



January 24, 2024

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF SB 102 and HB 329 WITH AMENDMENTS

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), 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 Maryland and of the Bar of the District of Columbia. I recently 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, federal 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, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in SUPPORT of SB 102 and the cross-file, HB 329, WITH AMENDMENTS.

The Bill:

Current Maryland law provides that wear and carry permits for the possession and transport of a handgun outside the home may be issued for an initial term of 2 years and that permit may thereafter be renewed for a 3-year term. See MD Code, Public Safety, § 5-309(a),(b). This bill would create a 5-year term for expiration of the carry permit as limited to “a retired law enforcement officer who retired in good standing from service with a law enforcement agency of the state or a county or municipal corporation of the state.” For the reasons set forth below, we respectfully suggest that while the 5-year term for permits is reasonable, retired law enforcement officers are not entitled to special consideration for these purposes. Accordingly, Section 5-309 should be amended to apply a 5-year term for all permit holders, not merely for retired officers.

Discussion:

Stated simply, Maryland’s 2-year term for initial permits and the 3-year term for renewal inappropriately inflicts unwarranted costs on both permit holders and on the Maryland State Police, the agency charged with issuance of permits under MD Code, Public Safety, § 5-306. In particular, the scarce resources of the Maryland State Police can be put to better use, especially where, as now, the State is experiencing a budget shortfall.

Maryland’s limited expiration terms are anomalous. First, 28 States are now “constitutional carry” jurisdictions meaning that no permit is required for concealed carry by otherwise law-abiding, non-disqualified adults in that State. <https://bit.ly/3S2nbde>. By definition, the right to carry in these States is not subject to **any** time limit. Such “constitutional carry” states

include states with small populations, like New Hampshire, Vermont, and Maine, as well as states more heavily populated, such as Missouri, Florida, Texas, and Ohio. *Id.* Maryland's neighbors, Pennsylvania, and Virginia, allow **open** carry **without** a permit and issue **concealed** carry permits for those who wish to carry concealed. Those concealed carry permits are good for five years. Virginia Code, § 18.2-308.02; Pennsylvania Code § 1609(f). Similarly, in Delaware, open carry is allowed without a permit. The initial permit for concealed carry is good for 3 years and renewals are good for 5 years. Del. Code Ann. tit. 11, § 1441(a)(5).

Second, even in States that still require carry permits for all types of carry, very few (e.g., New Jersey and California) impose a 2-year expiration period for permits. Michigan, for example, has a four-year expiration period for initial issuance and a 5-year term for renewals. Michigan Statutes, § Section 28.425l. Illinois (hardly a gun-friendly State), issues renewals for a five-year period. 430 ILCS 66/50. A carry permit is good for 6 years in Massachusetts, see Mass. Gen. Laws ch. 140, §§ 131(i), and for 5 years in Connecticut, see Conn. Gen. Stat. §§ 29-30(b). Not even New York uses a two-year period for initial permits or a 3-year period for renewals. Rather, New York law provides that a carry permit is valid for “five years after the date of issuance” for the City of New York, and for the counties of Nassau, Suffolk, and Westchester. NY Penal Code Art. 400.00(10)(a). Elsewhere in the State of New York, “any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, **shall be in force and effect until revoked as herein provided.**” *Id.* Emphasis added. New York merely requires that the license be “recertified to the division of the state police every five years” and revokes any permit not recertified. *Id.* § 400.00(10)(b). Recertification does not require proof of training. *Id.*

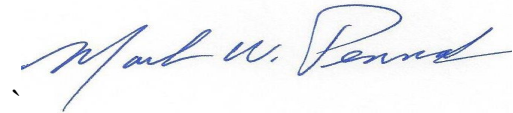
There is simply no reason to require frequent renewals. Such short renewals are not necessary to ensure continual qualification for the permit as Maryland participates in the FBI's “Rap Back” system under which the State Police will receive prompt notification of an arrest of any permit holder anywhere in the United States. <https://www.dpscs.state.md.us/publicservs/bgchecks.shtml>. The State Police may immediately revoke the permit held by any person who is no longer qualified to hold the permit. MD Code, Public Safety, § 5-310. That disqualification includes, for example, “any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year,” 18 U.S.C. § 922(n), or has been convicted of any “felony or misdemeanor for which a sentence of imprisonment for more than 1 year has been imposed,” MD Code, Public Safety, § 5-306(a)(2), or is on “supervised probation for a “conviction of a crime punishable by imprisonment for 1 year or more” or for “violating a protective order” issued under the Family Law article of the Maryland code. *Id.* at §5-306(a)(4).

Special treatment for retired law enforcement officers is unwarranted as such individuals already enjoy a privileged position under LEOSA, 18 U.S.C. § 926C. That provision of federal law provides that “[n]otwithstanding any other provision of the law of any State or any political subdivision thereof, 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 that has been shipped or transported in interstate or foreign commerce.” (Emphasis added). Thus, under LEOSA, otherwise qualified retired law enforcement officers need not obtain a State-issued permit **at all** to carry in Maryland. Indeed, because LEOSA expressly preempts State law, these individuals may disregard limitations

otherwise imposed on permit holders by State law, subject only to the exceptions imposed by LEOSA itself. See 18 U.S.C. 926C((b)). Given LEOSA, there is no reason to carve out retired officers for special treatment. While retired officers are undoubtedly law-abiding, the same is overwhelmingly true for permit holders, nationwide. See John Lott, Carlisle E. Moody, and Rujun Wang, *Concealed Carry Permit Holders Across the United States: 2023*, at 43-44 (2023) (“it is impossible to think of any other group in the US that is anywhere near as law-abiding,” noting further that “concealed carry permit holders are even more law-abiding than police”) (available at <https://bit.ly/3O8SjGH>).

We urge a favorable report on this bill, if it is amended to include all permit holders.

Sincerely,

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

Mark W. Pennak
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