



President
Mark W. Pennak

January 22, 2020

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MARYLAND SHALL ISSUE, IN SUPPORT OF HB 47, HB 265, SB 156 and SB 327 WITH AMENDMENTS

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and muzzle loading. I appear today as President of MSI in support of HB 47, SB 156 and HB 265 **WITH AMENDMENTS**.

The Statutory Scheme and the Problem Addressed by these Bills:

Under MD Code Public Safety 5-117.1(c), [a] person may purchase, rent, or receive a handgun only if the person” obtains a Handgun Qualification License” (HQL). Under Section 5-117.1(a), the statute does not apply to “a law enforcement officer or person who is retired in good standing from service **with a law enforcement agency of the United States, the State, or a local law enforcement agency of the State.**” By its terms, this exclusion for active and retired law enforcement officers applies only to **federal agents** or law enforcement **officers of the State of Maryland**.

Thus, while subsection (c) of Section 5-117.1 provides that “a person who possesses valid credentials from a law enforcement agency or retirement credentials from a law enforcement agency” may purchase a handgun without an HQL, the Maryland State Police has interpreted that exemption to apply only to **federal law enforcement agents** or law enforcement **officers of the State of Maryland**. <https://mdsp.maryland.gov/Organization/Pages/CriminalInvestigationBureau/LicensingDivision/Firearms/HandgunQualificationLicense.aspx>. That means that law enforcement officers of other State jurisdictions, such as the District of Columbia, Virginia and Pennsylvania (and who may live in Maryland) must have an HQL before being permitted to purchase a handgun in Maryland. Under federal law, such officers who live in Maryland may purchase handguns only in Maryland. See 18 U.S.C. §922(a).

The limited exemption for federal and Maryland officers also applies to the training requirements. In order to obtain an HQL, a person is required to obtain four hours of training by a certified handgun instructor. While certain persons (such as persons with a hunter training certificate, instructors, honorably discharged members of the Armed Forces, armed car employees, or a person who lawfully owned a regulated firearm (handgun) prior to October 1, 2013, are exempted from this training requirement, **there is no training exception for law enforcement officers of other State jurisdictions.** See MD Code Public Safety §5-117.1(e).

The Bills:

HB 47 and SB 156, SB 327 and HB 265 all seek to address the foregoing anomaly in the HQL training requirements for law enforcement officers who live in Maryland but who are employed outside of Maryland. HB 47 and SB 327 would exempt from the HQL training requirements “A LAW ENFORCEMENT OFFICER WITH A LAW ENFORCEMENT AGENCY IN DELAWARE, PENNSYLVANIA, VIRGINIA, WEST VIRGINIA, OR WASHINGTON, D.C.” Somewhat similarly, SB 156 and HB 265 would add two new classification of law enforcement officers who are exempt from the HQL training requirement imposed by Section 5-117.1(e). Those two classifications are (1) qualified **retired** law enforcement officers covered by 18 U.S.C. §926C and (2), an “active or retired correctional officer, sheriff, or deputy sheriff who has successfully completed an initial correctional officer, sheriff, or deputy sheriff firearms training course approved by the Secretary.”

MSI supports HB 47, HB 265, SB 156 and SB 327 as we believe that the public safety is enhanced by the public presence of trained, armed law enforcement personnel. These officers are all trained far beyond the four hours of introductory training mandated by the HQL statute. Given that existing training as law enforcement officers, these out-of-state officers should be allowed, at a minimum, to forego the four hours of training required by the HQL statute. Eliminating the training requirement would still require these out of state officers to apply and obtain an HQL prior to purchasing a handgun in Maryland. More sensibly, these officers should not be even subject to the HQL requirement at all, just as Maryland officers and federal officers are not subject to the HQL requirement.

The HQL Requirement Itself Is Unconstitutional

At the outset, it should be noted that the HQL requirement is, itself, likely to be held to be an unconstitutional infringement on the Second Amendment right of a law-abiding citizen to purchase a handgun for self-defense in the home. The HQL requirement is thus under constitutional attack in litigation in which MSI is a party. In that litigation, the federal district court initially denied the State’s motion to dismiss, holding that the MSI complaint fully stated a claim on which relief could be granted under the Second Amendment. See *MSI v. Hogan*, 2017 WL 3891705 (D. Md 2017). However, on April 1, 2019, the court dismissed the MSI complaint on grounds of standing without reaching the merits. That decision is on appeal to the Fourth Circuit and has been fully briefed and is awaiting oral argument. *MSI v. Hogan*, No. 19-1469 (4th Cir.).

Public safety would also be greatly enhanced by allowing all “law-abiding, responsible” citizens to obtain carry permits under MD Code Public Safety §5-306. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (holding that the Second Amendment protected right extends to every “law-abiding, responsible citizen[]”). The constitutionality of Maryland’s highly restrictive carry law is currently before the Maryland Court of Special Appeals in *Whalen v. Handgun Permit Review Board*, No. CSA-REG-2431-2018, argued by the undersigned counsel on November 4, 2019, and is currently awaiting decision. The scope of the Second Amendment is also before the Supreme Court of the United States on a petition for certiorari filed in *Malpasso v. Pallozzi*, No. 19-425, petition for certiorari filed Sept. 26 2019 (U.S.). See <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-423.html>.

We expect the Supreme Court to establish the correct standard of review for Second Amendment claims, should it reach the merits, in *NYSRPA v. NYC*, 883 F.3d 45 (2d Cir. 2018), *cert. granted*, 139 S.Ct. 939 (Jan. 22, 2019), argued December 2, 2019. That decision will likely have a substantial impact on both the constitutionality on Maryland’s “good and substantial reason” for a carry permit and on the constitutionality of the HQL requirement itself. In short, many of Maryland’s highly restrictive gun laws may be on borrowed time.

These Bills Need To Be Amended:

However, and in any event, we believe that these bills should be amended to provide HQL exemptions for law enforcement officers of other jurisdictions. First, as noted above, the HQL statute exempts only federal and Maryland law enforcement officers from its coverage. It thus subjects law enforcement officers of **other States** to the training requirement for obtaining an HQL. That result is little short of nonsensical. These active and retired law enforcement officers of other state jurisdiction have firearms training that **far** exceeds the four hours of HQL training required by Section 5-117.1(e). Exempting from the HQL training out of state officers and retired officers thus makes obvious sense.

HB 265 and SB 156 focus on an exemption for law enforcement officers who are covered by Section 926C of LEOSA, but omit any mention of state **active duty** law enforcement officers who are permitted to carry firearms anywhere in the United States under 18 U.S.C. §926B of LEOSA. In contrast, HB 47 and SB 317 limit the HQL training exemption only to active duty officers in DC, Virginia, Delaware and Pennsylvania. Under all four of these bills, out-of-state active or retired law enforcement officers are NOT exempt from the HQL statute; they are merely exempt from the training requirements for the HQL. Both of these approaches are flawed. As explained below, we believe that all these bills should be amended to include law enforcement officers covered by both 18 U.S.C. §926B of LEOSA and 18 U.S.C. §926C of LEOSA.

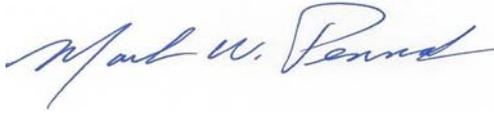
Both Section 926B and Section 926C are part of the Law Enforcement Officers Safety Act (LEOSA) enacted by Congress in 2004. See Pub. L. 108–277, 118 Stat. 865 (2004). Section 926C preempts all state and local laws and provides that “an

individual who is a qualified **retired** law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm” anywhere in the United States, subject to specified qualifications. See Section 926C(a)&(b). Section 926B covers **current, active** law enforcement officers of all 50 states and the District of Columbia. Both Section 926B and Section 926C provide that “[n]otwithstanding any other provision of the law of any State or any political subdivision thereof,” and individual covered by these provisions and who is carrying the required identification “may carry a concealed firearm.” Under Section 926B, a “qualified law enforcement officer” within the meaning of this provision includes any employee of a “government agency” who has the power of arrest and is authorized by that state agency to carry a firearm under that state’s law. 18 U.S.C. §926B(c)(1). As thus qualified, state law enforcement officers of all 50 States and the District of Columbia are covered by Section 926B of LEOSA, just as all qualified **retired** officers from these jurisdictions are covered by Section 926C. Again, both 926B officers and 926C retired officers may carry a concealed handgun in any state, including Maryland. See, e.g., *Duberry v. District of Columbia*, 924 F.3d 570 (D.C. Cir. 2019); *Ord v. District of Columbia*, 587 F.3d 1136 (D.C. Cir. 2009).

Stated simply, under HB 265 and SB 156, it makes no sense to allow retired officers covered by Section 926C of LEOSA to skip the HQL training requirements, but to continue to insist **that current, active duty** state law enforcement officers of other state jurisdictions, covered under Section 926B, to undergo HQL training. Likewise, it makes little sense, in HB 47 and SB 327, to limit the exemption from the HQL training requirement to active duty officers in DC, Virginia, West Virginia, Delaware and Pennsylvania, but deny that exemption to officers of other states and retired officers of all states (and who may live in Maryland) to the extent that these officers are already covered by LEOSA. Both otherwise qualified active duty current officers and retired officers are already allowed, by Section 926B and Section 926C of LEOSA, to carry a concealed firearm anywhere in the United States, regardless of any state law to the contrary. We respectfully suggest that all of these bills be amended to exempt from the HQL training officers covered by BOTH Section 926B and Section 926C of LEOSA.

Alternatively, the more direct (and, in our view, better) method of accomplishing this result is to amend Section 5-117.1(a) to exclude from the HQL statute all of active and retired law enforcement individuals who are permitted carry a concealed handgun under Section 926B and Section 926C of LEOSA, just as it currently exempts federal and Maryland law enforcement officers. In our view, it is senseless to exempt from the HQL statute federal and Maryland officers, while making the HQL statute fully applicable to active duty or retired officers who happen to live in Maryland. Again, under LEOSA, all these officers (who otherwise meet the qualification requirements imposed by LEOSA), are fully trained and are free to carry concealed firearms in Maryland, regardless of state law. Incorporating the LEOSA requirements into the HQL statute harmonizes the HQL statute with LEOSA and takes advantage of the strict LEOSA requirements imposed by federal law. Requiring these LEOSA officers to obtain an HQL to buy a handgun in Maryland does nothing to protect public safety. All it does is encourage these officers and retired officers to move out of Maryland. That result hardly promotes public safety.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Mark W. Pennak
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