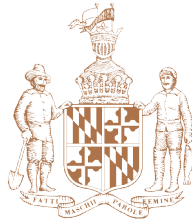


ANTHONY G. BROWN
ATTORNEY GENERAL

CANDACE McLAREN LANHAM
CHIEF OF STAFF

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

DAVID W. STAMPER
DEPUTY COUNSEL

SHAUNEE L. HARRISON
ASSISTANT ATTORNEY GENERAL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 5, 2023

The Honorable Wes Moore
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401
Delivered via email

RE: House Bill 824, "Public Safety - Regulated Firearms - Possession and Permits to Carry, Wear, and Transport a Handgun"

Dear Governor Moore:

It is our view is that House Bill 824 is legally sufficient and is not clearly unconstitutional.¹

House Bill 824 deletes the requirement in State law that a person have a good and substantial reason to wear, carry, or transport a handgun. Instead, the bill sets forth specified disqualifiers for the issuance of a permit and possession of a regulated firearm. The bill also imposes mandatory notices, raises permit fees, and enhances the required firearms training course.

Second Amendment Analysis Under Bruen

Last year, the Supreme Court held that when a regulation applies to conduct falling within the Second Amendment's "plain text," the government has the burden to justify the firearm regulation by showing the regulation is consistent with the Nation's historical tradition of firearm regulation. *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct.

¹ We apply a "not clearly unconstitutional" standard of review for the bill review process. *71 Opinions of the Attorney General* 266, 272 n.11 (1986).

2111 (2022).² Thus, the applicable test is “whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding.” *Id.* at 2131. Determination of whether a modern regulation is consistent with a historical one requires “analogical reasoning”; that is, “a determination of whether the two regulations are ‘relevantly similar.’” *Id.* at 2132 (citation omitted). This determination involves “at least two metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 2133. “[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.” *Id.* (emphasis in original).

The Court in *Bruen* stated that “[t]he Second Amendment’s plain text ... presumptively guarantees ... a right to ‘bear’ arms in public for self-defense.” *Id.* at 2135. The Court added that it found no evidence of “a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense” or “limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense.” *Id.* Thus, the Court concluded that New York’s proper cause requirement was unconstitutional because “it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* at 2156.

The Court in *Bruen*, however, left room for restrictions limiting, for example, “the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms...” *Id.* One concurring opinion stated that “[o]ur holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said ... about restrictions that may be imposed on the possession or carrying of guns.” *Id.* at 2157 (Alito, J., concurring). *See also McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (emphasizing that the Second Amendment right is not absolute and does not “imperil every law regulating firearms”); *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (explaining that “[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns” in order to protect the broader public”); *Binderup v. U.S.*, 836 F.3d 336, 367 (3d Cir. 2016) (Hardiman, J., concurring) (“the founding generation did not understand the right to keep and bear arms to extend to certain categories of people deemed too dangerous to possess firearms”).

² The law challenged in *Bruen* was New York’s requirement that individuals applying for a permit to carry a handgun outside the home show a special need for self-defense. The legal issue raised was the extent to which the government could regulate an individual’s Second Amendment right to keep and bear arms for self-defense, including outside the home.

Moreover, the Court in *Bruen* pointed out that its decision was not calling into question statutory requirements that “require applicants to undergo a background check or pass a firearms safety course,” noting such “are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” 142 S. Ct. at 2138 n.9. The Court supported such provisions that are “‘narrow, objective, and definite standards’ guiding licensing officials” as opposed to standards requiring the “appraisal of facts, the exercise of judgment, and the formation of an opinion...” *Id.* “[T]he Court’s decision does not affect the existing licensing regimes ... that are employed in 43 States. ... Those shall-issue regimes may require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements... Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.” *Id.* at 2162 (Kavanaugh, J., concurring, joined by Roberts, C.J.). *See also United States v. Jackson*, 2023 WL 249856 (D. Md. March 13, 2023) at * 7 (noting the Second Amendment is not unlimited and “historical categories” of who may not wear and carry “were not limited to felons, but extended more broadly to groups identified as dangerous, classes of individuals reasonably regarded as posing an elevated risk for firearms violence, and any person viewed as potentially dangerous”) (citations omitted).

House Bill 824

Among other things, House Bill 824 makes changes regarding additional disqualifications for possession of a regulated firearm. A person on supervised probation after conviction of specified crimes may not possess a regulated firearm; this disqualification does not include a person who was not convicted but received probation before judgment.

As for permit applicants, House Bill 824 deletes the requirement in current law, Public Safety Article, § 5-306(a)(6)(ii), that a person “has good and substantial reason to wear, carry, or transport a handgun.” Instead, the bill sets out additional specified disqualifiers for issuance of a permit: being on supervised probation for (i) conviction of a crime punishable by imprisonment for 1 year or more; (ii) a violation for driving while impaired by alcohol or drugs; or (iii) a violation of a domestic violence protective order; suffering from a mental disorder defined in Health-General Article (“HG”), § 10-101(i)(2) and having a history of violent behavior; being involuntarily admitted for more than 30 consecutive days to a facility defined in HG § 10-101(g); and having any of the following entered against the person—a current non ex parte civil or extreme risk protective order or any other current court order prohibiting purchase or possession of a firearm. In addition, the person must be 21 years old or a member of the armed forces of the United States or, the National Guard, or the uniformed services.

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House Bill 824 also adds provisions providing that a person may not possess a regulated firearm if the person, on or after October 1, 2023, has been convicted of a second or subsequent violation of Criminal Law Article (“CR”), § 4-104 (access to firearms by a minor), or a violation of CR § 4-104 if the violation resulted in the use of a loaded firearm by a minor causing death or serious bodily injury to the minor or another person.

Additionally, House Bill 824 sets out mandatory notice provisions relating to permit applications and revocations. The bill also raises permit fees and enhances the required firearms training course. In addition, the bill requires the Department of State Police to provide certain information about the State’s firearms law for notices to purchasers or transferees of regulated firearms. The bill also requires reporting of firearms crime information.

In our view, House Bill 824 sets forth objective standards and imposes minimal administrative burdens that will not limit law-abiding, responsible citizens access to firearms. *See Heller v. District of Columbia*, 698 F. Supp. 2d 179, 190 (D.D.C. 2010), *aff’d in part, vacated in part*, 670 F.3d 1244 (D.C. Cir. 2011) (noting that “the Supreme Court has held that registration and licensing schemes are permissible in other contexts so long as they do not excessively impinge on the constitutional right”). As supported by the legislative record, the bill is aimed toward ensuring that an applicant is a law-abiding, responsible citizen consistent with the historical tradition of such regulations. Accordingly, we believe that House Bill 824 is constitutional.

Sincerely,

A handwritten signature in black ink, appearing to read 'AGB', followed by the name 'Anthony G. Brown' in a cursive script.

Anthony G. Brown

AGB/SBB/kd

cc: The Honorable Susan C. Lee
Eric G. Luedtke
Victoria L. Gruber