licenses/permits afford a “reasonably similar degree of protection” as is provided by licensure in Delaware. The term “reasonably similar” does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. However, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General of Delaware may not include that state on the reciprocity list even if the law of that state is determined to be “reasonably similar.” The list is valid for one year and any removal of a state from the list may not occur without one-year’s notice of the impending removal.

The Attorney General is required to publish on January 15 of each year a list of all states which have qualified for reciprocal recognition of concealed weapon licenses/permits from Delaware. The states with which Delaware has currently established reciprocity are Alaska, Arizona, Arkansas, Colorado, Florida, Kentucky, Maine, Michigan, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and West Virginia.

Pennsylvania

Under Pennsylvania law, there are six categories of firearms reciprocity status under the Uniform Firearms Act.

- Category 1: States that have entered into formal written reciprocity agreements with Pennsylvania that provide for reciprocal recognition of valid licenses/permits issued by both states: Alaska, Arizona, Arkansas, Florida, Georgia, Kentucky, Michigan, Missouri, New Hampshire, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Virginia, and Wyoming.

- Category 2: States that have statutory reciprocity without a formal written agreement, based on the determination of the Attorney General that the other state has granted reciprocity to Pennsylvania license holders, and that the other state's laws governing firearms are similar: Colorado, Idaho, Indiana, Louisiana, Montana, North Dakota, and Utah.
- Category 3: Unilateral reciprocity granted by another state for Pennsylvania license holders, encompassing states which allow an individual who has been issued a valid concealed firearm license from Pennsylvania to carry a firearm while in those respective states.
- Category 4: "Application states," whereby Pennsylvanians may apply for a license/permit from another state: Maine, Maryland, Massachusetts, and Washington.
- Category 5: The other state does not recognize or grant licenses/permits to individuals from another state, currently does not extend reciprocal privileges to Pennsylvania license holders, or has not indicated current status: Alabama, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, and Wisconsin.
- Category 6: Carry permitted without license/permit: Vermont, because that state allows possession or carrying of a concealed firearm without a license/permit.

Virginia

Under Virginia law, a valid concealed handgun permit or license issued by another state is valid in Virginia, provided that (1) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day and (2) the requirements and qualifications of the other state's law are adequate to prevent possession of a permit by persons who would be denied a permit in Virginia. The Superintendent of State Police, in consultation with the Office of the Attorney General, determines whether states meet the requirements and qualifications of Virginia law. The superintendent may also enter into agreements for reciprocal recognition with any qualifying state. In addition, a valid concealed handgun permit issued by Maryland is valid in Virginia so long as the holder of the permit is age 21 or older, is licensed in Maryland to perform duties substantially similar to those performed by licensed Virginia branch pilots, and is performing such duties while in Virginia.

- The states with which Virginia has a formal written reciprocity agreement are Alaska, Florida, Kentucky, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and West Virginia. Holders of Virginia nonresident permits are advised to contact each reciprocal state to determine if their permits will be recognized prior to carrying in that jurisdiction. Florida law does not grant reciprocity to holders of Virginia nonresident permits.
- The states with which Virginia has mutual recognition (jurisdictions which have informally agreed to honor permits issued by the other) are Arizona, Arkansas, Delaware, Louisiana, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, and Utah.
- The states to which Virginia will grant recognition to valid permit holders are Minnesota, Washington, and Wyoming. Although Virginia will grant recognition, these states may not authorize Virginia permit holders to possess a firearm in their states. Virginia permit holders are advised to contact each state to determine if they will recognize the Virginia permits.
- Virgin Islands Temporary Permit: Persons with a valid Virginia concealed carry permit may apply individually to the U.S. Virgin Islands Police Department for temporary reciprocal recognition of a concealed carry license while in the Virgin Islands. This temporary recognition is normally for 90 days from the date of issue.

West Virginia

West Virginia has handgun reciprocity agreements with the following 22 states: Alaska, Arizona, Arkansas, Delaware, Florida, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wyoming. The terms of the reciprocity agreements allow West Virginia resident concealed weapons licensees to carry concealed weapons in the reciprocating states. A resident of the reciprocating states who is age 21 or older who has in his or her possession a valid concealed handgun license or permit may also carry concealed weapons in West Virginia.

By law, West Virginia is prohibited from recognizing handgun licenses from other states unless there is a reciprocity agreement in place. However, the following states formally recognize permits issued by West Virginia: Idaho, Indiana, Iowa, Montana, Nebraska, Nevada, and Vermont.

Additional Information: In *Woppard 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 cases relating to Maryland firearms law are pending:

Kolbe v. O'Malley: This case, originally filed under the name *Tardy v. O'Malley*, is pending in the U.S. District Court for the District of Maryland. The suit seeks to have the assault weapon and high-capacity magazine bans included in Chapter 427 of 2013 declared unconstitutional under the Second Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment. Judge Blake denied plaintiffs' request for a temporary restraining order to prevent those aspects of the law from going into effect on October 1, 2013. The case is currently in the discovery phase with motions for summary judgment due on February 14, 2014.

Doe v. O'Malley: This case anticipated that the DSP would be unable to process the new handgun qualification licenses (HQL) mandated for handgun transactions under Chapter 427 in a timely manner and that the result would be a *de facto* moratorium on handgun sales in Maryland. Judge Catherine Blake denied plaintiffs' request for a temporary restraining order to delay the effective date of the HQL requirement for 90 days. Although the case remains active on the court's docket, plaintiffs have entered an agreement deferring the State's obligation to respond to the complaint unless and until it is amended.

Additional Information

Prior Introductions: Similar bills granting reciprocity for carry permits generally or with neighboring states were introduced in the 2013, 2012, 2011, and 2010 sessions. 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: None.

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

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mm/lgc

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