IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAWN J. TARDY, *et al.*,	*	
Plaintiffs,	*	
v.	*	Civil Case No. 13-cv-02841-CCB
MARTIN O'MALLEY, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * *

DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

For the reasons stated in the accompanying memorandum, defendants Governor Martin O'Malley, Attorney General Douglas F. Gansler, Colonel Marcus Brown, all sued in their official capacities, and the Maryland State Police, move to dismiss Counts Two, Three, and Four of the third amended complaint (ECF No. 30), pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim on which relief can be granted; and to dismiss the claims of plaintiffs Wink's Sporting Goods, Inc., Atlantic Guns, Inc., Maryland Licensed Firearm Dealers Association, Inc., and, to the extent it purports to represent the interests of member firearms sellers, the National Sports Shooting Foundation, in Counts One and Two of the third amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1).

A proposed order is attached.

DOUGLAS F. GANSLER
Attorney General

/s/

MATTHEW J. FADER (Fed. Bar # 29294)
STEPHEN M. RUCKMAN (Fed. Bar # 28981)
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-7906 (tel.); 410-576-6955 (fax)
mfader@oag.state.md.us

DAN FRIEDMAN (Fed. Bar # 24535)
Assistant Attorney General
Office of the Attorney General
Legislative Services Building
90 State Circle, Room 104
Annapolis, Maryland 21401
Tel. 410-946-5600
dfriedman@oag.state.md.us

Dated: November 22, 2013

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MARYLAND

STEPHEN V. KOLBE, *et al.*,	*	
Plaintiffs,	*	
v.	*	Civil Case No. 13-cv-02841-CCB
MARTIN O'MALLEY, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

DOUGLAS F. GANSLER
Attorney General of Maryland

MATTHEW J. FADER (Fed. Bar # 29294)
STEPHEN M. RUCKMAN (Fed. Bar # 28981)
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-7906 (tel.); 410-576-6955 (fax)
mfader@oag.state.md.us

DAN FRIEDMAN (Fed. Bar # 24535)
Assistant Attorney General
Office of the Attorney General
Legislative Services Building
90 State Circle, Room 104
Annapolis, Maryland 21401
410-946-5600 (tel.)
dfriedman@oag.state.md.us

Dated: November 22, 2013

Attorneys for Defendants

TABLE OF CONTENTS

Page

INTRODUCTION 1

FACTUAL BACKGROUND 2

STANDARD OF REVIEW 6

ARGUMENT 7

I. THE PLAINTIFFS' CHALLENGE TO CHAPTER 427'S BAN ON HIGH-CAPACITY DETACHABLE MAGAZINES FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED BECAUSE THE BAN DOES NOT IMPLICATE THE SECOND AMENDMENT (COUNT TWO). 7

A. The Second Amendment Framework 7

B. Maryland's Ban on High-Capacity Detachable Magazines Does Not Fall Within the Scope of the Second Amendment Right. 10

II. THE PLAINTIFFS FAIL TO STATE A CLAIM FOR VIOLATION OF THE EQUAL PROTECTION OF THE LAWS (COUNT THREE). 16

III. THE PLAINTIFFS HAVE FAILED TO STATE A VOID-FOR-VAGUENESS CLAIM UPON WHICH RELIEF CAN BE GRANTED (COUNT FOUR). 21

A. The Plaintiffs' Due Process Challenge Fails Because a Facial Challenge Based on Vagueness Can Only Succeed if the Law Is Impermissibly Vague in All of Its Applications 23

B. To the Extent the Plaintiffs Are Making an As-Applied Challenge, They Have Failed to Plead a Plausible Claim of Vagueness in Any Potential Application of the Statute to Them. 31

IV. THE BUSINESS PLAINTIFFS' SECOND AMENDMENT CLAIMS MUST BE DISMISSED BECAUSE THE SECOND AMENDMENT DOES NOT PROTECT A RIGHT TO SELL FIREARMS. 32

CONCLUSION 35

TABLE OF AUTHORITIES

Page

Cases

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 7

Bell v. Maryland, 378 U.S. 226 (1964) 19

Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) 6

Cabell v. Chavez-Salido, 454 U.S. 432 (1982) 19

City of Chicago v. Morales, 527 U.S. 41 (1999) 23

City of Clebourne v. Clebourne City Ctr., Inc. 473 U.S. 432 (1985) 17, 20

Coal. of N.J. Sportsmen, Inc. v. Whitman, 44 F. Supp. 2d 666 (D.N.J. 1999) 25

Crawford v. Marion Cnt. Election Bd., 553 U.S. 181 (2008) 24

District of Columbia v. Heller, 554 U.S. 570 (2008) 7, 8, 11, 13, 14, 15

Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011) 34

Federal Communications Commission v. Fox TV Stations, 132 S. Ct. 2307 (2012) 22

Foley v. Connelie, 435 U.S. 291 (1978) 18

Gallagher v. City of Clayton, 699 F.3d 1013 (8th Cir. 2012) 24

Giarratano v. Johnson, 521 F.3d 298 (4th Cir. 2008) 17

Grayned v. City of Rockford, 408 U.S. 104 (1972) 21

Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011) 15

Hodges v. Colorado Springs, 1992 U.S. App. LEXIS 10105 (10th Cir. May 4, 1992) 20

Kowalski v. Tesmer, 543 U.S. 125 (2004) 34

Martin v. Lloyd, 700 F.3d 132 (4th Cir. 2012) 22, 23, 24, 27

McDonald v. City of Chicago, ___ U.S. ___, 130 S. Ct. 3020 (2010) 9, 12

Pizzo v. City & County of San Francisco, 2012 U.S. Dist. LEXIS 173370 (N.D. Cal. Dec. 5, 2012) 20

Richmond Boro Gun Club v. City of New York, 896 F. Supp. 276 (E.D.N.Y. 1995) 25

San Diego County Gun Rights Cmte. v. Reno, 98 F.3d 1121 (9th Cir. 1996) 17

Silveira v. Lockyer, 312 F.3d 1052 (9th Cir. 2002) 21

Smith v. Goguen, 415 U.S. 566, 574 (1974) 22

Springfield Armory, Inc. v. City of Columbus, 29 F.3d 250 (6th Cir. 1994) 30

United States v. Aguilar, 585 F.3d 652 (4th Cir. 2009) 22

United States v. Chafin, 423 F. App'x. 342 (4th Cir. 2011) 33, 34

United States v. Chapman, 666 F.3d 220 (4th Cir. 2012) 11, 14

United States v. Chester, 628 F.3d 673 (4th Cir. 2010) 9, 11

United States v. Comstock, 627 F.3d 513 (4th Cir. 2010) 23

United States v. Conrad, 2013 WL 546373 (W.D. Va. Feb. 13, 2013) 33

United States v. Hager, 721 F.3d 167 (4th Cir. 2013) 22

United States v. Klecker, 348 F.3d 69 (4th Cir. 2003) 23

United States v. Lanning, 723 F.3d 476 (4th Cir. 2013) 22

United States v. Lee, 815 F.2d 971 (4th Cir. 1987) 24

United States v. Masciandaro, 638 F.3d 458 (4th Cir. 2011) 9

United States v. Miller, 307 U.S. 174 (1939) 12

United States v. Salerno, 481 U.S. 739 (1987) 24

United States v. Whorley, 550 F.3d 326 (4th Cir. 2008) 22

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1983) 22, 23, 24

Wag More Dogs, LLC v. Cozart, 680 F.3d 359 (4th Cir. 2012) 7, 22

Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008) 24

White Tail Park, Inc. v. Stroube, 413 F.3d 451 (4th Cir. 2005) 32, 34

Williams v. Puerto Rico, 910 F. Supp. 2d 386 (D.P.R. 2012) 20

Wilson v. County of Cook, 968 N.E.2d 641 (Ill. 2012) 30

Woollard v. Gallagher, 712 F.3d 865 (4th Cir.), *cert. denied* No. 13-42, 2013 U.S. LEXIS 7384 (2013) 4, 9, 24

W.R. Huff Asset Mgmt. Co., LLC v. Deloitte & Touche LLP, 549 F.3d 100 (2d. Cir. 2008) 34

Wroblewski v. City of Washburn, 965 F.2d 452 (7th Cir., 1992) 17

Constitutional Provisions

U.S. Const., amend. II ..... passim

U.S. Const., amend. V 2

U.S. Const., amend. XIV, § 1 16

Federal Statutes

7 U.S.C. § 2238 12

10 U.S.C. § 899 12

10 U.S.C. § 904 12

10 U.S.C. § 2110 12

10 U.S.C. § 2385 12

10 U.S.C. § 2538 12

10 U.S.C. § 2539 12

10 U.S.C. § 2576 12

10 U.S.C. § 2576a 12

10 U.S.C. § 4655 12

10 U.S.C. § 4684 12

10 U.S.C. § 9655 12

10 U.S.C. § 9684 12

14 U.S.C. § 655 12

16 U.S.C. § 3912 12

18 U.S.C. § 922(a)(1)(A) 12

18 U.S.C. § 922(a)(1)(B) 12

18 U.S.C. § 922(d)(3) 34

18 U.S.C. § 922(g) 12

18 U.S.C. § 926B 20

18 U.S.C. § 926C 20

18 U.S.C. § 962 12

18 U.S.C. § 967 12

18 U.S.C. § 1022 12

18 U.S.C. § 1386 12

22 U.S.C. § 450 12

22 U.S.C. § 522 12

22 U.S.C. § 523 12

22 U.S.C. § 524 12

22 U.S.C. § 527 12

22 U.S.C. § 2349aa-2 12

22 U.S.C. § 2778 12

26 U.S.C. § 995 12

26 U.S.C. § 5847 12

31 U.S.C. § 321 12

State Statutes

Md. Code Ann., Crim. Law § 4-301 3

Md. Code Ann., Crim. Law § 4-301(f) 10

Md. Code Ann., Crim. Law § 4-302(7) 17, 18

Md. Code Ann., Crim. Law § 4-303(a) 3

Md. Code Ann., Crim. Law § 4-303(b)(2) 3

Md. Code Ann., Crim. Law § 4-303(b)(3) 3

Md. Code Ann., Crim. Law § 4-305 3

Md. Code Ann., Crim. Law § 4-305(b) 10

Md. Code Ann., Crim. Law § 4-306(a) 29

Md. Code Ann., Pub. Safety 3-101(e) 17

Md. Code Ann., Pub. Safety § 5-101(r) 7, 29

Md. Code Ann., Pub. Safety § 5-101(r)(2) 7, 29

Md. Code Ann., Pub. Safety § 5-117 29

Md. Code Ann., Pub. Safety § 5-118 29

Md. Code Ann., Pub. Safety § 5-123(a) 29

Md. Code Ann., Pub. Safety § 5-144 29

Rules

Fed. R. Civ. P. 12(b)(1) 2

Fed. R. Civ. P. 12(b)(6) 16

Regulations

COMAR 12.04.02.03A 18

COMAR 12.04.02.06A 18

COMAR 12.04.02.06B(2) 18

COMAR 12.04.02.06B(3) 19

COMAR 12.04.02.07 18

COMAR 12.04.02.08A 18

COMAR 12.04.02.08E 19

COMAR 12.04.02.10C 19

Miscellaneous

1 A New and Complete Law Dictionary 11

1 Dictionary of the English Language 106 (4th ed.) (reprinted 1978) 11

4 Blackstone, Commentaries on the Laws of England (1769) 8

95 Atty. Gen. Md. 101 (2010) 26

2007 Laws of Maryland, ch. 427 ..... passim

Puerto Rico's Weapons Act of 2000, P.R. Laws Ann. Tit. 25, §§ 455-460(k) 20

State of Connecticut Dep't of Emerg. Srvcs. and Public Protection, State Police Identify Weapons Used in Sandy Hook Investigation; Investigation Continues, Jan. 18, 2013, *available at* http://www.ct.gov/despp/cwp/view.asp?Q=517284&A=4226 4

The American Heritage Dictionary of the English Language 405 (5th ed. 2011) 30

INTRODUCTION

Defendants Governor Martin O'Malley, Attorney General Douglas F. Gansler, Superintendent of State Police Colonel Marcus Brown, all sued in their official capacities, and the Maryland State Police, have moved to dismiss counts Two, Three, and Four of the third amended complaint ("Th. Am. Complaint") for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The plaintiffs' claim in Count Two—which alleges that Maryland's ban on the purchase or receipt of large-capacity detachable magazines violates the right to keep and bear arms in the Second Amendment to the United States Constitution—fails to state a claim upon which relief can be granted because the ban does not burden conduct protected by the Second Amendment. The plaintiffs' claim in Count Three—which alleges that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is violated by a narrow exception to bans on the purchase or receipt of assault long guns and high-capacity detachable magazines for certain transfers by law enforcement agencies to retired law enforcement officers—fails to state a claim because the plaintiffs have not stated a plausible claim that they are similarly situated to the retired law enforcement officers. And the plaintiffs' claim in Count Four—which alleges that the definition of an assault long gun, which has been in existence in connection with a separate statute for more than two decades, is void for vagueness in violation of the Due Process Clause of

the Fifth Amendment—fails to state a claim because the plaintiffs have not stated a plausible claim for the facial invalidity of the statute.

Additionally, four of the plaintiffs, Wink's Sporting Goods, Inc., Atlantic Guns, Inc., Maryland Licensed Firearm Dealers Association, Inc., and, to the extent it purports to represent the interests of member firearms sellers, the National Sports Shooting Foundation (together, the "Business Plaintiffs"), lack the requisite standing to bring claims under the Second Amendment because there is no Second Amendment right to sell a firearm. As a result, Counts One and Two must be dismissed as to those plaintiffs pursuant to Fed. R. Civ. P. 12(b)(1).

FACTUAL BACKGROUND

The Firearm Safety Act of 2013, Chapter 427 of the 2007 Laws of Maryland (hereinafter, "Chapter 427"), represents a comprehensive effort to amend Maryland's gun laws to enhance public safety, including by the establishment of a handgun qualification license for purchasers of handguns, a ban on armor-piercing bullets, a number of provisions addressing mental health issues connected with firearms, and several other provisions. *See generally* 2007 Laws of Maryland, ch. 427 (attached as Exhibit A).

The plaintiffs in this case challenge two aspects of Chapter 427. First, the plaintiffs challenge a provision that prohibits a Maryland person, after October 1, 2013, from, among other things, possessing, selling, or receiving "assault long guns" and "copycat weapons," (collectively "assault weapons") as those terms are specifically

defined. Md. Code Crim. Law ("CR") §§ 4-303(a), 4-301.[1] That prohibition does not apply to any assault long guns or copycat weapons that were lawfully possessed, or for which a purchase order or application to purchase was completed, before October 1, 2013. CR § 4-303(b)(3). Moreover, licensed firearms dealers to whom the law applies may "continue to possess, sell, offer for sale, or transfer an assault long gun or copycat weapon that the licensed firearms dealer lawfully possessed on or before October 1, 2013." CR § 4-303(b)(2).

Second, the plaintiffs challenge a provision of Chapter 427 that generally prohibits a Maryland person, including a licensed firearms dealer, from, among other things, possessing, selling, or receiving "a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm." CR § 4-305. This represents a reduction from the prohibition on detachable magazines with a capacity of more than 20 rounds, which was in place before October 1, 2013.

Chapter 427 was enacted in the wake of a series of mass shootings perpetrated by individuals using assault weapons and high-capacity magazines, most immediately the murder of 20 elementary school students and six teachers at an elementary school in Newtown, Connecticut on December 14, 2012. According to the Connecticut State Police, the Newtown shooter used a Bushmaster assault rifle, specifically the Bushmaster

[1] Chapter 427 left in place Maryland's longstanding ban on "assault pistols." The plaintiffs do not challenge that ban.

.223 caliber XM 15-E2S assault rifle, with a high-capacity 30-round magazine to perpetrate his heinous crime.[2]

Chapter 427 was introduced on January 18, 2013 as Senate Bill 281, passed by the General Assembly on April 4, 2013, and signed by Governor O'Malley on May 16, 2013. *See* History of Ch. 427, *available at* http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&stab=03&id=sb0281&tab=subject3&ys=2013RS (last visited Sept. 30, 2013).

Andrew C. Turner is an individual plaintiff who alleges: (1) that he owns what are now classified as assault long guns as well as detachable magazines holding in excess of ten rounds;[3] (2) that if allowed by law, he plans on purchasing additional such assault long guns and high-capacity detachable magazines in the future;[4] (3) that he uses his assault long guns for home defense and hunting;[5] and (4) that he suffers a physical ailment as a result of which, he contends, he requires access to detachable magazines

---

[2] *See* State of Connecticut Dep't of Emerg. Srvcs. and Public Protection, State Police Identify Weapons Used in Sandy Hook Investigation; Investigation Continues, Jan. 18, 2013, *available at* http://www.ct.gov/despp/cwp/view.asp?Q=517284&A=4226 (last visited Sept. 27, 2013).

[3] *See* ECF No. 3-2, Declaration of Andrew Turner ("Turner Decl.") ¶ 3; *see also* declarations of former plaintiffs: ECF No. 3-3, Declaration of Shawn J. Tardy ("Tardy Decl.") ¶ 3; ECF No. 3-4, Declaration of Matthew Godwin ("Godwin Decl.") ¶ 3.

[4] *See* ECF No. 30, Complaint ¶ 73; ECF No. 3-2, Turner Decl. ¶ 5; *see also* ECF No. 3-3, Tardy Decl. ¶ 5; ECF No. 3-4, Godwin Decl. ¶ 5.

[5] *See* ECF No. 3-2, Turner Decl. ¶ 6; ECF No. 3-3, *see also* Tardy Decl. ¶ 8; ECF No. 3-4, Godwin Decl. ¶ 6.

with a quantity in excess of 10 rounds to "fully utilize" firearms he owns.[6] Stephen V. Kolbe is an individual plaintiff who alleges that he does not currently own any of the banned firearms, but wishes to purchase one. *See* ECF No. 30, Th. Am. Complaint ¶ 4.

Plaintiffs Wink's and Atlantic Guns are business plaintiffs who allege that "regulated long guns classified as 'assault weapons' by [Chapter 427] represent a substantial number of all long guns sold by" them, especially "firearms based on the AR-15 platform."[7] They further allege that their inability to sell detachable magazines holding in excess of ten rounds will result in lost sales and the necessity of refunding money with respect to other sales.[8]

Plaintiff Maryland Licensed Firearm Dealers Association, Inc. ("MLFDA") is a Maryland corporation whose members are individual firearms dealers. ECF No. 30, Th. Am. Complaint ¶ 14. MLFDA alleges that weapons now classified as "assault long guns" "represent a substantial number of all long guns sold" by its members, specifically with respect to firearms based on the AR-15 platform, and that its members also sell detachable magazines capable of holding in excess of ten rounds.[9]

Plaintiffs Associated Gun Clubs of Baltimore ("AGC"), Maryland State Rifle and Pistol Association ("MSRPA"), Maryland Shall Issue, Inc. ("MSI"), and the National

---

6 *See* ECF No. 3-2, Turner Decl. ¶ 6; ECF No. 3-3, *see also* Tardy Decl. ¶ 8; ECF No. 3-4, Godwin Decl. ¶ 6.

7 *See* ECF No. 3-5, Declaration of Carol Wink ("Wink Decl.") ¶ 4; ECF No. 3-6, Declaration of Stephen Schneider ("Schneider Decl.") ¶ 6.

8 *See* ECF No. 3-5, Wink Decl. ¶ 4; ECF No. 3-6, Schneider Decl. ¶ 6.

9 *See* ECF No. 3-6, Schneider Decl. ¶ 6.

Sports Shooting Foundation ("NSSF") are organizations claiming to represent the interests of unidentified business or individual members' interests with respect to the laws at issue. ECF No. 30, Th. Am. Complaint ¶¶ 10-13.

The plaintiffs allege that the weapons classified as assault long guns and banned by Chapter 427, as well as the high-capacity detachable magazines banned by Chapter 427, are commonly possessed and used in Maryland, ECF No. 30, Th. Am. Complaint ¶¶ 28, 36, 42, 46, 49, 61, 63, 81; are commonly used and useful for self-defense, hunting, and sport, *id.* ¶¶ 36, 47, 50, 64, 67, 68, 71, 82, 84, 87; and are rarely used in crimes, *id.* ¶¶ 41, 48. The plaintiffs also allege that the individual plaintiffs and individual members of the organizational plaintiffs want to buy weapons classified as assault long guns and banned by Chapter 427, as well as high-capacity detachable magazines with a capacity of more than 10 rounds banned by Chapter 427, for use in home self-defense, hunting, or sport shooting, *id.* ¶¶ 37, 38, 43, 73, 88; and that the business plaintiffs and business members of the organizational plaintiffs want to sell such weapons and magazines, *id.* ¶¶ 39, 73, 88.

STANDARD OF REVIEW

To survive a motion to dismiss for failure to state a claim on which relief can be granted, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although the Court is required to "'take the facts in the light most favorable to the plaintiff,'" the Court "need

not accept legal conclusions couched as facts or 'unwarranted inferences, unreasonable conclusions, or arguments.'" *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012) (quoting *Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008) (internal citation omitted)). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 679.

ARGUMENT

I. THE PLAINTIFFS' CHALLENGE TO CHAPTER 427'S BAN ON HIGH-CAPACITY DETACHABLE MAGAZINES FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED BECAUSE THE BAN DOES NOT IMPLICATE THE SECOND AMENDMENT (COUNT TWO).

A. The Second Amendment Framework

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In *District of Columbia v. Heller*, the Supreme Court reviewed a District of Columbia law that imposed a "complete prohibition" on the possession of handguns in the home. 554 U.S. 570, 629 (2008). After engaging in a lengthy textual and historical analysis of the Second Amendment, the Court concluded: (1) that the amendment codified a pre-existing right, *id.* at 592; (2) that this right is an individual right, not dependent on militia service, *id.*; and (3) that, "whatever else [the Second Amendment] leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home," *id.* at 635. As a result, the Supreme Court held that the District could not ban

handguns, the class of arms "that is overwhelmingly chosen by American society" for the lawful purpose of self-defense in the home. *Id.* at 628.

Although the Supreme Court declined to speculate about other conduct that might fall *within* the protection of the Second Amendment, *id.*, the Court observed that, notwithstanding the amendment's unconditional language, "the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Indeed, the Court identified, by way of example, a number of types of laws that it presumed would fall *outside* the protection of the amendment. First, the Court observed that a majority of nineteenth-century courts had upheld the constitutionality of complete prohibitions on the carry of concealed weapons. *See id.* Second, the Court identified as "presumptively lawful regulatory measures": (i) longstanding bans on "the possession of firearms by felons and the mentally ill"; (ii) bans on "the carrying of firearms in sensitive places such as schools and government buildings"; and (iii) "laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27 & n.26. Third, the Court recognized that the right was limited to weapons "in common use at the time," a recognition supported by "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Id.* at 627 (quoting 4 Blackstone, Commentaries on the Laws of England 148-149 (1769)). The Court's list, which contained only "examples" of presumptively lawful regulations, did "not purport to be exhaustive." *Id.* at 627 n.26.

Two years after *Heller*, in *McDonald v. City of Chicago*, the Supreme Court held that the individual Second Amendment right is "fully applicable to the States." ___ U.S.

___, 130 S. Ct. 3020, 3026 (2010). Although *McDonald* did not further clarify the substantive scope of the Second Amendment right, it promised that "'state and local experimentation with reasonable firearms regulation will continue under the Second Amendment.'" *Id.* at 3047 (quoting Brief of State of Texas, *et al.* as *Amici Curiae* at 23).

The Court of Appeals for the Fourth Circuit has adopted a two-pronged approach to analyzing laws under the Second Amendment. *Woollard v. Gallagher*, 712 F.3d 865, 874-75 (4th Cir.), *cert. denied* No. 13-42, 2013 U.S. LEXIS 7384 (2013); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). Under this approach, the first question is "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee." *Chester*, 628 F.3d at 680 (internal quotation marks omitted). If not, the challenged law is valid. *Id.* If, on the other hand, the burdened conduct is found to be within the scope of the Amendment, then the second prong requires the application of "an appropriate form of means-end scrutiny." *Id.* The Fourth Circuit—like nearly every other federal court to have considered the question—has adopted intermediate scrutiny as the appropriate test for regulations affecting behavior that implicates the Second Amendment right, but that is outside the core of in-home self-defense by law-abiding citizens. *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011); *Woollard*, 712 F.3d at 876. Under that test, the government bears the burden of demonstrating that the challenged regulation "is reasonably adapted to a substantial government interest." *Masciandaro*, 638 F.3d at 471; *see also Woollard*, 712 F.3d at 876 (same); *Chester*, 628 F.3d at 683 (under intermediate scrutiny, "the government must

demonstrate . . . that there is a 'reasonable fit' between the challenged regulation and a 'substantial' government objective").

B. Maryland's Ban on High-Capacity Detachable Magazines Does Not Fall Within the Scope of the Second Amendment Right.

Chapter 427 defines a detachable magazine as "an ammunition feeding device that can be removed readily from a firearm without requiring disassembly of the firearm action or without the use of a tool, including a bullet or a cartridge." CR § 4-301(f). The law then states that a person "may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm." CR § 4-305(b). The statute does not make unlawful the continued possession or use of detachable magazines already owned, but effectively bans (with certain exceptions) the purchase, transfer, or import of new detachable magazines with a capacity of more than 10 rounds. Such magazines are referred to as high-capacity or large-capacity detachable magazines. Prior to the October 1, 2013 effective date of Chapter 427, Maryland law had restricted the purchase of magazines to those holding no more than 20 rounds, a limit whose constitutionality was never challenged. Thus, the effect of the new law is to reduce the limit from 20 rounds to 10 rounds. The plaintiffs fail to explain how this reduced limit crosses a constitutional line. A maximum capacity of 10 rounds was also the limit under the federal assault weapons ban in place from 1994 until 2004.

The threshold inquiry of the first step of the two-step analysis is whether Maryland's Permit Statute "imposes a burden on conduct falling within the scope of the

Second Amendment's guarantee as historically understood." *United States v. Chapman*, 666 F.3d 220, 225 (4th Cir. 2012) (citing *Chester*, 628 F.3d at 680). In *Heller*, in answering what types of "arms" are protected by the Second Amendment, the Supreme Court observed that the "18th-century meaning" of "arms" "is no different from the meaning today": "'weapons of offence, or armour of defence.'" 554 U.S. at 581 (quoting 1 Dictionary of the English Language 106 (4th ed.) (reprinted 1978)). Another late 18th-century legal dictionary relied upon by the Court defined arms as "'any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.'" *Id.* (quoting 1 A New and Complete Law Dictionary). Rejecting the notion that "arms" was limited to those in existence at the time the Second Amendment was ratified, the Supreme Court in *Heller* held that the amendment's protection "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." 554 U.S. at 582.

Thus, an initial question in determining whether a ban on high-capacity detachable magazines imposes a burden on conduct falling within the scope of the Second Amendment is whether high-capacity detachable magazines are protected by the amendment at all. They are not. A high-capacity detachable magazine is not an "arm"; it is not itself a "weapon[] of offence," or a thing worn for defense or taken "to cast at or strike another." Rather, it is a particular subclass of ammunition container used to load a firearm. In this respect, high-capacity detachable magazines are not even ammunition, [10]

[10] Even if a high-capacity detachable magazine could be construed as part of "ammunition," courts and statutes have long recognized a distinction between arms and

but instead are devices used for feeding ammunition into firearms. And, notably, high-capacity detachable magazines are not necessary components of firearms, but, by definition, are detachable, allowing them to be switched out with other detachable magazines that are of lower capacity but that can still feed ammunition, up to 10 rounds at a time, into a firearm.

Although the plaintiffs state a preference for the use of high-capacity detachable magazines, they do not and cannot allege that firearms are rendered inoperable with lower-capacity detachable magazines. The plaintiffs allege that "[m]agazines are integral parts of firearms," ECF No. 30, ¶ 79, but Maryland has not banned magazines, just new purchases of those with a capacity in excess of 10 rounds. In response to the defendants' initial motion to dismiss, the plaintiffs added the following allegation to their amended complaint: "Magazine capacity is also a critical component of the functionality and

---

ammunition. *See, e.g.*, *McDonald*, 130 S. Ct. at 3038 (noting an 1865 Mississippi law that banned the "keep or carry of fire-arms of any kind, or any ammunition"); *United States v. Miller*, 307 U.S. 174, 182 (1939) (noting a 1765 Virginia declaration requiring state militia "officers, non-commissioned officers, and privates, [to] constantly keep the aforesaid arms, accoutrements, and ammunition, ready to be produced whenever called for by his commanding officer"). And numerous federal laws currently draw that same distinction by listing arms and ammunition separately. For example, 18 U.S.C. § 922(a)(1)(A) makes it illegal for anyone other than a licensed importer, manufacturer, or dealer to import, manufacture, or sell firearms, while § 922(a)(1)(B) separately addresses the import, manufacture, or sale of ammunition; and § 922(g) makes unlawful the possession of "any firearm or ammunition" by nine categories of individuals. *See also, e.g.*, 7 U.S.C. § 2238; 10 U.S.C. § 899; 10 U.S.C. § 904; 10 U.S.C. § 2110; 10 U.S.C. § 2385; 10 U.S.C. § 2538; 10 U.S.C. § 2539; 10 U.S.C. § 2576; 10 U.S.C. § 2576a; 10 U.S.C. § 4655; 10 U.S.C. § 4684; 10 U.S.C. § 9655; 10 U.S.C. § 9684; 14 U.S.C. § 655; 16 U.S.C. § 3912; 18 U.S.C. § 962; 18 U.S.C. § 967; 18 U.S.C. § 1022; 18 U.S.C. § 1386; 22 U.S.C. § 450; 22 U.S.C. § 522; 22 U.S.C. § 523; 22 U.S.C. § 524; 22 U.S.C. § 527; 22 U.S.C. § 2349aa-2; 22 U.S.C. § 2778; 26 U.S.C. § 995; 26 U.S.C. § 5847; 31 U.S.C. § 321.

utility of a firearm for self-defense, in that restrictions on magazine capacity limit the effectiveness of the firearm and, therefore, the ability of law-abiding citizens to defend themselves with that firearm." *Id.* ¶ 80. This conclusory allegation is insufficient to bring high-capacity detachable magazines within the scope of protection of the Second Amendment, as, even if true, it would not establish a plausible claim that *high-capacity* detachable magazines are arms within the meaning of the Second Amendment, or that they are necessary to the operation of firearms.[11] Moreover, even if the conclusory allegation were otherwise sufficient, the plaintiffs fail to allege any facts to state a plausible claim that magazines holding more than 10 rounds are necessary for any lawful purpose.

Although the plaintiffs do not allege that any firearms are inoperable without high-capacity detachable magazines—much less that an entire class of firearms would be rendered inoperable, as was the case in *Heller*—they contend that there are particular individuals who might not be able to fire rapidly more than ten rounds in succession if left only with magazines holding up to ten rounds because those individuals might be incapable of quickly changing magazines under stress or because others "could not change magazines quickly due to old age, major disability, arthritis, and other physical conditions." ECF No. 30, ¶ 83. Even if the inability to fire more than 10 rounds with the same firearm in rapid succession could conceivably be considered a burden on the Second Amendment right—and the plaintiffs fail to explain why such individuals could

[11] The plaintiffs' allegation has no limiting principal, and if accepted would presumably support a constitutional right to a 200 round-detachable magazine or greater.

not, for example, have multiple firearms available—such claims would only be appropriately considered in an as-applied challenge to Maryland's high-capacity detachable magazine ban, not the facial challenge presented in this case.[12]

Moreover, because the Fourth Circuit has looked to whether a law regulates conduct protected by "the Second Amendment as historically understood," *Chapman*, 666 F.3d at 225, it is notable that at the time of the ratification of the Second Amendment there were a number of statutes that severely restricted access to ammunition, apparently without any belief that these statutes interfered with the right to keep and bear arms that was codified in the Second Amendment. For example, "several towns and cities (including Philadelphia, New York, and Boston) regulated, for fire-safety reasons, the storage of gunpowder, a necessary component of an operational firearm." *Heller*, 554 U.S. at 684-85 (Breyer, J., dissenting). The effect of these laws was to restrict the number of rounds that could be fired in defense of one's home, *id.* at 683-87, which was already severely restricted by the technology of the day. Although the *Heller* majority found such laws inapposite to the complete handgun ban at issue in that case, *id.* at 631-32, those founding-era laws were far more restrictive than the law at issue in this

[12] The plaintiffs' allegations that "there are individual Plaintiffs and members of association Plaintiffs who only have one magazine for their firearm; own obsolete models of firearms for which extra magazines are no longer available; [and] do not keep extra loaded magazines with their firearms," ECF No. 30, Complaint ¶ 83, are similarly unavailing. Individuals with only one magazine can continue to use it, regardless of its capacity; individuals with obsolete models of firearms for which extra magazines are not available can purchase a new firearm—as they would presumably have been required to do regardless of the ban on acquisition of new high-capacity detachable magazines; and individuals who do not keep extra loaded magazines with their firearms can choose to do so. The law does not restrict any of these activities.

case, which does not ban or restrict ammunition or any other mechanism that is necessary to the operation of a firearm. Even as to those laws that actually restricted access to or use of gunpowder—a necessary component for the operation of any firearm of the day—the *Heller* majority held that they did not "remotely burden the right of self-defense as much as an absolute ban on handguns." *Id.* at 632. Chapter 427, by contrast, precludes only new acquisitions of detachable magazines that can fire more than ten rounds without being re-loaded or switched out for a new magazine for the same firearm. There is no basis to conclude that such a ban burdens conduct protected by the Second Amendment as historically understood.

Although some other courts adjudicating constitutional challenges to bans on high-capacity detachable magazines have assumed, solely for the purposes of argument, that ammunition and magazines might fall within the scope of the Second Amendment's protection, *see, e.g.*, *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011) ("*Heller II*") (declining to resolve whether high-capacity magazines falls within the scope of the Second Amendment's protection because, even if they do, Washington D.C.'s ban on them satisfies intermediate scrutiny), there is no basis for concluding that they do. To the contrary, because high-capacity detachable magazines are neither "arms" nor are they required to operate arms, they fall outside the scope of the Second Amendment's protection, and Count Two should be dismissed.

There are additional reasons why the ban on high-capacity magazines fall outside the protection of the Second Amendment, but which are not raised in this motion to dismiss because they call for consideration of materials outside of the pleadings.

Similarly, even if high-capacity detachable magazines were deemed to be protected by the Second Amendment, Maryland's ban on such magazines would survive the second step of the analysis dictated by the Fourth Circuit, application of the applicable level of scrutiny. However, that analysis would also call for consideration of materials outside of the pleadings and, therefore, is not reasonably susceptible to being addressed on a motion to dismiss.[13] Nonetheless, for the reasons set forth above, high-capacity magazines fall outside the protection of the Second Amendment as a matter of law, and the Court should therefore dismiss Count Two.

II. THE PLAINTIFFS FAIL TO STATE A CLAIM FOR VIOLATION OF THE EQUAL PROTECTION OF THE LAWS (COUNT THREE).

Count Three of Plaintiffs' Complaint alleges a violation of the Equal Protection Clause of the Fourteenth Amendment because the Firearms Safety Act of 2013 treats retired law enforcement officers differently than other individuals for purposes of possessing assault weapons and high capacity magazines. ECF No. 30, Th. Am. Complaint at ¶¶ 91-98. This count fails to state a claim upon which relief can be granted and must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The Equal Protection Clause of the Fourteenth Amendment states that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the law." U.S. Const., amend. XIV, § 1. This requires that similarly-situated individuals be treated alike. *City of Clebourne v. Clebourne City Ctr., Inc.* 473 U.S. 432, 439 (1985).

[13] If necessary, the defendants anticipate raising those issues, as well as their entitlement to summary judgment as to Count One of the complaint, in a motion for summary judgment to be filed in accord with the scheduling order (ECF No. 19).

However, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id*. at 440. The Fourth Circuit has explained how to test an equal protection claim for sufficiency of the pleadings:

> While we . . . must take as true all of the complaint's allegations and reasonable inferences that follow, we apply the resulting 'facts' in the light of the deferential rational basis standard. To survive a motion to dismiss for failure to state a claim, a plaintiff must allege facts sufficient to overcome the presumption of rationality that applies to government classifications.

Giarratano, 521 F.3d at 303-04 (*quoting Wroblewski v. City of Washburn*, 965 F.2d 452 (7th Cir., 1992)). Plaintiffs have failed to even approach this pleading threshold.

As exceptions to the ban on the transfer of an assault weapon or a high-capacity detachable magazine, Chapter 427 permits the transfer from a law enforcement agency to a retired law enforcement officer only if: (1) it is sold or transferred on retirement, or (2) it was "purchased or obtained by the person for official use with the law enforcement agency before retirement." CR § 4-302(7). Thus, these are not broad exceptions allowing all retired law enforcement officers to obtain as many assault weapons as they like whenever they would like, nor are these exceptions connected to a need for home self-defense by retired law enforcement officers. Instead, the first is an exception applicable only to transfers to law enforcement personnel by a law enforcement agency upon retirement, and the second permits the transfer only of weapons actually obtained by such a law enforcement officer for official use. These exceptions are thus similar to an exception previously contained in the federal Crime Control Act of 1994. *See San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1124 (9th Cir. 1996) (stating that the

federal "Act exempt[ed] governmental agencies and law enforcement officers, as well as firearms transferred to an individual upon retirement from a law enforcement agency").

Retired law enforcement officers are not similarly situated as a matter of law to other citizens with respect to either exception. Law enforcement officers are differentiated by their experience of having been entrusted with the statutory duty to protect public safety, and the corresponding statutory authority to detain, arrest, and use force against other citizens to carry out their duty. *Id.*; *see also* PS § 3-101(e) (defining "law enforcement officer" as an individual who is a member of a law enforcement agency and "is authorized by law to make arrests"). Thus, a law enforcement officer is "not to be equated with a private person engaged in routine public employment or other common occupations of the community who exercises no broad power over people generally." *Foley v. Connelie*, 435 U.S. 291, 298 (1978) (internal quotations omitted). Moreover, retired law enforcement officers can also be expected to face different types of threats after retirement than the public at large.

Retired Maryland law enforcement officers are also differently situated than other citizens when it comes to the use of, and training with respect to, firearms. To be allowed to carry a firearm as a law enforcement officer in Maryland—including an assault weapon—one has to successfully complete extensive firearms classroom instruction, training, and qualification on that firearm, Code of Maryland Regulations ("COMAR") 12.04.02.03A, and then submit to firearms training every year thereafter, COMAR 12.04.02.08A; *see also* COMAR 12.04.02.06A (requirements applicable to long guns); COMAR 12.04.02.06B(2) (initial training from 7-35 hours depending on the type of long

gun); COMAR 12.04.02.06B(3) (minimum rounds fired requirements ranging from 50-350 rounds); COMAR 12.04.02.07 (course of fire requirements). Failure to complete annual training on a firearm results in seizure of that firearm until successful completion of training is completed. COMAR 12.04.02.08E. Maryland law enforcement officers, unlike other Marylanders, are also required to receive—as part of their classroom instruction on firearms—training on the rules for the use of deadly force, judgment training on the use of deadly force, and "emotional, mental, and psychological preparation needed for the possibility of a deadly force shooting situation." COMAR 12.04.02.10C. These extensive training requirements imposed on Maryland's law enforcement officers differentiate them from other citizens with respect to firearm safety. *See Cabell v. Chavez-Salido*, 454 U.S. 432, 443-44 (1982) ("The general law enforcement character of all California 'peace officers' is underscored by the fact that all have the power to make arrests and all receive a course of training in the exercise of their respective arrest powers and in the use of firearms") (internal citations omitted); *Bell v. Maryland*, 378 U.S. 226, 327-28 (1964) ("Instead of attempting to take the law into their own hands, people have been taught to call for police protection to protect their rights wherever possible"). The Plaintiffs are not similarly situated to law enforcement officers in these important respects.

Moreover, it would also have been rational for the General Assembly to conclude that an assault weapon or high-capacity detachable magazine transferred to a law enforcement officer—combined with the general provisions of Chapter 427 that would

prohibit such retired law enforcement officer from transferring possession of the weapon or magazine to others—would be less likely to end up in the hands of criminals.

When considering challenges to state laws under the Equal Protection Clause, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Accordingly, the distinctions drawn between law enforcement officers and other citizens in Chapter 427 easily pass constitutional muster. *See, e.g., Williams v. Puerto Rico*, 910 F. Supp. 2d 386, 398-399 (D.P.R. 2012) (holding that Puerto Rico's Weapons Act of 2000, P.R. Laws Ann. Tit. 25, §§ 455-460(k), which creates different weapons permit procedures for government officials than other citizens, does not violate the Equal Protection Clause); *Pizzo v. City & Cnty. of San Francisco*, 2012 U.S. Dist. LEXIS 173370 (N.D. Cal. Dec. 5, 2012) (unpublished) (granting summary judgment to city defendants in case involving equal protection challenge to (a) sections of the California Penal Code that create an exception to concealed and loaded carry laws for honorably retired police officers with concealed carry permits and (b) the Federal Law Enforcement Officers Safety Act, 18 U.S.C. §§ 926B & 926C, which allows qualified federal law enforcement officers—both active and retired—to carry concealed firearms notwithstanding applicable state laws). Although the United States Court of Appeals for the Ninth Circuit came to a different conclusion in *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), that decision is not controlling here.

Thus, the plaintiffs have failed to state a cause of action on which relief can be granted because they have failed to plead a plausible claim that retired law enforcement officers are similarly situated to members of the general public with respect to the challenged provisions.

III. THE PLAINTIFFS HAVE FAILED TO STATE A VOID-FOR-VAGUENESS CLAIM UPON WHICH RELIEF CAN BE GRANTED (COUNT FOUR).

The plaintiffs have also failed to state a claim upon which relief can be granted for their claim that Chapter 427's list of banned assault weapons is unconstitutionally vague. Although the plaintiffs' amended complaint identifies two firearms as to which they contend a "citizen of ordinary intelligence" would not know if they are banned without assistance from the Maryland State Police, their allegations clearly demonstrate that they are readily able to identify a core of weapons that are banned by Chapter 427. Moreover, the theoretical need for guidance in particular cases does not render a law unconstitutionally vague, and any such claims would be required to be brought in an as-applied challenge by an individual who wishes to purchase one of those particular firearms, not as a facial challenge to the statute. The plaintiffs have thus failed to plead a plausible claim that Chapter 427 is unconstitutionally vague.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104 (1972). The "void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those

enforcing the law do not act in an arbitrary or discriminatory way." *Federal Communications Commission v. Fox TV Stations*, 132 S. Ct. 2307, 2317 (2012). The Supreme Court has identified the "most meaningful" aspect of vagueness doctrine as not actual notice to those to which a law might apply, but rather "'the requirement that a legislature establish minimal guidelines to govern law enforcement.'" *United States v. Lanning*, 723 F.3d 476, 482 (4th Cir. 2013) (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)).

However, courts "do not hold legislators to an unattainable standard when evaluating enactments in the face of vagueness challenges." *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 371 (4th Cir. 2012). "[B]ecause we are condemned to the use of words, we can never expect mathematical certainty from our language." *Id.* (internal quotation omitted). Thus, "'[a] statute need not spell out every possible factual scenario with 'celestial precision' to avoid being struck down on vagueness grounds.'" *United States v. Hager*, 721 F.3d 167, 183 (4th Cir. 2013) (quoting *United States v. Whorley*, 550 F.3d 326, 334 (4th Cir. 2008)). A statute "'must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.'" *Hager*, 721 F.3d at 183 (quoting *United States v. Aguilar*, 585 F.3d 652, 658 (4th Cir. 2009)). Thus, if any aspect of a statute could be deemed vague, a "federal court must 'consider any limiting construction that a state court or enforcement agency has proffered.'" *Martin v. Lloyd*, 700 F.3d 132, 136 (4th Cir. 2012) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1983)).

A. The Plaintiffs' Due Process Challenge Fails Because a Facial Challenge Based on Vagueness Can Only Succeed if the Law Is Impermissibly Vague in All of Its Applications.

In this case, the plaintiffs purport to make a facial challenge to Chapter 427. However, the Supreme Court has held that in cases that do not involve the First Amendment, "a plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Village of Hoffman*, 455 U.S. at 494. As the Court elaborated: "'[Vagueness] challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.' . . . 'One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.'" *Id.* at 495 n.7 (internal citations omitted); *see also United States v. Klecker*, 348 F.3d 69, 71 (4th Cir. 2003) ("[F]acial vagueness challenges to criminal statutes are allowed only when the statute implicates First Amendment rights.) Thus, to succeed on a vagueness challenge that does not implicate the First Amendment, "the complainant must demonstrate that the law is impermissibly vague in all of its applications." *Village of Hoffman*, 455 U.S. at 497.[14]

[14] In *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999) (plurality op.), a three-judge plurality of the Supreme Court suggested that a criminal law containing no mens rea requirement may be subject to a slightly more flexible standard allowing a facial attack if "vagueness permeates the text of a law." That alternative formulation has not been adopted in any majority opinion by the Supreme Court or, it appears, by the Fourth Circuit. In *United States v. Comstock*, 627 F.3d 513, 518-19 (4th Cir. 2010), the Fourth Circuit noted that "some members of the [Supreme] Court have expressed reservations about the applicability" of the stringent "no set of circumstances" test articulated for facial challenges in *United States v. Salerno*, 481 U.S. 739 (1987), but the Fourth Circuit did not adopt the *Morales* plurality's formulation. Instead, the Fourth Circuit noted that "at the very least, a facial challenge cannot succeed if 'a statute has a 'plainly legitimate sweep.'" *Comstock*, 627 F.3d at 518-19 (quoting *Crawford v. Marion Cnt. Election Bd.*,

The Fourth Circuit's decision in *Martin*, 700 F.3d 132, is instructive. In *Martin*, a plaintiff gaming company sued to enjoin enforcement of a South Carolina law that prohibited specific types of gaming machines (such as keno, poker, and slots) as well as any "other devices pertaining to games of chance of whatever name or kind." 700 F.3d at 134. The plaintiffs argued that this latter catch-all category was unconstitutionally vague. The Fourth Circuit rejected the claim, relying on the Supreme Court's rule that "a plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Id.* at 137. Most importantly, the Fourth Circuit emphasized that the plaintiffs' claim failed under *Village of Hoffman* because they did not offer any proof that they were in the business of developing a type of device that might fall into the allegedly vague category or "describe any concrete example of the kind of game they [were] seek[ing] to develop" that might have been within the scope of the statute. *Id.* Thus, a plaintiff must demonstrate that his or her actions will result in a potentially vague application of the law, *id.*; *see also Gallagher v. City of Clayton*, 699 F.3d 1013 (8th Cir. 2012), and "cannot rely merely on the fact that some hypothetical applications might raise constitutional problems." *Martin*, 700 F.3d at 137 (quoting *United States v. Lee*, 815 F.2d 971, 974 (4th Cir. 1987)).

Thus, even if assault weapons bans might contain some potentially vague terms, courts have nonetheless rejected void-for-vagueness claims if the statutory terms covered *any* identifiable "core" of prohibited conduct. *See, e.g., Richmond Boro Gun Club v. City*

---

553 U.S. 181, 202 (2008) (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008))). For reasons discussed below, Chapter 427 would meet any applicable facial challenge test.

of New York, 896 F. Supp. 276 (E.D.N.Y. 1995), *aff'd*, 97 F.3d 681 (2d Cir.1996); *Coal. of N.J. Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666 (D.N.J. 1999), *aff'd*, 263 F.3d 157 (3d Cir. 2001).

In this case, the plaintiffs have failed to plead facts that, if proven, would "demonstrate that the law is impermissibly vague in all of its applications," or that "vagueness permeates" the law. To the contrary, the plaintiffs' own allegations clearly demonstrate an identifiable "core" of prohibited conduct. Chapter 427 identifies with particularity a list of 45 assault long guns that are prohibited, along with their "copies." Plaintiffs' own allegations confirm the existence of this "core" of prohibited conduct in that the individual and business plaintiffs have demonstrated their knowledge of certain firearms that are subject to Chapter 427's ban on assault long guns. For example, plaintiff Andrew Turner's declaration states that he "currently own[s] three regulated long guns which are classified as 'assault weapons' by [Chapter 427]," (ECF No. 3-2, ¶ 3); plaintiff Stephen V. Kolbe alleges in the complaint that he "does not currently own any firearms banned by the Act but wishes to purchase a firearm that is banned," (ECF No. 1, ¶ 6); the declaration of Carol Wink, operator of Wink's, states that "regulated long guns classified as 'assault weapons' by [Chapter 427] represent a substantial number of all long guns sold by Wink's Sporting Goods," a firearms dealer she operates (ECF No. 3-5, ¶ 4); and the declaration of Stephen Schneider, President of MLFDA and the owner and operator of Atlantic Guns, states that "regulated long guns classified as 'assault weapons' by SB 281 represent a substantial number of all long guns sold by MLFDA's individual members, including Atlantic Guns" (ECF No. 3-6, ¶ 6).

Thus, all of these plaintiffs have already identified particular assault long guns that fit within the "core" of prohibited conduct by Chapter 427, and none has identified any uncertainty about whether a single firearm they own or wish to own fits within that core. Instead, the plaintiffs make three allegations about vagueness, none of which state a claim on which relief can be granted. First, the plaintiffs claim that the law must be vague because the Office of the Attorney General issued an opinion "in an attempt to clarify the ambiguity inherent in the term 'copy.'" ECF No. 30, Th. Am. Complaint ¶ 107. That opinion concludes that to be a copy of a weapon now designated as an assault long gun requires more than cosmetic similarity, but instead requires that a listed weapons share "a similarity between the internal components and function of the firearm in question." Ex. B, Regulated Firearms—Assault Weapons—Whether a Weapon Is a "Copy" of a Designated Assault Weapon and Therefore Subject to the Regulated Firearms Law, 95 Atty. Gen. Md. 101, 108 (2010). The opinion further states that whether such a similarity exists is "a factual question entrusted in the first instance to the Department of State Police." *Id.* at 108-09.

This guidance does not identify any inherent vagueness in the law, but instead offers an interpretation of the Attorney General that cosmetic similarity is insufficient to bring a firearm within the definition of a copy. And noting that the MSP, the state agency charged with administering the law—rather than the Attorney General's Office—was responsible for making its own factual determinations as to whether something is a copy is not noteworthy, nor does the requirement that the law be interpreted render it unconstitutionally vague. Indeed, the courts are charged with looking to such limiting

constructions as a way of avoiding a conclusion of vagueness. *Martin*, 700 F.3d at 136. Moreover, the fact that the law may require interpretation with respect to its applicability to certain firearms does not undermine the conclusion, verified by the plaintiffs' own allegations, that the law applies clearly to a core of prohibited conduct.

Second, the plaintiffs complain about the law's designation of "Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle" as assault long guns. ECF No. 30, Th. Am. Complaint ¶¶ 110-12. The plaintiffs' purported confusion as to what is covered by this definition is belied by their other allegations, including the testimony of the principals of both business plaintiffs, in referring to "regulated long guns classified as 'assault weapons'" by Chapter 427, that: "firearms based on the AR-15 platform currently are far and away the most commonly purchased long gun in Maryland, and are in common possession and use by the residents of Maryland." ECF No. 3-5, Wink Decl. ¶ 4; ECF No. 3-6, Schneider Decl. ¶ 6. The plaintiffs thus demonstrate that they understand what is banned by Chapter 427, and why that is of concern to them. The fact that Colt manufactured numerous semi-automatic models of its AR-15, each bearing a different model number—not to mention the numerous copies of the same model made by other manufacturers bearing other names—demonstrates the need for identification of covered assault weapons not only by the original brand and model, but with application to "copies" of such weapons as well. Finally, the fact that the AR-15 Sporter H-BAR (*i.e.*, heavy barrel) may no longer be in active production does not introduce vagueness into the definition. Regardless of when it was manufactured, existing Colt AR-15 Sporter

H-BAR rifles are not banned, and may be re-sold, transferred, and received in Maryland.[15]

Third, although the third amended complaint now identifies two particular firearms as to which the plaintiffs contend "a person of average intelligence" would not know whether they are copies of the banned AR-15, ECF No. 30, Th. Am. Complaint ¶¶ 113-14, they still fail to allege that any of the individual plaintiffs wishes to purchase either of these firearms or that any of the business plaintiffs wishes to sell either of these firearms. Thus, the plaintiffs have failed to allege vagueness with respect to any firearm that is actually at issue. Even were they to have made such allegations, that still would not overcome the fact that their allegations clearly identify a core of prohibited conduct.

Moreover, the plaintiffs have not alleged that they are incapable of determining whether any particular firearm is covered by the ban, but instead allege only that to do so one would need to consult with the Maryland State Police. *Id.* ¶ 113. This is not a case involving a statute addressing loitering or some other conduct that an individual might inadvertently and unintentionally undertake. The provision of Chapter 427 at issue involves the purchase of firearms, which is not conduct that can be undertaken unwittingly. And even the plaintiffs concede they are able to identify numerous prohibited weapons, even if they now claim it is conceivable they may come to a

[15] The ban does not apply only to initial sales of new firearms, but also to any subsequent sale or transfer of such firearms.

different conclusion than the MSP as to the statute's applicability to a particular firearm. For that reason as well, the plaintiffs' claim of vagueness fails.

Additionally, although the plaintiffs complain about the list of banned assault long guns as though it was newly enacted in Chapter 427, the list has been part of Maryland law since 1989. It was originally added as § 441(d) of then-Article 27 of the Maryland Code, which defined "assault weapon" as including "any of the following specific firearms or their *copies*." That definition—now contained in § 5-101(r)(2) of the Public Safety Article of the Maryland Code—has served for more than two decades to apprise individuals and firearms dealers of which long guns could be transferred only after first submitting to the MSP a completed firearm application and waiting up to seven days for a response. *See* PS § 5-101(r) (defining "regulated firearm"); § 5-117 (requiring submission of firearm application before purchase or transfer of a regulated firearm); § 5-118 (firearm application requirements); § 5-123(a) (prohibiting sale or transfer of regulated firearms until seven days after submission of firearm application to the MSP). The penalty for violating the regulated firearms law—by, for example, selling a "copy" of an assault weapon without submitting a firearm application—is up to five years imprisonment and a $10,000 fine. PS § 5-144. By contrast, the penalty for violating the assault weapons ban is up to 3 years imprisonment and a fine of up to $5,000. CR § 4-306(a). Thus, the same list of assault weapons that the plaintiffs now claim is too vague to comply with is one that Marylanders have actually been complying with for many years, under threat of greater criminal penalties than those imposed under Chapter 427.

The reason none of these plaintiffs had difficulty identifying which long guns are classified assault weapons, and why the definition of assault weapons has been in place successfully for many years, is that it is not vague, at least with respect to the majority of covered firearms. Assault long guns are defined as any of the weapons specifically listed and, because model names and manufacturers can change so quickly, their "copies." *See Wilson v. County of Cook*, 968 N.E.2d 641, 649-653 (Ill. 2012) (in rejecting challenge to ban on "copies or duplicates" of listed assault weapons, stating that this phrase was added "in order to prevent manufacturers form simply changing the name of the specified weapons to avoid criminal liability"). The American Heritage Dictionary defines "copy" as "[a]n imitation or reproduction of an original; a duplicate." The American Heritage Dictionary of the English Language 405 (5th ed. 2011). In *Wilson*, the Illinois Supreme Court rejected a similar vagueness challenge to Cook County's assault weapons ban on "copies and duplicates." 968 N.E.2d at 652-53. The court concluded that a person of ordinary intelligence would understand that a ban on a specific list of weapons and "copies and duplicates" of those weapons would include "the specific weapons listed and any imitations or reproductions of those weapons made by that manufacturer or another." *Id.* at 652. Thus, when the phrase "copies and duplicates" is read together with the list, the court found that the "provision is not vague." *Id.*

The sole case the plaintiffs have thus far identified in support of their vagueness claim is inapposite. In *Springfield Armory, Inc. v. City of Columbus*, the United States Court of Appeals for the Sixth Circuit addressed the constitutionality of a ban on assault weapons that covered 46 specific weapons and "other models by the same manufacturer

with the same action design that have slight modifications or enhancements." 29 F.3d 250, 251 (6th Cir. 1994). The Sixth Circuit found this definition "fundamentally irrational and impossible to apply consistently," especially in its application only to weapons made by the same manufacturer as the 46 listed weapons, but not identical weapons made by other manufacturers. *Id.* at 252. Maryland's law does not suffer that same flaw, as it covers all copies, not just those made by particular manufacturers. The Sixth Circuit also found vague the statute's application to weapons with "slight modifications or enhancements," but with no guidance as to which modifications or enhancements might be slight, and what might count as a modification. *Id.* at 252-53. The court concluded it was simply impossible to know with respect to any particular modification or enhancement whether the weapon would be banned or not. *Id.* at 253. Again, Maryland's law does not suffer from this flaw as it does not contain either of the terms the Sixth Circuit found vague—"slight" or "modifications." Maryland's law is not unconstitutionally vague, and the plaintiffs' facial challenge must be rejected.

B. To the Extent the Plaintiffs Are Making an As-Applied Challenge, They Have Failed to Plead a Plausible Claim of Vagueness in Any Potential Application of the Statute to Them.

The plaintiffs' due process claim in Count Four is stated exclusively as a facial challenge to Chapter 427. It does not allege vagueness in application specific to any of the plaintiffs, but instead generally makes allegations as to how a "reasonable person" would interpret the Act. *E.g.*, ECF No. 30, Complaint ¶ 105. Thus, it does not appear that the plaintiffs have brought an as-applied challenge to Chapter 427's ban on assault

long guns. Even if they had, the plaintiffs have failed to plead a plausible claim of vagueness in any potential application of the statute to them. To the contrary, as discussed above, their allegations demonstrate precisely the opposite. Thus, in this pre-enforcement challenge, they have failed to identify any application of Chapter 427 that is vague as to them, and any as-applied challenge must also be rejected.

For these reasons, Count Four must be dismissed.

IV. THE BUSINESS PLAINTIFFS' SECOND AMENDMENT CLAIMS MUST BE DISMISSED BECAUSE THE SECOND AMENDMENT DOES NOT PROTECT A RIGHT TO SELL FIREARMS.

In addition to individual plaintiffs, and organizations that claim to represent the interests of other individuals, the plaintiffs include two entities in the business of selling firearms—Wink's and Atlantic Guns—and two organizations whose membership is comprised wholly, in the case of MLFDA, or mostly, in the case of NSSF, of sellers of firearms.[16] In the complaint, Wink's, Atlantic Guns, MLFDA, and the NSSF do not claim to possess direct Second Amendment rights, but instead allege that "Business

[16] With respect to NSSF, the plaintiffs aver that its interest in this litigation "derives principally from the fact that the NSSF's FFL manufacturer, distributer, and retail members provide the lawful commerce in firearms that makes exercise of Second Amendment rights possible. Until the effective date of the Act, NSSF's individual members have sold and will sell [banned assault weapons and high capacity magazines]." ECF No. 30, Th. Am. Complaint, ¶ 13. This averment is insufficient as a matter of law to establish either organizational standing or associational standing. *See White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 458 (4th Cir. 2005) (discussing requirements for organizational and associational standing). However, NSSF has also averred that its membership includes at least some individual "hunters and recreational target shooters." ECF No. 30, Th. Am. Complaint ¶ 13. With respect to NSSF, the argument in this motion to dismiss addresses its claims to the extent they are made on behalf of its "principal[]" interest in protecting the interests of its manufacturer, distributor, and retailer members. It is not clear whether NSSF is making any other claims.

Plaintiffs . . . will imminently suffer a significant loss of income by virtue of Defendants' enforcement of the Act." ECF No. 30, Th. Am. Complaint ¶ 18; *see also id*. ¶¶ 39-42 (describing gun sales of Business Plaintiffs). In their amended complaint, these plaintiffs now also purport to represent the Second Amendment rights of their "customers and potential customers." *Id.* ¶ 17.

Even if the assault long guns and high-capacity magazines at issue here were protected by the Second Amendment, the Business Plaintiffs still have no Second Amendment rights to assert. The literal text of the Second Amendment speaks only of a right to "keep" and "bear" arms, not a right to sell them. U.S. Const., amend. II. In *United States v. Chafin*, the United States Court of Appeals for the Fourth Circuit confronted this exact question. 423 F. App'x. 342 (4th Cir. 2011) (unpublished). In that case, the defendant alleged that his conviction for selling firearms to an unlawful drug user, 18 U.S.C. § 922(d)(3), violated the Second Amendment. The Fourth Circuit disagreed, holding that there was no evidence to "remotely suggest that, at the time of its ratification, the Second Amendment was understood to protect an individual's right to *sell* a firearm." *Id*. at 344 (emphasis in original). Moreover, the Court made clear that "although the Second Amendment protects an individual's right to bear arms, it does not necessarily give rise to a corresponding right to sell a firearm." *Id*.; *see also United States v. Conrad*, 2013 WL 546373, at *7-8 (W.D. Va. Feb. 13, 2013) (relying on *Chafin*).

These plaintiffs' claims are not saved by the allegation added to their amended complaint that these plaintiffs "can and do represent the interests of their customers and

potential customers in exercising their Second Amendment rights by acquiring the banned firearms and magazines." ECF No. 30, Th. Am. Complaint ¶ 18. Although the Seventh Circuit has allowed such a standing claim, *see Ezell v. City of Chicago,* 651 F.3d 684, 696 (7th Cir. 2011), this circuit has not and other courts have rejected third-party standing claims on behalf of prospective customers in other circumstances. *See, e.g.*, *Kowalski v. Tesmer*, 543 U.S. 125 (2004) (rejecting third-party standing on behalf of prospective customers); *W.R. Huff Asset Mgmt. Co., LLC v. Deloitte & Touche LLP*, 549 F.3d 100 (2d. Cir. 2008) (rejecting attempts by business to litigate claims on behalf of customers). Indeed, allowing a seller of firearms to have standing simply by claiming to be representing the interests of its customers—especially when individuals are already parties—would render meaningless the holding in *Chafin*. Thus, plaintiffs Wink's, Atlantic Guns, MLFDA and, to the extent it is representing the interests of its business members, NSSF, lack constitutional standing to assert claims under the Second Amendment, and Counts One and Two must be dismissed as to them pursuant to Federal Rule 12(b)(1). *See White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 458 (4th Cir. 2005) ("the standing limitation is derived from the cases and controversies requirement of Article III").

CONCLUSION

The Court should dismiss Counts Two, Three, and Four of the Complaint, and should dismiss the claims of plaintiffs Wink's, Atlantic Guns, MLDFA, and NSSF as to Count One.

DOUGLAS F. GANSLER
Attorney General

/s/
MATTHEW J. FADER (Fed. Bar # 29294)
STEPHEN M. RUCKMAN (Fed. Bar # 28981)
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-7906 (tel.); 410-576-6955 (fax)
mfader@oag.state.md.us

DAN FRIEDMAN (Fed. Bar # 24535)
Assistant Attorney General
Office of the Attorney General
Legislative Services Building
90 State Circle, Room 104
Annapolis, Maryland 21401
Tel. 410-946-5600
dfriedman@oag.state.md.us

Attorneys for Defendants

Dated: November 22, 2013

Chapter 427

(Senate Bill 281)

AN ACT concerning

Firearm Safety Act of 2013

FOR the purpose of *establishing a certain exception to the prohibition against carrying a deadly weapon on public school property; making it a misdemeanor to possess or use certain firearm ammunition during and in relation to the commission of a certain crime of violence;* altering the authorization for a person to wear, carry, or transport a handgun to be within certain limitations; designating certain firearms as assault weapons; prohibiting, with certain exceptions, a person from transporting an assault weapon into the State or possessing, selling, offering to sell, transferring, purchasing, or receiving an assault weapon; ~~authorizing certain licensed firearms dealers to continue to possess, sell, offer for sale, or transfer assault long guns or copycat weapons~~ providing that certain prohibitions relating to certain assault weapons and detachable magazines do not apply to certain persons under certain circumstances; authorizing a person to transport certain assault weapons under certain circumstances; authorizing certain persons to continue to possess assault long guns or copycat weapons under certain circumstances; ~~providing that certain registration requirements for certain assault weapons do not apply under certain circumstances;~~ altering the maximum capacity of rounds of ammunition allowable to be manufactured, sold, offered for sale, purchased, received, or transferred for a firearm*, with certain exceptions*; making it a misdemeanor to use an assault long gun or a copycat weapon or a magazine that exceeds a certain maximum capacity of rounds of ammunition in the commission of a felony or a crime of violence; requiring a certain hearing officer, after making a certain determination, to order certain individuals to surrender ~~or consign~~ firearms in the individual's possession under certain circumstances; prohibiting an individual, while hunting for any wild bird or mammal, from shooting or discharging a firearm within a certain distance of a public or nonpublic school during certain times; *repealing certain duties of the Police Training Commission relating to a certain firearms safety training course;* requiring the Secretary of State Police to disapprove an application for a State–regulated firearms dealer's license if the Secretary determines that the applicant intends a certain person to participate or hold a certain interest in the management or operation of the business for which the license is sought; ~~requiring that~~ *requiring the Secretary to include certain information in a certain notice if a State–regulated firearms dealer's license application is denied; authorizing* the Secretary *to* suspend a dealer's license if the licensee is not in compliance with certain record keeping and reporting requirements; *authorizing the Secretary to lift a certain license suspension under certain circumstances;* prohibiting a certain person from

selling, purchasing, renting, transferring, or receiving a certain regulated firearm unless the person presents or possesses a certain handgun qualification license issued by the Secretary ~~of State Police~~ or certain credentials or identification; providing for certain exceptions to the requirement to present and possess a certain handgun qualification license under certain circumstances; establishing certain requirements and procedures for the issuance and renewal of a certain handgun qualification license; authorizing the Secretary to revoke a certain handgun qualification license under certain circumstances; requiring a certain person to return a certain handgun qualification license under certain circumstances; establishing certain requirements and procedures for the issuance of a replacement handgun qualification license under certain circumstances; requiring certain fees; requiring a certain licensee or designated law enforcement agency to transfer a certain firearm application to the Secretary in an electronic format; authorizing a certain hearing for a certain aggrieved person under certain circumstances; altering the information required in a certain statement for a certain firearm application; altering the circumstances under which a person is prohibited from possessing a certain regulated firearm; making it a misdemeanor for a certain person to possess certain ammunition if the person is prohibited from possessing a certain firearm under certain circumstances; establishing certain penalties; requiring certain persons to provide certain data about a certain person to a certain federal index in a certain manner under certain circumstances; authorizing a certain person who is subject to certain prohibitions from possessing certain firearms to apply for certain relief from certain prohibitions under certain circumstances; establishing the procedures and requirements for a person who is subject to certain prohibitions on the possession of certain firearms to apply for certain relief for certain prohibitions; ~~requiring certain persons to enter into a certain memorandum of understanding~~ *authorizing the Secretary of Health and Mental Hygiene to adopt certain regulations; providing that certain individuals may not be held criminally or civilly liable for certain actions*; requiring a person who moves into the State for the purpose of establishing residency to register certain firearms within a certain time period with the Secretary in a certain manner; requiring that a licensed dealer keep records of all receipts, sales, and other dispositions of firearms affected in connection with the licensed dealer's business; requiring the Secretary to adopt certain regulations specifying certain information; requiring that the records that licensed dealers maintain include certain information; specifying certain record keeping requirements to be met when a firearms business is discontinued; requiring that a licensee respond in a certain way after receipt of a request from the Secretary for certain information; authorizing the Secretary to implement a system by which a certain person may request certain information; requiring the Secretary to inspect the inventory and records of a licensed dealer under certain circumstances; authorizing the Secretary to conduct a certain inspection during a certain time; *requiring certain persons who sell or transfer regulated firearms to notify certain purchasers or recipients at the time of purchase or transfer that the purchaser or*

recipient is required to report a lost or stolen regulated firearm to a certain law enforcement agency; requiring the owner of a regulated firearm to report the loss or theft of the regulated firearm to a certain law enforcement agency within a certain period of time after the owner discovers the loss or theft; requiring a law enforcement agency on receipt of a report of a lost or stolen regulated firearm to enter certain information into a certain database; providing that certain information is not open to public inspection; prohibiting a certain person from possessing a rifle or shotgun under certain circumstances; repealing a provision of law that prohibits a certain person from possessing a rifle or shotgun unless the person possesses a certain physician's certificate; requiring a certain applicant for a certain firearm permit to complete a certain firearm training course under certain circumstances; exempting a certain applicant for a permit from a certain training requirement under certain circumstances; authorizing the Secretary to issue a certain handgun qualification license without an additional application or fee under certain circumstances; *prohibiting public inspection of the records of certain regulated firearm dealers, owners, or permit holders; authorizing the individual named in the record and the individual's attorney to view certain records; providing that this Act does not prohibit the Department of Public Safety and Correctional Services and the Department of State Police from accessing certain records in the performance of official duties;* defining certain terms; *requiring the Department of State Police to make certain investigations and to report its findings to the Governor and the General Assembly on or before a certain date; providing for the termination of certain provisions of this Act;* and generally relating to firearms.

BY adding to
Article – Criminal Law
Section 4–110
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section *4–102,* 4–203(b), and 4–301 through 4–306 to be under the amended subtitle "Subtitle 3. Assault Weapons and Detachable Magazines"
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY adding to
Article – Health – General
Section 10–632(g)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources

Section 10–410(g)
Annotated Code of Maryland
(2012 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Public Safety
Section *3–208*, 5–101, 5–110(a) *and (b)*, 5–114(a), 5–115, 5–118(b)(2) and (3), 5–120, 5–133, 5–143, 5–205, 5–206, 5–301, and 5–306
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY adding to
Article – Public Safety
Section 5–117.1, 5–118(b)(4), 5–133.1, 5–133.2, 5–133.3, ~~and 5–143~~ 5–143, ~~and~~ 5–145, *and 5–146*
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY repealing
Article – Public Safety
Section 5–119
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 10–616(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY adding to
Article – State Government
Section 10–616(v)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

4–102.

(a) This section does not apply to:

(1) a law enforcement officer in the regular course of the officer's duty;

(2) AN OFF–DUTY LAW ENFORCEMENT OFFICER WHO IS A PARENT, GUARDIAN, OR VISITOR OF A STUDENT ATTENDING A SCHOOL LOCATED ON THE PUBLIC SCHOOL PROPERTY, PROVIDED THAT:

(I) THE OFFICER IS DISPLAYING THE OFFICER'S BADGE OR CREDENTIAL; AND

(II) THE WEAPON CARRIED OR POSSESSED BY THE OFFICER IS CONCEALED;

[*(2)****] (3)*** *a person hired by a county board of education specifically for the purpose of guarding public school property;*

[*(3)****] (4)*** *a person engaged in organized shooting activity for educational purposes; or*

[*(4)****] (5)*** *a person who, with a written invitation from the school principal, displays or engages in a historical demonstration using a weapon or a replica of a weapon for educational purposes.*

(b) A person may not carry or possess a firearm, knife, or deadly weapon of any kind on public school property.

(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $1,000 or both.

(2) A person who is convicted of carrying or possessing a handgun in violation of this section shall be sentenced under Subtitle 2 of this title.

4–110.

(A) IN THIS SECTION, "RESTRICTED FIREARM AMMUNITION" MEANS A CARTRIDGE, A SHELL, OR ANY OTHER DEVICE THAT:

(1) CONTAINS EXPLOSIVE OR INCENDIARY MATERIAL DESIGNED AND INTENDED FOR USE IN A FIREARM; AND

(2) HAS A CORE CONSTRUCTED, EXCLUDING TRACES OF OTHER SUBSTANCES, ENTIRELY FROM ONE OR A COMBINATION OF:

(I) TUNGSTEN ALLOYS;

(II) STEEL;

(III) IRON;

(IV) BRASS;

(V) BERYLLIUM COPPER;

(VI) DEPLETED URANIUM; OR

(VII) AN EQUIVALENT MATERIAL OF SIMILAR DENSITY OR HARDNESS.

(B) A PERSON MAY NOT, DURING AND IN RELATION TO THE COMMISSION OF A CRIME OF VIOLENCE AS DEFINED IN § 14–101 OF THIS ARTICLE, POSSESS OR USE RESTRICTED FIREARM AMMUNITION.

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING $5,000 OR BOTH.

4–203.

(b) This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who **[**is on active assignment engaged in law enforcement,**]** is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

(i) a law enforcement official of the United States, the State, or a county or city of the State;

(ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

(iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;

(iv) a correctional officer or warden of a correctional facility in the State;

(v) a sheriff or full–time assistant or deputy sheriff of the State; or

(vi) a temporary or part–time sheriff's deputy;

(2) the wearing, carrying, or transporting of a handgun**, IN COMPLIANCE WITH ANY LIMITATIONS IMPOSED UNDER § 5–307 OF THE PUBLIC SAFETY ARTICLE,** by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources–sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment;

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle; or

(9) the wearing, carrying, or transporting of a handgun by a person who is carrying a court order requiring the surrender of the handgun, if:

(i) the handgun is unloaded;

(ii) the person has notified the law enforcement unit, barracks, or station that the handgun is being transported in accordance with the court order; and

(iii) the person transports the handgun directly to the law enforcement unit, barracks, or station.

Subtitle 3. Assault **[**Pistols**]** **WEAPONS** and Detachable Magazines.

4–301.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ASSAULT LONG GUN" MEANS ANY ASSAULT WEAPON LISTED UNDER § 5–101(R)(2) OF THE PUBLIC SAFETY ARTICLE.

(C) **[**In this subtitle, "assault**]** **"ASSAULT** pistol" means any of the following firearms ~~[~~or a copy regardless of the producer or manufacturer~~]~~:

(1) AA Arms AP–9 semiautomatic pistol;

(2) Bushmaster semiautomatic pistol;

(3) Claridge HI–TEC semiautomatic pistol;

(4) D Max Industries semiautomatic pistol;

(5) Encom MK–IV, MP–9, or MP–45 semiautomatic pistol;

(6) Heckler and Koch semiautomatic SP–89 pistol;

(7) Holmes MP–83 semiautomatic pistol;

(8) Ingram MAC 10/11 semiautomatic pistol and variations including the Partisan Avenger and the SWD Cobray;

(9) Intratec TEC–9/DC–9 semiautomatic pistol in any centerfire variation;

(10) P.A.W.S. type semiautomatic pistol;

(11) Skorpion semiautomatic pistol;

(12) Spectre double action semiautomatic pistol (Sile, F.I.E., Mitchell);

(13) UZI semiautomatic pistol;

(14) Weaver Arms semiautomatic Nighthawk pistol; or

(15) Wilkinson semiautomatic "Linda" pistol.

(D) "ASSAULT WEAPON" MEANS:

(1) AN ASSAULT LONG GUN;

(2) AN ASSAULT PISTOL; OR

(3) A COPYCAT WEAPON.

(E) (1) "COPYCAT WEAPON" MEANS:

(I) A SEMIAUTOMATIC CENTERFIRE RIFLE THAT CAN ACCEPT A DETACHABLE MAGAZINE AND HAS ANY TWO OF THE FOLLOWING:

~~1. A PISTOL GRIP THAT PROTRUDES CONSPICUOUSLY BENEATH THE ACTION OF THE WEAPON;~~

~~2. A THUMBHOLE STOCK;~~

~~3.~~ A FOLDING ~~OR TELESCOPING~~ STOCK;

~~4.~~ ~~3.~~ *2.* A GRENADE LAUNCHER OR FLARE LAUNCHER; *OR*

~~5.~~ ~~4.~~ *3.* A FLASH SUPPRESSOR; ~~OR~~

~~6.~~ ~~5.~~ ~~A FORWARD PISTOL GRIP;~~

(II) A SEMIAUTOMATIC CENTERFIRE RIFLE THAT HAS A FIXED MAGAZINE WITH THE CAPACITY TO ACCEPT MORE THAN 10 ROUNDS;

(III) A SEMIAUTOMATIC CENTERFIRE RIFLE THAT HAS AN OVERALL LENGTH OF LESS THAN ~~30~~ *29* INCHES;

~~(IV) A SEMIAUTOMATIC PISTOL THAT CAN ACCEPT A DETACHABLE MAGAZINE AND HAS ANY TWO OF THE FOLLOWING:~~

~~1. A THREADED BARREL, CAPABLE OF ACCEPTING A FLASH SUPPRESSOR, FORWARD HANDGRIP, OR SILENCER;~~

~~2. A SECOND HANDGRIP;~~

~~3. A SHROUD THAT IS ATTACHED TO OR THAT PARTIALLY OR COMPLETELY ENCIRCLES THE BARREL, EXCEPT FOR A SLIDE THAT ENCLOSES THE BARREL, AND THAT ALLOWS THE BEARER TO FIRE THE WEAPON WITHOUT BURNING THE BEARER'S HAND; OR~~

~~4. THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE OUTSIDE THE PISTOL GRIP;~~

~~(V)~~ *(IV)* **A SEMIAUTOMATIC PISTOL WITH A FIXED MAGAZINE THAT CAN ACCEPT MORE THAN 10 ROUNDS;**

~~(VI)~~ *(V)* **A SEMIAUTOMATIC SHOTGUN THAT HAS:**

~~1.~~ **A FOLDING ~~OR TELESCOPING~~ STOCK; ~~AND~~**

~~2. A PISTOL GRIP THAT PROTRUDES CONSPICUOUSLY BENEATH THE ACTION OF THE WEAPON, THUMBHOLE STOCK, OR VERTICAL HANDGRIP;~~ OR**

~~(VII)~~ *(VI)* **A SHOTGUN WITH A REVOLVING CYLINDER.**

(2) "COPYCAT WEAPON" DOES NOT INCLUDE AN ASSAULT LONG GUN OR AN ASSAULT PISTOL.

(F) "DETACHABLE MAGAZINE" MEANS AN AMMUNITION FEEDING DEVICE THAT CAN BE REMOVED READILY FROM A FIREARM WITHOUT REQUIRING DISASSEMBLY OF THE FIREARM ACTION OR WITHOUT THE USE OF A TOOL, INCLUDING A BULLET OR CARTRIDGE.

(G) "FLASH SUPPRESSOR" MEANS A DEVICE THAT FUNCTIONS, OR IS INTENDED TO FUNCTION, TO PERCEPTIBLY REDUCE OR REDIRECT MUZZLE FLASH FROM THE SHOOTER'S FIELD OF VISION.

~~(H) "FORWARD PISTOL GRIP" MEANS A GRIP THAT ALLOWS FOR A PISTOL–STYLE GRASP FORWARD OF THE TRIGGER.~~

~~(I)~~ ***(H)*** **"LICENSED FIREARMS DEALER" MEANS A PERSON WHO HOLDS A DEALER'S LICENSE UNDER TITLE 5, SUBTITLE 1 OF THE PUBLIC SAFETY ARTICLE.**

~~**(J) "PISTOL GRIP THAT PROTRUDES CONSPICUOUSLY BENEATH THE ACTION OF THE WEAPON" MEANS A GRIP THAT ALLOWS FOR A PISTOL-STYLE GRASP IN WHICH THE WEB OF THE TRIGGER HAND BETWEEN THE THUMB AND INDEX FINGER CAN BE PLACED BELOW THE TOP OF THE EXPOSED PORTION OF THE TRIGGER WHILE FIRING.**~~

~~**(K) "THUMBHOLE STOCK" MEANS A STOCK WITH A HOLE THAT ALLOWS THE THUMB OF THE TRIGGER HAND TO PENETRATE INTO OR THROUGH THE STOCK WHILE FIRING.**~~

4–302.

This subtitle does not apply to:

(1) if acting within the scope of official business, personnel of the United States government or a unit of that government, members of the armed forces of the United States or of the National Guard, ~~***MEMBERS OF THE MARYLAND DEFENSE FORCE,***~~ ~~**or**~~ law enforcement personnel of the State or a local unit in the State**, OR A RAILROAD POLICE OFFICER AUTHORIZED UNDER TITLE 3 OF THE PUBLIC SAFETY ARTICLE OR 49 U.S.C. § 28101**;

(2) a firearm modified to render it permanently inoperative;

(3) **POSSESSION,** ***IMPORTATION*****, MANUFACTURE, RECEIPT FOR MANUFACTURE, SHIPMENT FOR MANUFACTURE,** ***STORAGE,*** purchases, sales, and transport to or by a licensed firearms dealer or manufacturer who is:

(i) providing or servicing an assault **[**pistol**]** **WEAPON** or detachable magazine for a law enforcement unit or for personnel exempted under item (1) of this section; ~~**or**~~

(ii) acting to sell or transfer an assault **[**pistol**]** **WEAPON** or detachable magazine to a licensed firearm dealer in another state ***OR TO AN INDIVIDUAL PURCHASER IN ANOTHER STATE THROUGH A LICENSED FIREARMS DEALER***; **OR**

(III) ACTING TO RETURN TO A CUSTOMER IN ANOTHER STATE AN ASSAULT WEAPON TRANSFERRED TO THE LICENSED FIREARMS DEALER OR MANUFACTURER UNDER THE TERMS OF A WARRANTY OR FOR REPAIR;

(4) organizations that are required or authorized by federal law governing their specific business or activity to maintain assault **[**pistols**]** **WEAPONS** and applicable ammunition and detachable magazines;

(5) the receipt of an assault **[**pistol**]** **WEAPON** or detachable magazine by inheritance**, *AND POSSESSION OF THE INHERITED ASSAULT WEAPON OR DETACHABLE MAGAZINE,*** if the decedent lawfully possessed the assault **[**pistol**]** **WEAPON** ***OR DETACHABLE MAGAZINE AND THE PERSON INHERITING THE ASSAULT WEAPON OR DETACHABLE MAGAZINE IS NOT OTHERWISE DISQUALIFIED FROM POSSESSING A REGULATED FIREARM*****; ~~or~~**

(6) the receipt of an assault **[**pistol**]** **WEAPON** or detachable magazine by a personal representative of an estate for purposes of exercising the powers and duties of a personal representative of an estate**; ~~OR~~**

(7) POSSESSION BY A PERSON WHO IS RETIRED IN GOOD STANDING FROM SERVICE WITH A LAW ENFORCEMENT AGENCY OF THE STATE OR A LOCAL UNIT IN THE STATE AND IS NOT OTHERWISE PROHIBITED FROM RECEIVING AN ASSAULT WEAPON OR DETACHABLE MAGAZINE IF:

(I) THE ASSAULT WEAPON OR DETACHABLE MAGAZINE IS SOLD OR TRANSFERRED TO THE PERSON BY THE LAW ENFORCEMENT AGENCY ON RETIREMENT; OR

(II) THE ASSAULT WEAPON OR DETACHABLE MAGAZINE WAS PURCHASED OR OBTAINED BY THE PERSON FOR OFFICIAL USE WITH THE LAW ENFORCEMENT AGENCY BEFORE RETIREMENT; ~~OR~~

(8) POSSESSION OR TRANSPORT BY AN EMPLOYEE OF AN ARMORED CAR COMPANY IF THE INDIVIDUAL IS ACTING WITHIN THE SCOPE OF EMPLOYMENT AND HAS A PERMIT ISSUED UNDER TITLE 5, SUBTITLE 3 OF THE PUBLIC SAFETY ARTICLE*; OR*

(9) POSSESSION, RECEIPT, AND TESTING BY, OR SHIPPING TO OR FROM:

(I) AN ISO 17025 ACCREDITED, NATIONAL INSTITUTE OF JUSTICE–APPROVED BALLISTICS TESTING LABORATORY; OR

(II) A FACILITY OR ENTITY THAT MANUFACTURES OR PROVIDES RESEARCH AND DEVELOPMENT TESTING, ANALYSIS, OR ENGINEERING FOR PERSONAL PROTECTIVE EQUIPMENT OR VEHICLE PROTECTION SYSTEMS.

4–303.

(a) Except as provided in subsection (b) of this section, a person may not:

(1) transport an assault **[**pistol**]** **WEAPON** into the State; or

(2) possess, sell, offer to sell, transfer, purchase, or receive an assault **[**pistol**]** **WEAPON**.

(b) **(1)** A person who lawfully possessed an assault pistol before June 1, 1994, and who registered the assault pistol with the Secretary of State Police before August 1, 1994, may:

[(1)**]** **(I)** continue to possess **AND TRANSPORT** the assault pistol; or

[(2)**]** **(II)** while carrying a court order requiring the surrender of the assault pistol, transport the assault pistol directly to the law enforcement unit, barracks, or station if the person has notified the law enforcement unit, barracks, or station that the person is transporting the assault pistol in accordance with a court order and the assault pistol is unloaded.

(2) ***A LICENSED FIREARMS DEALER MAY CONTINUE TO POSSESS, SELL, OFFER FOR SALE, OR TRANSFER AN ASSAULT LONG GUN OR A COPYCAT WEAPON THAT THE LICENSED FIREARMS DEALER LAWFULLY POSSESSED ON OR BEFORE OCTOBER 1, 2013.***

~~***(3)***~~ ~~**A LICENSED FIREARMS DEALER MAY CONTINUE TO POSSESS, SELL, OFFER FOR SALE, OR TRANSFER AN ASSAULT LONG GUN OR A COPYCAT WEAPON THAT THE LICENSED FIREARMS DEALER LAWFULLY POSSESSED ON OR BEFORE OCTOBER 1, 2013.**~~

~~**(3)**~~ ~~**(I)**~~ **A PERSON WHO LAWFULLY POSSESSED** ~~***OR PLACED A VERIFIABLE PURCHASE ORDER FOR***~~***, HAS A PURCHASE ORDER FOR, OR COMPLETED AN APPLICATION TO PURCHASE*** **AN ASSAULT LONG GUN OR A COPYCAT WEAPON BEFORE OCTOBER 1, 2013,** ~~**AND WHO REGISTERS THE ASSAULT LONG GUN OR COPYCAT WEAPON WITH THE SECRETARY OF STATE POLICE BEFORE NOVEMBER 1, 2013 JANUARY 1, 2014,**~~ **MAY:**

~~**(I)**~~ ~~**1.**~~ ***(I)*** ~~**CONTINUE TO**~~ **POSSESS AND TRANSPORT THE ASSAULT LONG GUN OR COPYCAT WEAPON; OR**

~~**(II)**~~ ~~**2.**~~ ***(II)*** **WHILE CARRYING A COURT ORDER REQUIRING THE SURRENDER OF THE ASSAULT LONG GUN OR COPYCAT WEAPON,**

TRANSPORT THE ASSAULT LONG GUN OR COPYCAT WEAPON DIRECTLY TO THE LAW ENFORCEMENT UNIT, BARRACKS, OR STATION IF THE PERSON HAS NOTIFIED THE LAW ENFORCEMENT UNIT, BARRACKS, OR STATION THAT THE PERSON IS TRANSPORTING THE ASSAULT LONG GUN OR COPYCAT WEAPON IN ACCORDANCE WITH A COURT ORDER AND THE ASSAULT LONG GUN OR COPYCAT WEAPON IS UNLOADED.

~~(II) A PERSON WHO PURCHASED AN ASSAULT LONG GUN BEFORE OCTOBER 1, 2013, AND REGISTERED THE ASSAULT LONG GUN WITH THE SECRETARY OF STATE POLICE IS NOT REQUIRED TO REREGISTER THE ASSAULT LONG GUN UNDER THIS SUBSECTION.~~

~~(3) (I) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A PERSON WHO LAWFULLY POSSESSED AN ASSAULT LONG GUN OR A COPYCAT WEAPON BEFORE OCTOBER 1, 2013, AND WHO VOLUNTARILY REGISTERS THE ASSAULT LONG GUN OR COPYCAT WEAPON ON OR AFTER NOVEMBER 1, 2013 JANUARY 1, 2014, IS NOT SUBJECT TO THE PENALTIES IN § 4–306 OF THIS SUBTITLE.~~

~~(II) A PERSON WHO VOLUNTARILY REGISTERS AN ASSAULT LONG GUN OR A COPYCAT WEAPON AS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $1,000:~~

~~1. BEFORE MAY 1, 2014, A CIVIL PENALTY NOT EXCEEDING $290 PER REGISTERED FIREARM;~~

~~2. ON OR AFTER MAY 1, 2014 AND BEFORE NOVEMBER 1, 2015, A CIVIL PENALTY NOT EXCEEDING $580 PER REGISTERED FIREARM; AND~~

~~3. ON OR AFTER NOVEMBER 1, 2015 AND BEFORE MAY 1, 2016, A CIVIL PENALTY NOT EXCEEDING $1,000 PER REGISTERED FIREARM.~~

~~(4) (I) A PERSON WHO LAWFULLY POSSESSED AN ASSAULT LONG GUN OR A COPYCAT WEAPON BEFORE OCTOBER 1, 2013, AND WHO REGISTERS THE ASSAULT LONG GUN OR COPYCAT WEAPON ON OR AFTER NOVEMBER 1, 2013 JANUARY 1, 2014, ONLY AFTER BEING DISCOVERED IN POSSESSION OF THE ASSAULT LONG GUN OR COPYCAT WEAPON BY A LAW ENFORCEMENT OFFICER IS NOT SUBJECT TO THE PENALTIES IN § 4–306 OF THIS SUBTITLE.~~

~~(II) A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 18 MONTHS 1 YEAR FOR EACH INCIDENT IN WHICH THE PERSON IS DISCOVERED WITH UNREGISTERED FIREARMS.~~

(4) A PERSON MAY TRANSPORT AN ASSAULT WEAPON TO OR FROM:

(I) AN ISO 17025 ACCREDITED, NATIONAL INSTITUTE OF JUSTICE–APPROVED BALLISTICS TESTING LABORATORY; OR

(II) A FACILITY OR ENTITY THAT MANUFACTURES OR PROVIDES RESEARCH AND DEVELOPMENT TESTING, ANALYSIS, OR ENGINEERING FOR PERSONAL PROTECTIVE EQUIPMENT OR VEHICLE PROTECTION SYSTEMS.

4–304.

A law enforcement unit may seize as contraband and dispose of according to regulation an assault **[**pistol**]** **WEAPON** transported, sold, transferred, purchased, received, or possessed in violation of this subtitle.

4–305.

(a) This section does not apply to***:***

(1) a .22 caliber rifle with a tubular magazine***; OR***

(2) A LAW ENFORCEMENT OFFICER OR A PERSON WHO RETIRED IN GOOD STANDING FROM SERVICE WITH A LAW ENFORCEMENT AGENCY OF THE UNITED STATES, THE STATE, OR ANY LAW ENFORCEMENT AGENCY IN THE STATE.

(b) A person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than **[**20**]** **10** rounds of ammunition for a firearm.

4–306.

(a) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A** person who violates this subtitle is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $5,000 or both.

(b) (1) A person who uses an assault **[**pistol**]** **WEAPON**, or a magazine that has a capacity of more than **[**20**]** **10** rounds of ammunition, in the commission of a

felony or a crime of violence as defined in § 5–101 of the Public Safety Article is guilty of a misdemeanor and on conviction, in addition to any other sentence imposed for the felony or crime of violence, shall be sentenced under this subsection.

(2) (i) For a first violation, the person shall be sentenced to imprisonment for not less than 5 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 5 years.

(iii) The mandatory minimum sentence of 5 years may not be suspended.

(iv) Except as otherwise provided in § 4–305 of the Correctional Services Article, the person is not eligible for parole in less than 5 years.

(3) (i) For each subsequent violation, the person shall be sentenced to imprisonment for not less than 10 years and not exceeding 20 years.

(ii) The court may not impose less than the minimum sentence of 10 years.

(iii) A sentence imposed under this paragraph shall be consecutive to and not concurrent with any other sentence imposed for the felony or crime of violence.

Article – Health – General

10–632.

(G) IF A HEARING OFFICER ENTERS AN ORDER FOR INVOLUNTARY ~~ADMISSION~~ *COMMITMENT* UNDER PART III OF THIS SUBTITLE AND THE HEARING OFFICER DETERMINES THAT THE INDIVIDUAL CANNOT SAFELY POSSESS A FIREARM BASED ON CREDIBLE EVIDENCE OF DANGEROUSNESS TO OTHERS, THE HEARING OFFICER SHALL ORDER THE INDIVIDUAL WHO IS SUBJECT TO THE INVOLUNTARY ~~ADMISSION~~ *COMMITMENT* TO:

(1) ~~(I)~~ SURRENDER TO LAW ENFORCEMENT AUTHORITIES ANY FIREARMS IN THE INDIVIDUAL'S POSSESSION~~; OR~~

~~(II) TEMPORARILY CONSIGN ANY FIREARMS IN THE INDIVIDUAL'S POSSESSION TO A LICENSED DEALER FOR STORAGE OR CONSIGNMENT~~; AND

(2) REFRAIN FROM POSSESSING A FIREARM UNLESS THE INDIVIDUAL IS GRANTED RELIEF FROM FIREARMS DISQUALIFICATION IN ACCORDANCE WITH § 5–133.3 OF THE PUBLIC SAFETY ARTICLE.

Article – Natural Resources

10–410.

(g) (1) Except as provided in **[**paragraph (2)**]** **PARAGRAPHS (2) AND (3)** of this subsection, a person, other than the owner or occupant, while hunting for any wild bird or mammal may not shoot or discharge any firearm or other deadly weapon within 150 yards, known as the "safety zone," of a dwelling house, residence, church, or other building or camp occupied by human beings, or shoot at any wild bird or mammal while it is within this area, without the specific advance permission of the owner or occupant.

(2) A PERSON, WHILE HUNTING FOR ANY WILD BIRD OR MAMMAL, MAY NOT SHOOT OR DISCHARGE ANY FIREARM WITHIN 300 YARDS OF A PUBLIC OR NONPUBLIC SCHOOL DURING SCHOOL HOURS OR AT A TIME WHEN A SCHOOL–APPROVED ACTIVITY IS TAKING PLACE.

[(2)**]** **(3)** For archery hunters in Carroll County or Frederick County, the safety zone described in paragraph (1) of this subsection extends for 50 yards from a dwelling house, residence, church, or any other building or camp occupied by human beings.

[(3)**]** **(4)** During any open hunting season, a person, other than the owner or occupant, may not hunt or chase willfully any wild bird or mammal within the safety zone without the specific advance permission of the owner or occupant.

Article – Public Safety

3–208.

[*(a)****]*** *Subject to the authority of the Secretary, the Commission has the following powers and duties:*

(1) to adopt regulations necessary or appropriate to carry out this subtitle; and

(2) to adopt regulations that establish and enforce standards for prior substance abuse by individuals applying for certification as a police officer.

[*(b) Subject to subsections (c) and (d) of this section, the Commission shall adopt regulations on or before January 1, 2001, for a certified firearms safety training*

course required for an applicant for a regulated firearms purchase, rental, or transfer made on or after January 1, 2002.

(c) The certified firearms safety training course required under subsection (b) of this section shall:

(1) be offered by the Commission; or

(2) contain a handgun safety component and be conducted by an individual or organization certified by:

(i) the Commission;

(ii) the Department of Natural Resources;

(iii) the Department of State Police; or

(iv) any reputable organization:

1. that has as one of its objectives the promotion of competency and safety in handling handguns; and

2. whose course has been determined by the Commission to meet the regulations adopted by the Commission.

(d) Any course offered by the Commission under subsection (c) of this section:

(1) shall be offered free of charge or fee;

(2) may not be more than 2 hours in duration;

(3) shall be conducted or offered at least once each week in all geographic areas of the State;

(4) shall be available after regular business hours;

(5) shall be open to each individual required by law to complete the firearms safety training course, within 2 weeks after request of the individual;

(6) shall only require attendance throughout the duration of the course in order to complete the course successfully; and

(7) may not require any skills or knowledge testing in the use of a regulated firearm in order to complete the course successfully.]

5–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Antique firearm" has the meaning stated in § 4–201 of the Criminal Law Article.

(B–1) (1) "CONVICTED OF A DISQUALIFYING CRIME" INCLUDES:

(I) A CASE IN WHICH A PERSON RECEIVED PROBATION BEFORE JUDGMENT FOR A CRIME OF VIOLENCE; AND

(II) A CASE IN WHICH A PERSON RECEIVED PROBATION BEFORE JUDGMENT IN A DOMESTICALLY RELATED CRIME AS DEFINED IN § 6–233 OF THE CRIMINAL PROCEDURE ARTICLE.

(2) "CONVICTED OF A DISQUALIFYING CRIME" DOES NOT INCLUDE A CASE IN WHICH A PERSON RECEIVED A PROBATION BEFORE JUDGMENT:

(I) FOR ASSAULT IN THE SECOND DEGREE; OR

(II) THAT WAS EXPUNGED UNDER TITLE 10, SUBTITLE 1 OF THE CRIMINAL PROCEDURE ARTICLE.

(c) "Crime of violence" means:

(1) abduction;

(2) arson in the first degree;

(3) assault in the first or second degree;

(4) burglary in the first, second, or third degree;

(5) carjacking and armed carjacking;

(6) escape in the first degree;

(7) kidnapping;

(8) voluntary manslaughter;

(9) maiming as previously proscribed under former Article 27, § 386 of the Code;

(10) mayhem as previously proscribed under former Article 27, § 384 of the Code;

(11) murder in the first or second degree;

(12) rape in the first or second degree;

(13) robbery;

(14) robbery with a dangerous weapon;

(15) sexual offense in the first, second, or third degree;

(16) an attempt to commit any of the crimes listed in items (1) through (15) of this subsection; or

(17) assault with intent to commit any of the crimes listed in items (1) through (15) of this subsection or a crime punishable by imprisonment for more than 1 year.

(d) "Dealer" means a person who is engaged in the business of:

(1) selling, renting, or transferring firearms at wholesale or retail; or

(2) repairing firearms.

(e) "Dealer's license" means a State regulated firearms dealer's license.

(f) "Designated law enforcement agency" means a law enforcement agency that the Secretary designates to process applications to purchase regulated firearms for secondary sales.

(g) "Disqualifying crime" means:

(1) a crime of violence;

(2) a violation classified as a felony in the State; or

(3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.

(h) (1) "Firearm" means:

(i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or

(ii) the frame or receiver of such a weapon.

(2) "Firearm" includes a starter gun.

(i) "Firearm applicant" means a person who makes a firearm application.

(j) "Firearm application" means an application to purchase, rent, or transfer a regulated firearm.

(k) "Fugitive from justice" means a person who has fled to avoid prosecution or giving testimony in a criminal proceeding.

(l) "Habitual drunkard" means a person who has been found guilty of any three crimes under § 21–902(a), (b), or (c) of the Transportation Article, one of which occurred in the past year.

(m) "Habitual user" means a person who has been found guilty of two controlled dangerous substance crimes, one of which occurred in the past 5 years.

(n) (1) "Handgun" means a firearm with a barrel less than 16 inches in length.

(2) "Handgun" includes signal, starter, and blank pistols.

(O) "HANDGUN QUALIFICATION LICENSE" MEANS A LICENSE ISSUED BY THE SECRETARY THAT AUTHORIZES A PERSON TO PURCHASE, RENT, OR RECEIVE A HANDGUN.

[(o)**] (P)** "Licensee" means a person who holds a dealer's license.

(Q) "QUALIFIED HANDGUN INSTRUCTOR" MEANS A ~~PERSON CERTIFIED BY THE SECRETARY WHO MEETS THE REQUIREMENTS ESTABLISHED BY THE SECRETARY TO PROVIDE TRAINING IN THE CARE, SAFETY, AND USE OF HANDGUNS~~ *CERTIFIED FIREARMS INSTRUCTOR WHO:*

(1) IS RECOGNIZED BY THE MARYLAND POLICE AND CORRECTIONAL TRAINING COMMISSIONS;

(2) HAS A QUALIFIED HANDGUN INSTRUCTOR LICENSE ISSUED BY THE SECRETARY; OR

***(3) HAS A CERTIFICATION ISSUED ~~AND RECOGNIZED BY A NATIONAL ORGANIZATION~~ BY A NATIONALLY RECOGNIZED FIREARMS ORGANIZATION*.**

[(p)**]** **(R)** "Regulated firearm" means:

(1) a handgun; or

(2) a firearm that is any of the following specific assault weapons or their copies, regardless of which company produced and manufactured that assault weapon:

(i) American Arms Spectre da Semiautomatic carbine;

(ii) AK–47 in all forms;

(iii) Algimec AGM–1 type semi–auto;

(iv) AR 100 type semi–auto;

(v) AR 180 type semi–auto;

(vi) Argentine L.S.R. semi–auto;

(vii) Australian Automatic Arms SAR type semi–auto;

(viii) Auto–Ordnance Thompson M1 and 1927 semi–automatics;

(ix) Barrett light .50 cal. semi–auto;

(x) Beretta AR70 type semi–auto;

(xi) Bushmaster semi–auto rifle;

(xii) Calico models M–100 and M–900;

(xiii) CIS SR 88 type semi–auto;

(xiv) Claridge HI TEC C–9 carbines;

(xv) Colt AR–15, CAR–15, and all imitations except Colt AR–15 Sporter H–BAR rifle;

(xvi) Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K–1, and K–2;

(xvii) Dragunov Chinese made semi–auto;

(xviii) Famas semi–auto (.223 caliber);

(xix) Feather AT–9 semi–auto;

(xx) FN LAR and FN FAL assault rifle;

(xxi) FNC semi–auto type carbine;

(xxii) F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun;

(xxiii) Steyr–AUG–SA semi–auto;

(xxiv) Galil models AR and ARM semi–auto;

(xxv) Heckler and Koch HK–91 A3, HK–93 A2, HK–94 A2 and A3;

(xxvi) Holmes model 88 shotgun;

(xxvii) Avtomat Kalashnikov semiautomatic rifle in any format;

(xxviii) Manchester Arms "Commando" MK–45, MK–9;

(xxix) Mandell TAC–1 semi–auto carbine;

(xxx) Mossberg model 500 Bullpup assault shotgun;

(xxxi) Sterling Mark 6;

(xxxii) P.A.W.S. carbine;

(xxxiii) Ruger mini–14 folding stock model (.223 caliber);

(xxxiv) SIG 550/551 assault rifle (.223 caliber);

(xxxv) SKS with detachable magazine;

(xxxvi) AP–74 Commando type semi–auto;

(xxxvii) Springfield Armory BM–59, SAR–48, G3, SAR–3, M–21 sniper rifle, M1A, excluding the M1 Garand;

(xxxviii) Street sweeper assault type shotgun;

(xxxix) Striker 12 assault shotgun in all formats;

(xl) Unique F11 semi–auto type;

(xli) Daewoo USAS 12 semi–auto shotgun;

(xlii) UZI 9mm carbine or rifle;

(xliii) Valmet M–76 and M–78 semi–auto;

(xliv) Weaver Arms "Nighthawk" semi–auto carbine; or

(xlv) Wilkinson Arms 9mm semi–auto "Terry".

[(q)**] (S)** "Rent" means the temporary transfer for consideration of a regulated firearm that is taken from the property of the owner of the regulated firearm.

[(r)**] (T)** "Secondary sale" means a sale of a regulated firearm in which neither party to the sale:

(1) is a licensee;

(2) is licensed by the federal government as a firearms dealer;

(3) devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of earning a profit through the repeated purchase and resale of firearms; or

(4) repairs firearms as a regular course of trade or business.

[(s)**] (U)** "Secretary" means the Secretary of State Police or the Secretary's designee.

[(t)**] (V)** "Straw purchase" means a sale of a regulated firearm in which a person uses another, known as the straw purchaser, to:

(1) complete the application to purchase a regulated firearm;

(2) take initial possession of the regulated firearm; and

(3) subsequently transfer the regulated firearm to the person.

5–110.

(a) The Secretary shall disapprove an application for a dealer's license if:

(1) the Secretary determines that the applicant supplied false information or made a false statement;

(2) the Secretary determines that the application is not properly completed; **[**or**]**

(3) the Secretary receives a written notification from the applicant's licensed attending physician that the applicant suffers from a mental disorder and is a danger to the applicant or to another**; OR**

(4) THE SECRETARY DETERMINES THAT THE APPLICANT INTENDS THAT A PERSON WHO IS NOT ELIGIBLE TO BE ISSUED A DEALER'S LICENSE OR WHOSE DEALER'S LICENSE HAS BEEN REVOKED OR SUSPENDED:

(I) WILL PARTICIPATE IN THE MANAGEMENT OR OPERATION OF THE BUSINESS FOR WHICH THE LICENSE IS SOUGHT; OR

(II) HOLDS A LEGAL OR EQUITABLE INTEREST IN THE BUSINESS FOR WHICH THE LICENSE IS SOUGHT.

*(b) If the Secretary disapproves an application for a dealer's license, the Secretary shall notify the applicant in writing of**:***

(1) *the disapproval **OF THE APPLICATION; AND***

(2) ***THE REASON THE APPLICATION WAS DENIED.***

5–114.

(a) ***(1)*** The Secretary shall suspend a dealer's license if the licensee:

~~(1)~~ ***(I)*** is under indictment for a crime of violence; **[**~~or~~**]**

~~(2)~~ ***(II)*** is arrested for a violation of this subtitle that prohibits the purchase or possession of a regulated firearm~~; OR~~ .

~~(3)~~ ***(2)*** ***(I)*** ***THE SECRETARY MAY SUSPEND A DEALER'S LICENSE IF THE LICENSEE*** **IS NOT IN COMPLIANCE WITH THE RECORD KEEPING AND REPORTING REQUIREMENTS OF § 5–145 OF THIS SUBTITLE**.

(II) THE SECRETARY MAY LIFT A SUSPENSION UNDER THIS PARAGRAPH AFTER THE LICENSEE PROVIDES EVIDENCE THAT THE RECORD KEEPING VIOLATION HAS BEEN CORRECTED.

5–115.

(a) (1) A person whose dealer's license is suspended or revoked **OR WHO IS FINED FOR A VIOLATION OF THIS SUBTITLE** and who is aggrieved by the action of the Secretary may request a hearing by writing to the Secretary within 30 days after the Secretary forwards notice to the applicant under § 5–114(c) of this subtitle.

(2) The Secretary shall grant the hearing within 15 days after receiving the request.

(b) The hearing shall be held in accordance with Title 10, Subtitle 2 of the State Government Article.

5–117.1.

(A) THIS SECTION DOES NOT APPLY TO:

(1) A LICENSED FIREARMS MANUFACTURER;

(2) 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; ~~OR~~

(3) A MEMBER OR RETIRED MEMBER OF THE ARMED FORCES OF THE UNITED STATES ~~OR,~~ *OR* THE NATIONAL GUARD~~, *OR THE MARYLAND DEFENSE FORCE*~~; *OR*

(4) A PERSON PURCHASING, RENTING, OR RECEIVING AN ANTIQUE, CURIO, OR RELIC FIREARM, AS DEFINED IN FEDERAL LAW OR IN DETERMINATIONS PUBLISHED BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES.

~~(A)~~ (B) A DEALER OR ANY OTHER PERSON MAY NOT SELL, RENT, OR TRANSFER A ~~REGULATED FIREARM~~ *HANDGUN* TO A PURCHASER, LESSEE, OR TRANSFEREE UNLESS THE PURCHASER, LESSEE, OR TRANSFEREE PRESENTS TO THE DEALER OR OTHER PERSON A VALID ~~REGULATED FIREARM~~ HANDGUN QUALIFICATION LICENSE ISSUED TO THE PURCHASER, LESSEE, OR TRANSFEREE BY THE SECRETARY UNDER THIS SECTION.

~~(B)~~ (C) A PERSON MAY PURCHASE, RENT, OR RECEIVE A HANDGUN ONLY IF THE PERSON:

(1) (I) POSSESSES A VALID HANDGUN QUALIFICATION LICENSE ISSUED TO THE PERSON BY THE SECRETARY IN ACCORDANCE WITH THIS SECTION; ~~AND~~

(II) POSSESSES VALID CREDENTIALS FROM A LAW ENFORCEMENT AGENCY OR RETIREMENT CREDENTIALS FROM A LAW ENFORCEMENT AGENCY; ~~OR~~

(III) IS AN ACTIVE OR RETIRED MEMBER OF THE ARMED FORCES OF THE UNITED STATES ~~OR,~~ *OR* THE NATIONAL GUARD~~, OR THE MARYLAND DEFENSE FORCE~~ AND POSSESSES A VALID MILITARY IDENTIFICATION CARD; ~~AND~~ *OR*

(IV) IS PURCHASING, RENTING, OR RECEIVING AN ANTIQUE, CURIO, OR RELIC FIREARM, AS DEFINED IN FEDERAL LAW OR IN DETERMINATIONS PUBLISHED BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; AND

(2) IS NOT OTHERWISE PROHIBITED FROM PURCHASING OR POSSESSING A HANDGUN UNDER STATE OR FEDERAL LAW.

~~(C)~~ (D) SUBJECT TO SUBSECTIONS ~~(E) AND (F)~~ (F) AND (G) OF THIS SECTION, THE SECRETARY SHALL ISSUE A HANDGUN QUALIFICATION LICENSE TO A PERSON WHO THE SECRETARY FINDS:

(1) ~~*(I)*~~ IS AT LEAST 21 YEARS OLD; ~~*OR*~~

~~*(II) IS AT LEAST 18 YEARS OLD IF THE PERSON IS A MEMBER OF THE UNITED STATES ARMED FORCES, THE NATIONAL GUARD, OR THE MARYLAND DEFENSE FORCE;*~~

(2) IS A RESIDENT OF THE STATE;

(3) EXCEPT AS PROVIDED IN SUBSECTION ~~(D)~~ (E) OF THIS SECTION, HAS DEMONSTRATED SATISFACTORY COMPLETION~~;~~ :

~~(I),~~ WITHIN ~~1 YEAR~~ 3 YEARS PRIOR TO THE SUBMISSION OF THE APPLICATION, OF A FIREARMS SAFETY TRAINING COURSE APPROVED BY THE SECRETARY THAT INCLUDES:

~~(I)~~ ~~1.~~ *(I)* A MINIMUM OF ~~8~~ 4 HOURS OF INSTRUCTION BY A QUALIFIED HANDGUN INSTRUCTOR;

~~(II)~~ ~~2.~~ *(II)* CLASSROOM INSTRUCTION ON:

~~1.~~ ~~A.~~ *1.* STATE FIREARM LAW;

~~2. B.~~ *2.* **HOME FIREARM SAFETY; AND**

~~3. C.~~ *3.* **HANDGUN MECHANISMS AND OPERATION; AND**

~~(III)~~ ~~(II)~~ *(III)* ~~WITHIN 10 YEARS PRIOR TO THE SUBMISSION OF THE APPLICATION, OF A FIREARMS SAFETY TRAINING COURSE APPROVED BY THE SECRETARY THAT INCLUDES~~ **A FIREARMS** ~~QUALIFICATION COMPONENT THAT DEMONSTRATES THE PERSON'S PROFICIENCY AND USE OF THE~~ *ORIENTATION COMPONENT THAT DEMONSTRATES THE PERSON'S SAFE OPERATION AND HANDLING OF A* **FIREARM; AND**

(4) BASED ON AN INVESTIGATION, IS NOT PROHIBITED BY FEDERAL OR STATE LAW FROM PURCHASING OR POSSESSING A HANDGUN.

~~(D)~~ **(E) AN APPLICANT FOR A HANDGUN QUALIFICATION LICENSE IS NOT REQUIRED TO COMPLETE A FIREARMS SAFETY TRAINING COURSE UNDER SUBSECTION** ~~(C)~~ **(D) OF THIS SECTION IF THE APPLICANT:**

(1) ~~IS A LAW ENFORCEMENT OFFICER OF THE UNITED STATES, THE STATE, OR ANY LOCAL LAW ENFORCEMENT AGENCY IN THE STATE;~~

~~(2) IS A MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR THE NATIONAL GUARD; OR~~

~~(3)~~ **HAS COMPLETED A CERTIFIED FIREARMS TRAINING COURSE APPROVED BY THE SECRETARY;** ~~OR~~

(2) HAS COMPLETED A COURSE OF INSTRUCTION IN COMPETENCY AND SAFETY IN THE HANDLING OF FIREARMS PRESCRIBED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER § 10–301.1 OF THE NATURAL RESOURCES ARTICLE;

~~(2)~~ *(3)* **IS** ~~CURRENTLY A CERTIFIED FIREARMS INSTRUCTOR WHO:~~

~~(I) IS RECOGNIZED BY THE MARYLAND POLICE AND CORRECTIONAL TRAINING COMMISSIONS;~~

~~(II) HAS A QUALIFIED HANDGUN INSTRUCTOR LICENSE ISSUED BY THE SECRETARY; OR~~

~~(III) HAS A CERTIFICATION ISSUED AND RECOGNIZED BY A NATIONAL ORGANIZATION~~ *A QUALIFIED HANDGUN INSTRUCTOR*; ~~OR~~

~~(3)~~ *(4)* **IS AN HONORABLY DISCHARGED MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR THE NATIONAL GUARD;** ~~**OR**~~

~~(4)~~ *(5)* **IS AN EMPLOYEE OF AN ARMORED CAR COMPANY AND HAS A PERMIT ISSUED UNDER TITLE 5, SUBTITLE 3 OF THE PUBLIC SAFETY ARTICLE** ***; OR***

***(6) LAWFULLY OWNS A REGULATED FIREARM*.**

~~(E)~~ **(F) (1) IN THIS SUBSECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

(2) ~~**IN ORDER TO OBTAIN A HANDGUN QUALIFICATION LICENSE, AN APPLICANT SHALL APPLY TO THE CENTRAL REPOSITORY FOR A NATIONAL AND STATE CRIMINAL HISTORY RECORDS CHECK**~~ **THE SECRETARY SHALL APPLY TO THE CENTRAL REPOSITORY FOR A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR EACH APPLICANT FOR A HANDGUN QUALIFICATION LICENSE.**

(3) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS CHECK, THE ~~**APPLICANT**~~ **SECRETARY SHALL SUBMIT TO THE CENTRAL REPOSITORY:**

(I) ~~**TWO COMPLETE SETS**~~ **A COMPLETE SET OF THE APPLICANT'S LEGIBLE FINGERPRINTS TAKEN IN A FORMAT APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;**

(II) THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF THE CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS; AND

(III) THE MANDATORY PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.

(4) THE CENTRAL REPOSITORY SHALL PROVIDE A RECEIPT TO THE APPLICANT FOR THE FEES PAID IN ACCORDANCE WITH PARAGRAPH (3)(II) AND (III) OF THIS SUBSECTION.

(5) IN ACCORDANCE WITH §§ 10–201 THROUGH 10–234 OF THE CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD

TO THE APPLICANT AND THE SECRETARY A PRINTED STATEMENT OF THE APPLICANT'S CRIMINAL HISTORY INFORMATION.

(6) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER THIS SECTION:

(I) IS CONFIDENTIAL AND MAY NOT BE DISSEMINATED; AND

(II) SHALL BE USED ONLY FOR THE LICENSING PURPOSE AUTHORIZED BY THIS SECTION.

(7) IF CRIMINAL HISTORY RECORD INFORMATION IS REPORTED TO THE CENTRAL REPOSITORY AFTER THE DATE OF THE INITIAL CRIMINAL HISTORY RECORDS CHECK, THE CENTRAL REPOSITORY SHALL PROVIDE TO THE DEPARTMENT OF STATE POLICE LICENSING DIVISION A REVISED PRINTED STATEMENT OF THE APPLICANT'S OR LICENSEE'S STATE CRIMINAL HISTORY RECORD.

~~(F)~~ (G) AN APPLICANT FOR A HANDGUN QUALIFICATION LICENSE SHALL SUBMIT TO THE SECRETARY:

(1) AN APPLICATION IN THE MANNER AND FORMAT DESIGNATED BY THE SECRETARY;

(2) A NONREFUNDABLE APPLICATION FEE ~~OF $100~~ TO COVER THE COSTS TO ADMINISTER THE PROGRAM *OF* UP TO ~~$50~~ ~~$25~~ *$50*;

(3) *(I)* PROOF OF SATISFACTORY COMPLETION OF*:*

1.* A FIREARMS SAFETY TRAINING COURSE APPROVED BY THE SECRETARY*; OR

***2. A COURSE OF INSTRUCTION IN COMPETENCY AND SAFETY IN THE HANDLING OF FIREARMS PRESCRIBED BY THE DEPARTMENT OF NATURAL RESOURCES UNDER § 10–301.1 OF THE NATURAL RESOURCES ARTICLE;* OR**

***(II)* A VALID FIREARMS INSTRUCTOR CERTIFICATION;**

(4) ANY OTHER IDENTIFYING INFORMATION OR DOCUMENTATION REQUIRED BY THE SECRETARY; AND

(5) A STATEMENT MADE BY THE APPLICANT UNDER THE PENALTY OF PERJURY THAT THE APPLICANT IS NOT PROHIBITED UNDER FEDERAL OR STATE LAW FROM POSSESSING A HANDGUN.

~~(G)~~ (H) *(1)* WITHIN 30 DAYS AFTER RECEIVING A PROPERLY COMPLETED APPLICATION, THE SECRETARY SHALL ISSUE TO THE APPLICANT:

~~(1)~~ *(I)* A HANDGUN QUALIFICATION LICENSE IF THE APPLICANT IS APPROVED; OR

~~(2)~~ *(II)* A WRITTEN DENIAL OF THE APPLICATION THAT CONTAINS*:*

~~(I)~~ 1. THE REASON THE APPLICATION WAS DENIED; AND

***~~(II)~~ 2.* A STATEMENT OF THE APPLICANT'S APPEAL RIGHTS UNDER SUBSECTION ~~(J)~~ (L) OF THIS SECTION.**

(2) (I) AN INDIVIDUAL WHOSE FINGERPRINTS HAVE BEEN SUBMITTED TO THE CENTRAL REPOSITORY, AND WHOSE APPLICATION HAS BEEN DENIED, MAY REQUEST THAT THE RECORD OF THE FINGERPRINTS BE EXPUNGED BY OBLITERATION.

(II) PROCEEDINGS TO EXPUNGE A RECORD UNDER THIS PARAGRAPH SHALL BE CONDUCTED IN ACCORDANCE WITH § 10–105 OF THE CRIMINAL PROCEDURE ARTICLE.

(III) ON RECEIPT OF AN ORDER TO EXPUNGE A FINGERPRINT RECORD, THE CENTRAL REPOSITORY SHALL EXPUNGE BY OBLITERATION THE FINGERPRINTS SUBMITTED AS PART OF THE APPLICATION PROCESS.

(IV) AN INDIVIDUAL MAY NOT BE CHARGED A FEE FOR THE EXPUNGEMENT OF A FINGERPRINT RECORD IN ACCORDANCE WITH THIS PARAGRAPH.

~~(H)~~ (I) ~~(1)~~ A HANDGUN QUALIFICATION LICENSE ISSUED UNDER THIS SECTION EXPIRES ~~5~~ 10 YEARS FROM THE DATE OF ISSUANCE.

~~(2)~~ (J) (1) THE HANDGUN QUALIFICATION LICENSE MAY BE RENEWED FOR SUCCESSIVE PERIODS OF ~~5~~ 10 YEARS EACH IF, AT THE TIME OF AN APPLICATION FOR RENEWAL, THE APPLICANT ~~POSSESSES THE QUALIFICATIONS FOR THE ISSUANCE OF THE HANDGUN QUALIFICATION~~

~~LICENSE AND PAYS THE FEES REQUIRED IN SUBSECTIONS (E)(3) AND (F)(2) OF THIS SECTION~~:

(I) POSSESSES THE QUALIFICATIONS FOR THE ISSUANCE OF THE HANDGUN QUALIFICATION LICENSE; AND

(II) SUBMITS A NONREFUNDABLE APPLICATION FEE TO COVER THE COSTS TO ADMINISTER THE PROGRAM UP TO $20.

(2) AN APPLICANT RENEWING A HANDGUN QUALIFICATION LICENSE UNDER THIS SUBSECTION IS NOT REQUIRED TO:

(I) COMPLETE THE FIREARMS SAFETY TRAINING COURSE REQUIRED IN SUBSECTION (D)(3) OF THIS SECTION; OR

(II) SUBMIT TO A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK AS REQUIRED IN SUBSECTION (F) OF THIS SECTION.

~~(H)~~ (K) (1) THE SECRETARY MAY REVOKE A HANDGUN QUALIFICATION LICENSE ISSUED OR RENEWED UNDER THIS SECTION ON A FINDING THAT THE LICENSEE NO LONGER SATISFIES THE QUALIFICATIONS SET FORTH IN SUBSECTION ~~(C)~~ (D) OF THIS SECTION.

(2) A PERSON HOLDING A HANDGUN QUALIFICATION LICENSE THAT HAS BEEN REVOKED BY THE SECRETARY SHALL RETURN THE LICENSE TO THE SECRETARY WITHIN 5 DAYS AFTER RECEIPT OF THE NOTICE OF REVOCATION.

~~(I)~~ (L) (1) A PERSON WHOSE ORIGINAL OR RENEWAL APPLICATION FOR A HANDGUN QUALIFICATION LICENSE IS DENIED OR WHOSE HANDGUN QUALIFICATION LICENSE IS REVOKED, MAY SUBMIT A WRITTEN REQUEST TO THE SECRETARY FOR A HEARING WITHIN 30 DAYS AFTER THE DATE THE WRITTEN NOTICE OF THE DENIAL OR REVOCATION WAS SENT TO THE AGGRIEVED PERSON.

(2) A HEARING UNDER THIS SECTION SHALL BE GRANTED BY THE SECRETARY WITHIN 15 DAYS AFTER THE REQUEST.

(3) A HEARING AND ANY SUBSEQUENT PROCEEDINGS OF JUDICIAL REVIEW UNDER THIS SECTION SHALL BE CONDUCTED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(4) A HEARING UNDER THIS SECTION SHALL BE HELD IN THE COUNTY OF THE LEGAL RESIDENCE OF THE AGGRIEVED PERSON.

(M) (1) IF AN ORIGINAL OR RENEWAL HANDGUN QUALIFICATION LICENSE IS LOST OR STOLEN, A PERSON MAY SUBMIT A WRITTEN REQUEST TO THE SECRETARY FOR A REPLACEMENT LICENSE.

(2) UNLESS THE APPLICANT IS OTHERWISE DISQUALIFIED, THE SECRETARY SHALL ISSUE A REPLACEMENT HANDGUN QUALIFICATION LICENSE ON RECEIPT OF A WRITTEN REQUEST AND A NONREFUNDABLE FEE TO COVER THE COST OF REPLACEMENT UP TO $20.

(N) THE SECRETARY MAY ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

5–118.

(b) A firearm application shall contain:

(2) the date and time that the firearm applicant delivered the completed firearm application to the prospective seller or transferor; **[**and**]**

(3) a statement by the firearm applicant under the penalty of perjury that the firearm applicant:

(i) ~~*1.*~~ is at least 21 years old; ~~*OR*~~

~~*2. IS AT LEAST 18 YEARS OLD IF THE FIREARM APPLICANT IS A MEMBER OF THE UNITED STATES ARMED FORCES, THE NATIONAL GUARD, OR THE MARYLAND DEFENSE FORCE;*~~

(ii) has never been convicted of a disqualifying crime;

(iii) has never been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years;

(iv) is not a fugitive from justice;

(v) is not a habitual drunkard;

(vi) is not addicted to a controlled dangerous substance or is not a habitual user;

(VII) DOES NOT SUFFER FROM A MENTAL DISORDER AS DEFINED IN § 10–101(F)(2) OF THE HEALTH – GENERAL ARTICLE AND HAVE A

HISTORY OF VIOLENT BEHAVIOR AGAINST ~~THEMSELVES~~ *THE FIREARM APPLICANT* OR ANOTHER~~, UNLESS THE PERSON HAS A PHYSICIAN'S CERTIFICATE THAT THE PERSON IS CAPABLE OF POSSESSING A REGULATED FIREARM WITHOUT UNDUE DANGER TO THE PERSON OR TO ANOTHER~~;

~~(vii)~~ **(VIII)** has never ~~spent more than 30 consecutive days in a medical institution for treatment of a mental disorder, unless a physician's certificate issued within 30 days before the date of application is attached to the application, certifying that the firearm applicant is capable of possessing a regulated firearm without undue danger to the firearm applicant or to another;~~

~~(viii)~~ ~~is not a respondent against whom a current non ex parte civil protective order has been entered under § 4–506 of the Family Law Article~~ **BEEN FOUND INCOMPETENT TO STAND TRIAL UNDER § 3–106 OF THE CRIMINAL PROCEDURE ARTICLE;**

(IX) HAS NEVER BEEN FOUND NOT CRIMINALLY RESPONSIBLE UNDER § 3–110 OF THE CRIMINAL PROCEDURE ARTICLE;

(X) ~~HAS NEVER BEEN~~ ~~BEFORE OCTOBER 1, 2013, WAS~~ *HAS* NEVER *BEEN* VOLUNTARILY ADMITTED FOR MORE THAN 30 CONSECUTIVE DAYS TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE;

(XI) HAS NEVER BEEN INVOLUNTARILY COMMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE;

~~(XII) HAS NEVER BEEN ADMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE AS THE RESULT OF AN EMERGENCY EVALUATION UNDER § 10–622 OF THE HEALTH – GENERAL ARTICLE OR, IF THE PERSON HAS BEEN ADMITTED TO A FACILITY, POSSESSES A CERTIFICATE FROM THE FACILITY THAT THE PERSON IS CAPABLE OF POSSESSING A REGULATED FIREARM WITHOUT UNDUE DANGER TO THE PERSON OR TO ANOTHER;~~

~~(XIII)~~ *(XII)* IS NOT UNDER THE PROTECTION OF A GUARDIAN APPOINTED BY A COURT UNDER § 13–201(C) OR § 13–705 OF THE ESTATES AND TRUSTS ARTICLE , *EXCEPT FOR CASES IN WHICH THE APPOINTMENT OF A GUARDIAN IS SOLELY A RESULT OF A PHYSICAL DISABILITY*;

~~(XIII)~~ ~~(XIV)~~ *(XIII)* IS NOT A RESPONDENT AGAINST WHOM:

1. A CURRENT NON EX PARTE CIVIL PROTECTIVE ORDER HAS BEEN ENTERED UNDER § 4–506 OF THE FAMILY LAW ARTICLE; OR

2. AN ORDER FOR PROTECTION, AS DEFINED IN § 4–508.1 OF THE FAMILY LAW ARTICLE, HAS BEEN ISSUED BY A COURT OF ANOTHER STATE OR A NATIVE AMERICAN TRIBE AND IS IN EFFECT; **AND**

~~(ix)~~ ~~**(XIV)**~~ ~~**(XV)**~~ ***(XIV)*** if under the age of 30 years at the time of application, has not been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult**[**; and

(x) subject to § 5–119 of this subtitle, has completed a certified firearms safety training course that the Police Training Commission conducts without charge or that meets the standards that the Police Training Commission establishes under § 3–207 of this article**]; AND**

(4) A COPY OF THE APPLICANT'S HANDGUN QUALIFICATION LICENSE.

[5–119.

A firearm applicant is not required to complete a certified firearms training course required under §§ 5–118 and 5–134 of this subtitle if the firearm applicant:

(1) has already completed a certified firearms training course required under §§ 5–118 and 5–134 of this subtitle;

(2) is a law enforcement officer of the State or any local law enforcement agency in the State;

(3) is a member, retired member, or honorably discharged member of the armed forces of the United States or the National Guard;

(4) is a member of an organization that is required by federal law governing its specific business or activity to maintain handguns and applicable ammunition; or

(5) holds a permit to carry a handgun under Subtitle 3 of this title.**]**

5–120.

(a) (1) On receipt of a firearm application, a licensee or designated law enforcement agency shall promptly forward one copy of it to the Secretary by**[**:

(i) certified mail;

(ii) facsimile machine; or

(iii)**]** electronic means approved by the Secretary.

(2) The copy of the firearm application forwarded to the Secretary shall contain the name, address, and signature of the prospective seller, lessor, or transferor.

(b) (1) The prospective seller, lessor, or transferor shall keep one copy of the firearm application for not less than 3 years.

(2) The firearm applicant is entitled to **[**the remaining**]** **A** copy of the firearm application.

(c) **[**(1) Except as provided in paragraph (2) of this subsection, the**]** **THE** licensee or designated law enforcement agency shall forward the $10 application fee with the firearm application to the Secretary.

[(2) A licensee or designated law enforcement agency that uses a facsimile machine to forward the firearm application to the Secretary shall:

(i) be billed $10 for each firearm application forwarded to the Secretary during the month; and

(ii) pay the total application fee by the fifteenth day of the following month.**]**

5–133.

(a) This section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

(b) **[**A**]** **SUBJECT TO § 5–133.3 OF THIS SUBTITLE, A** person may not possess a regulated firearm if the person:

(1) has been convicted of a disqualifying crime;

(2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years;

(3) is a fugitive from justice;

(4) is a habitual drunkard;

(5) is addicted to a controlled dangerous substance or is a habitual user;

~~(6) [suffers from a mental disorder as defined in § 10–101(f)(2) of the Health – General Article and has a history of violent behavior against the person or another, unless the person has a physician's certificate that the person is capable of possessing a regulated firearm without undue danger to the person or to another, unless the person has a physician's certificate that the person is capable of possessing a regulated firearm without undue danger to the person or to another];~~

(6) SUFFERS FROM A MENTAL DISORDER AS DEFINED IN § 10–101(F)(2) OF THE HEALTH – GENERAL ARTICLE AND HAS A HISTORY OF VIOLENT BEHAVIOR AGAINST THE PERSON OR ANOTHER;

(7) HAS BEEN FOUND INCOMPETENT TO STAND TRIAL UNDER § 3–106 OF THE CRIMINAL PROCEDURE ARTICLE;

~~(7)~~ (8) HAS BEEN FOUND NOT CRIMINALLY RESPONSIBLE UNDER § 3–110 OF THE CRIMINAL PROCEDURE ARTICLE;

[(7)**]** **~~(8)~~ (9)** has been **[**~~confined~~ **VOLUNTARILY ADMITTED** for more than 30 consecutive days to**] A PATIENT IN** a facility as defined in § 10–101 of the Health – General Article **~~BEFORE OCTOBER 1, 2013~~[**, unless the person has a physician's certificate that the person is capable of possessing a regulated firearm without undue danger to the person or to another**]** **~~AND:~~;**

~~(I)~~ ~~(10) HAS BEEN A VOLUNTARY OR AN INVOLUNTARY PATIENT FOR 30 CONSECUTIVE DAYS OR MORE; OR~~

~~(II) HAS BEEN DETERMINED BY A COURT TO BE UNABLE TO SAFELY POSSESS A FIREARM BASED ON CREDIBLE EVIDENCE OF DANGEROUSNESS TO OTHERS INVOLUNTARILY COMMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE;~~

~~(9)~~ ~~(11) HAS BEEN ADMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE AS THE RESULT OF AN EMERGENCY EVALUATION UNDER § 10–622 OF THE HEALTH – GENERAL ARTICLE, UNLESS THE PERSON HAS A CERTIFICATE FROM THE FACILITY THAT THE PERSON IS CAPABLE OF POSSESSING A REGULATED FIREARM WITHOUT UNDUE DANGER TO THE PERSON OR TO ANOTHER;~~

(10) HAS BEEN INVOLUNTARILY COMMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE;

~~(12)~~ *(11)* IS UNDER THE PROTECTION OF A GUARDIAN APPOINTED BY A COURT UNDER § 13–201(C) OR § 13–705 OF THE ESTATES AND TRUSTS

ARTICLE , *EXCEPT FOR CASES IN WHICH THE APPOINTMENT OF A GUARDIAN IS SOLELY A RESULT OF A PHYSICAL DISABILITY*;

[(8)**]** ~~**(10)**~~ ~~**(12)**~~ ~~**(13)**~~ ***(12)*** except as provided in subsection (e) of this section, is a respondent against whom **[**a current non ex parte civil protective order has been entered under § 4–506 of the Family Law Article; or**]:**

(I) A CURRENT NON EX PARTE CIVIL PROTECTIVE ORDER HAS BEEN ENTERED UNDER § 4–506 OF THE FAMILY LAW ARTICLE; OR

(II) AN ORDER FOR PROTECTION, AS DEFINED IN § 4–508.1 OF THE FAMILY LAW ARTICLE, HAS BEEN ISSUED BY A COURT OF ANOTHER STATE OR A NATIVE AMERICAN TRIBE AND IS IN EFFECT; OR

[(9)**]** ~~**(11)**~~ ~~**(13)**~~ ~~**(14)**~~ ***(13)*** if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

(c) (1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence;

(ii) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–612, § 5–613, or § 5–614 of the Criminal Law Article; or

(iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

(2) (i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in § 4–305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervision, probation, and parole:

(i) the imposition of the mandatory minimum sentence is within the discretion of the court; and

(ii) the mandatory minimum sentence may not be imposed unless the State's Attorney notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

(4) Each violation of this subsection is a separate crime.

(d) (1) Except as provided in paragraph (2) of this subsection, a person who is under the age of 21 years may not possess a regulated firearm.

(2) Unless a person is otherwise prohibited from possessing a regulated firearm, this subsection does not apply to:

(i) the temporary transfer or possession of a regulated firearm if the person is:

1. under the supervision of another who is at least 21 years old and who is not prohibited by State or federal law from possessing a firearm; and

2. acting with the permission of the parent or legal guardian of the transferee or person in possession;

(ii) the transfer by inheritance of title, and not of possession, of a regulated firearm;

(iii) a member of the armed forces of the United States or the National Guard *while performing official duties* ~~while performing official duties~~;

(iv) the temporary transfer or possession of a regulated firearm if the person is:

1. participating in marksmanship training of a recognized organization; and

2. under the supervision of a qualified instructor;

(v) a person who is required to possess a regulated firearm for employment and who holds a permit under Subtitle 3 of this title; or

(vi) the possession of a firearm for self–defense or the defense of others against a trespasser into the residence of the person in possession or into a residence in which the person in possession is an invited guest.

(e) This section does not apply to a respondent transporting a regulated firearm if the respondent is carrying a civil protective order requiring the surrender of the regulated firearm and:

(1) the regulated firearm is unloaded;

(2) the respondent has notified the law enforcement unit, barracks, or station that the regulated firearm is being transported in accordance with the civil protective order; and

(3) the respondent transports the regulated firearm directly to the law enforcement unit, barracks, or station.

5–133.1.

(A) IN THIS SECTION, "AMMUNITION" MEANS A CARTRIDGE, SHELL, OR ANY OTHER DEVICE CONTAINING EXPLOSIVE OR INCENDIARY MATERIAL DESIGNED AND INTENDED FOR USE IN A FIREARM.

(B) A PERSON MAY NOT POSSESS AMMUNITION IF THE PERSON IS PROHIBITED FROM POSSESSING A REGULATED FIREARM UNDER § 5–133 (B) OR (C) OF THIS SUBTITLE.

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING $1000 OR BOTH.

5–133.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "FACILITY" HAS THE MEANING STATED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE.

(3) "NICS INDEX" MEANS THE FEDERAL BUREAU OF INVESTIGATION'S NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(B) (1) A COURT SHALL PROMPTLY REPORT INFORMATION REQUIRED IN PARAGRAPH (2) OF THIS SUBSECTION THROUGH A SECURE DATA PORTAL APPROVED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES IF A COURT:

(I) DETERMINES THAT A PERSON IS NOT CRIMINALLY RESPONSIBLE UNDER § 3–110 OF THE CRIMINAL PROCEDURE ARTICLE;

(II) FINDS THAT A PERSON IS INCOMPETENT TO STAND TRIAL UNDER § 3–106 OF THE CRIMINAL PROCEDURE ARTICLE; OR

(III) FINDS UNDER § 13–201(C) OR § 13–705 OF THE ESTATES AND TRUST ARTICLE THAT A PERSON SHOULD BE UNDER THE PROTECTION OF A GUARDIAN, *EXCEPT FOR CASES IN WHICH THE APPOINTMENT OF A GUARDIAN IS SOLELY A RESULT OF A PHYSICAL DISABILITY*.

(2) ON A FINDING OR DETERMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE FOLLOWING INFORMATION SHALL BE REPORTED TO THE NICS INDEX:

(I) THE NAME AND IDENTIFYING INFORMATION OF THE PERSON; AND

(II) THE DATE OF THE DETERMINATION OR FINDING.

(C) (1) A FACILITY SHALL REPORT INFORMATION REQUIRED IN PARAGRAPH (2) OF THIS SUBSECTION REGARDING A PERSON ADMITTED TO THE FACILITY UNDER § 10–609 OF THE HEALTH – GENERAL ARTICLE OR COMMITTED TO THE FACILITY UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH – GENERAL ARTICLE TO THE NICS INDEX THROUGH A SECURE DATA PORTAL APPROVED BY THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, IF:

(I) THE PERSON HAS BEEN ADMITTED ~~OR COMMITTED~~ TO A FACILITY FOR 30 CONSECUTIVE DAYS OR MORE; OR

(II) ~~IN THE CASE OF AN INVOLUNTARY ADMISSION TO A FACILITY, A COURT MAKES A DETERMINATION THAT THE PERSON CANNOT SAFELY POSSESS A FIREARM BASED ON CREDIBLE EVIDENCE OF DANGEROUSNESS TO OTHERS~~ THE PERSON HAS BEEN INVOLUNTARILY COMMITTED TO A FACILITY.

(2) ON ADMISSION TO A FACILITY THE FOLLOWING INFORMATION SHALL BE REPORTED TO THE NICS INDEX:

(I) THE NAME AND IDENTIFYING INFORMATION OF THE PERSON ADMITTED OR COMMITTED;

(II) THE DATE THE PERSON WAS ADMITTED OR COMMITTED TO THE FACILITY; AND

(III) THE NAME OF THE FACILITY TO WHICH THE PERSON WAS ADMITTED OR COMMITTED.

~~**5–133.3.**~~

~~**(A) IN THIS SECTION, "HEALTH DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.**~~

~~**(B) A PERSON SUBJECT TO A REGULATED FIREARMS DISQUALIFICATION UNDER § 5–133(B)(6), (7), (8), OR (9) (9), (10), OR (11) (11), OR (12) OF THIS SUBTITLE OR A RIFLE OR SHOTGUN DISQUALIFICATION UNDER § 5–205(B)(6), (7), (8), (9), (10), OR (11) (11), OR (12) OF THIS TITLE MAY BE AUTHORIZED TO POSSESS A FIREARM IF:**~~

~~**(1) THE PERSON IS NOT SUBJECT TO ANOTHER FIREARMS RESTRICTION UNDER STATE OR FEDERAL LAW; AND**~~

~~**(2) THE HEALTH DEPARTMENT, IN ACCORDANCE WITH THIS SECTION, DETERMINES THAT THE PERSON MAY POSSESS A FIREARM.**~~

~~**(C) A PERSON WHO SEEKS RELIEF FROM A FIREARMS DISQUALIFICATION SHALL FILE AN APPLICATION WITH THE HEALTH DEPARTMENT IN THE FORM AND MANNER SET BY THE HEALTH DEPARTMENT.**~~

~~**(D) (1) AN APPLICANT SHALL PROVIDE COMPLETE AND ACCURATE DATA ON ALL INFORMATION REQUIRED IN AN APPLICATION UNDER THIS SECTION.**~~

~~**(2) THE APPLICANT SHALL INCLUDE THE FOLLOWING INFORMATION IN THE APPLICATION:**~~

~~**(I) THE REASON WHY THE APPLICANT IS PROHIBITED FROM POSSESSING A REGULATED FIREARM UNDER § 5–133(B)(6), (7), (8), OR (9) (9), (10), OR (11) (11), OR (12) OF THIS SUBTITLE OR A RIFLE OR SHOTGUN UNDER § 5–205(B)(6), (7), (8), (9), (10), OR (11) (11), OR (12) OF THIS TITLE AND WHY THE APPLICANT SHOULD BE RELIEVED FROM THAT PROHIBITION;**~~

~~**(II) A CERTIFICATE ON A FORM APPROVED BY THE HEALTH DEPARTMENT AND SIGNED BY AN INDIVIDUAL LICENSED IN THE STATE AS A PHYSICIAN WHO IS BOARD–CERTIFIED IN PSYCHIATRY OR AS A PSYCHOLOGIST**~~

~~AND LISTED IN THE NATIONAL REGISTER OF HEALTH SERVICE PROVIDERS IN PSYCHOLOGY THAT PROVIDES:~~

~~1. THAT THE CERTIFICATE WAS ISSUED WITHIN 30 DAYS OF THE DATE OF THE FILING OF THE PETITION;~~

~~2. THAT THE APPLICANT HAS BEEN EVALUATED AND THE SIGNATORY REASONABLY BELIEVES THAT THE APPLICANT IS COMPETENT TO UNDERSTAND AND COMPLY WITH THE RULES, REGULATIONS, AND LAW GOVERNING FIREARM OWNERSHIP AND POSSESSION AND THE RISKS AND RESPONSIBILITIES INHERENT TO FIREARM OWNERSHIP;~~

~~3. THAT THERE IS NO REASON TO BELIEVE THAT THE PERSON WILL BECOME INCOMPETENT IN THE FORESEEABLE FUTURE;~~

~~4. AN OPINION AS TO WHETHER THE APPLICANT WILL BE LIKELY TO ACT IN A MANNER THAT IS DANGEROUS TO SELF OR PUBLIC SAFETY; AND~~

~~5. AN OPINION ON WHETHER GRANTING A FIREARM HANDGUN QUALIFICATION LICENSE UNDER § 5–117 § 5–117.1 OF THIS SUBTITLE OR AUTHORIZING A PERSON TO POSSESS A RIFLE OR SHOTGUN WOULD BE CONTRARY TO THE PUBLIC INTEREST;~~

~~(III) A SIGNED AUTHORIZATION, ON A FORM APPROVED BY THE HEALTH DEPARTMENT ALLOWING THE HEALTH DEPARTMENT TO ACCESS ALL RELEVANT HEALTH CARE, MENTAL HEALTH, DISABILITY, GUARDIANSHIP, AND CRIMINAL JUSTICE RECORDS, INCLUDING COURT ORDERED OR REQUIRED MENTAL HEALTH RECORDS, OF THE APPLICANT FOR USE WITH THE DISQUALIFICATION AND HEARING PROCESS;~~

~~(IV) THREE STATEMENTS ON A FORM DESIGNATED BY THE HEALTH DEPARTMENT ATTESTING TO THE APPLICANT'S REPUTATION AND CHARACTER RELEVANT TO FIREARM OWNERSHIP OR POSSESSION; AND~~

~~(V) ANY OTHER INFORMATION REQUIRED BY THE HEALTH DEPARTMENT.~~

~~(3) (I) AT LEAST TWO OF THE STATEMENTS REQUIRED UNDER PARAGRAPH (2)(IV) OF THIS SUBSECTION SHALL BE PROVIDED BY AN INDIVIDUAL WHO IS NOT RELATED TO THE APPLICANT.~~

~~(II) STATEMENTS PROVIDED UNDER PARAGRAPH (2)(IV) OF THIS SUBSECTION MUST BE SIGNED AND DATED WITHIN 30 DAYS OF~~

~~SUBMISSION TO THE HEALTH DEPARTMENT AND PROVIDE CONTACT INFORMATION FOR EACH INDIVIDUAL PROVIDING A STATEMENT.~~

~~(4) IF THE APPLICANT IS PROHIBITED FROM FIREARM OWNERSHIP UNDER § 5–133(B)(9) § 5–133(B)(11) § 5–133(B)(12) OF THIS SUBTITLE OR § 5–205(B)(11) § 5–205(B)(12) OF THIS TITLE, THE FOLLOWING ADDITIONAL INFORMATION SHALL BE INCLUDED IN AN APPLICATION FOR RELIEF FROM THE PROHIBITION:~~

~~(I) A COPY OF ALL PLEADINGS, AFFIDAVITS, AND CERTIFICATES SUBMITTED INTO EVIDENCE AT THE GUARDIANSHIP PROCEEDING; AND~~

~~(II) ALL ORDERS ISSUED BY THE COURT RELATING TO THE GUARDIANSHIP, INCLUDING, IF APPLICABLE, AN ORDER INDICATING THAT THE GUARDIANSHIP IS NO LONGER IN EFFECT.~~

~~(5) IF THE APPLICANT IS PROHIBITED FROM FIREARM OWNERSHIP UNDER § 5–133(B)(6), (7), OR (8) (8), (9), OR (10) (10), OR (11) OF THIS SUBTITLE OR § 5–205(B)(6), (7), (8), (9), OR (10) (10), OR (11) OF THIS TITLE, THE CERTIFICATE REQUIRED UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION SHALL ALSO INCLUDE:~~

~~(I) AN OPINION AS TO WHETHER THE APPLICANT HAS SYMPTOMS OF A MENTAL DISORDER OR DEVELOPMENTAL DISABILITY THAT CAUSES THE APPLICANT TO BE A DANGER TO SELF OR OTHERS;~~

~~(II) IF THE APPLICANT HAS NO SYMPTOMS THAT CAUSE THE APPLICANT TO BE A DANGER, HOW MANY MONTHS THE APPLICANT HAS NOT HAD SYMPTOMS OF A MENTAL DISORDER OR DEVELOPMENTAL DISABILITY THAT CAUSED THE APPLICANT TO BE A DANGER TO SELF OR OTHERS;~~

~~(III) THE TIME PERIOD THE APPLICANT HAS BEEN COMPLIANT WITH TREATMENT RECOMMENDATIONS FOR THE INDIVIDUAL'S MENTAL ILLNESS;~~

~~(IV) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ALL MENTAL HEALTH PROVIDERS OR SERVICE PROVIDERS SEEN WITHIN THE LAST 12 MONTHS;~~

~~(V) IF THE APPLICANT WAS FOUND NOT GUILTY BY REASON OF INSANITY OR NOT CRIMINALLY RESPONSIBLE, A STATEMENT ATTESTING TO~~

~~WHETHER THE APPLICANT IS ON CONDITIONAL RELEASE UNDER § 3–114 OF THE CRIMINAL PROCEDURE ARTICLE; AND~~

~~(VI) IF THE APPLICANT WAS FOUND NOT COMPETENT TO STAND TRIAL AND DANGEROUS, A WRITTEN STATEMENT REGARDING THE STATUS OF THE RELATED CRIMINAL CHARGE.~~

~~(E) THE HEALTH DEPARTMENT MAY NOT APPROVE AN APPLICATION UNDER THIS SECTION IF A DETERMINATION IS MADE THAT:~~

~~(1) THE APPLICANT SUPPLIED FALSE INFORMATION OR MADE A FALSE STATEMENT;~~

~~(2) THE APPLICATION IS NOT PROPERLY COMPLETED; OR~~

~~(3) ON REVIEW OF THE APPLICATION AND SUPPORTING DOCUMENTATION AND ANY OTHER INFORMATION RELATING TO THE APPLICATION REQUESTED BY THE HEALTH DEPARTMENT, THE APPLICANT HAS NOT SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE APPLICANT WILL BE UNLIKELY TO ACT IN A MANNER DANGEROUS TO SELF OR PUBLIC SAFETY AND THAT GRANTING A PERMIT TO POSSESS A REGULATED FIREARM OR AUTHORIZING THE POSSESSION OF A RIFLE OR SHOTGUN WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST.~~

~~(F) (1) IF THE HEALTH DEPARTMENT DETERMINES THAT THE APPLICATION SHALL BE APPROVED ON REVIEW UNDER SUBSECTION (E)(3) OF THIS SECTION, THE HEALTH DEPARTMENT SHALL PROVIDE THE APPLICANT WITH A CERTIFICATE AFFIRMING THE APPLICANT'S MENTAL COMPETENCE TO POSSESS A REGULATED FIREARM.~~

~~(2) A CERTIFICATE UNDER THIS SUBSECTION SHALL BE PRESENTED TO THE DEPARTMENT OF STATE POLICE AS EVIDENCE OF THE APPLICANT'S ELIGIBILITY TO POSSESS A REGULATED FIREARM.~~

~~(G) AN APPLICANT WHO IS AGGRIEVED BY THE ACTION OF THE HEALTH DEPARTMENT MAY REQUEST A HEARING BY WRITING TO THE SECRETARY OF HEALTH AND MENTAL HYGIENE WITHIN 30 DAYS AFTER THE HEALTH DEPARTMENT MAILS THE DECISION TO THE APPLICANT.~~

~~(H) THE HEARING SHALL BE HELD IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE WITHIN 60 DAYS AFTER THE HEALTH DEPARTMENT RECEIVES THE REQUEST.~~

~~(I) IF THE APPLICANT REQUESTS A HEARING, THE ADMINISTRATIVE LAW JUDGE SHALL CONDUCT A HEARING AT WHICH THE APPLICANT MAY TESTIFY AND PROVIDE OTHER EVIDENCE.~~

~~(J) AT A HEARING, THE APPLICANT IS REQUIRED TO PROVIDE EVIDENCE THAT:~~

~~(1) THE APPLICANT DOES NOT HAVE SYMPTOMS OF A MENTAL DISORDER THAT WOULD CAUSE THE APPLICANT TO BE A DANGER TO SELF OR OTHERS AND HAS NOT HAD SYMPTOMS OF A MENTAL DISORDER FOR AT LEAST 6 MONTHS;~~

~~(2) THE APPLICANT DOES NOT HAVE A MENTAL DISORDER OR MENTAL HEALTH CONDITION THAT PREVENTS THE APPLICANT FROM UNDERSTANDING THE RULES, REGULATIONS, AND LAWS GOVERNING FIREARM OWNERSHIP AND POSSESSION, OR THE RESPONSIBILITIES AND RISKS INVOLVED IN FIREARM OWNERSHIP AND POSSESSION;~~

~~(3) THE APPLICANT IS NOT LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY;~~

~~(4) GRANTING RELIEF WOULD NOT BE CONTRARY TO PUBLIC INTEREST; AND~~

~~(5) THE APPLICANT IS NOT OTHERWISE PROHIBITED FROM OWNING OR POSSESSING A FIREARM.~~

~~(K) AT A HEARING UNDER THIS SECTION, THE HEALTH DEPARTMENT IS A PARTY AND SHALL PROVIDE EVIDENCE REGARDING:~~

~~(1) THE CIRCUMSTANCES UNDER WHICH THE FIREARMS PROHIBITION WAS IMPOSED UNDER STATE OR FEDERAL LAW; AND~~

~~(2) THE APPLICANT'S RECORD, INCLUDING THE APPLICANT'S MENTAL HEALTH AND CRIMINAL HISTORY RECORDS.~~

~~(L) IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT THE APPLICANT HAS MET, BY CLEAR AND CONVINCING EVIDENCE, THE STANDARDS OF SUBSECTION (J) OF THIS SECTION THE ADMINISTRATIVE LAW JUDGE SHALL:~~

~~(1) ISSUE A WRITTEN DETERMINATION THAT THE APPLICANT IS RELIEVED FROM THE FIREARMS DISQUALIFICATION IMPOSED BY 18 U.S.C. § 922(D)(4) AND (G)(4) AND § 5–133(B)(6), (7), (8), OR (9)~~ (9), (10), OR (11) (11),

~~OR (12) OF THIS SUBTITLE~~ OR § 5–205(B)(6), (7), (8), (9), (10), OR (11) (11), OR (12) OF THIS TITLE; AND

~~(2) PROVIDE TO THE NICS INDEX, THROUGH A SECURE DATA PORTAL APPROVED BY THE DEPARTMENT OF STATE POLICE~~ PUBLIC SAFETY AND CORRECTIONAL SERVICES:

~~(I) THE NAME AND IDENTIFYING INFORMATION OF THE APPLICANT; AND~~

~~(II) THE DATE OF THE DETERMINATION.~~

~~(M) AN APPLICANT OR THE~~ HEALTH ~~DEPARTMENT MAY SEEK JUDICIAL REVIEW OF A DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE ON AN APPLICATION UNDER THIS SECTION FOR RELIEF FROM A FIREARMS PROHIBITION IN ACCORDANCE WITH §§ 10–222 AND 10–223 OF THE STATE GOVERNMENT ARTICLE.~~

~~(N) AFTER A DETERMINATION ON THE MERITS OF A HEARING REQUESTED UNDER THIS SECTION, AN APPLICANT MAY NOT REQUEST A SUBSEQUENT HEARING WITHIN 1 YEAR AFTER THE COMPLETION OF THE HEARING PROCESS AND ANY JUDICIAL REVIEW OF THE ADMINISTRATIVE DECISION.~~

~~(O) THE HEALTH DEPARTMENT SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF STATE POLICE TO ASSIST IN CLINICAL CONSULTATION AND IMPLEMENTATION OF THIS SECTION.~~

5–133.3.

(A) IN THIS SECTION, "HEALTH DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

(B) A PERSON SUBJECT TO A REGULATED FIREARMS DISQUALIFICATION UNDER § 5–133(B)(6), (7), (8), (9), (10), OR (11) OF THIS SUBTITLE, A RIFLE OR SHOTGUN DISQUALIFICATION UNDER § 5–205(B)(6), (7), (8), (9), (10), OR (11) OF THIS TITLE, OR PROHIBITED FROM THE SHIPMENT, TRANSPORTATION, POSSESSION, OR RECEIPT OF A FIREARM BY 18 U.S.C. §§ 922(D)(4) OR (G)(4) AS A RESULT OF AN ADJUDICATION OR COMMITMENT THAT OCCURRED IN THE STATE MAY BE AUTHORIZED TO POSSESS A FIREARM IF:

(1) THE PERSON IS NOT SUBJECT TO ANOTHER FIREARMS RESTRICTION UNDER STATE OR FEDERAL LAW; AND

(2) THE HEALTH DEPARTMENT, IN ACCORDANCE WITH THIS SECTION, DETERMINES THAT THE PERSON MAY POSSESS A FIREARM.

(C) A PERSON WHO SEEKS RELIEF FROM A FIREARMS DISQUALIFICATION SHALL FILE AN APPLICATION WITH THE HEALTH DEPARTMENT IN THE FORM AND MANNER SET BY THE HEALTH DEPARTMENT.

(D) AN APPLICATION FOR RELIEF FROM A FIREARMS DISQUALIFICATION SHALL INCLUDE:

(1) A COMPLETE AND ACCURATE STATEMENT EXPLAINING THE REASON WHY THE APPLICANT IS PROHIBITED FROM POSSESSING A REGULATED FIREARM UNDER § 5–133(B)(6), (7), (8), (9), (10), OR (11) OF THIS SUBTITLE OR A RIFLE OR SHOTGUN UNDER § 5–205(B)(6), (7), (8), (9), (10), OR (11) OF THIS TITLE, OR IS PROHIBITED FROM THE SHIPMENT, TRANSPORTATION, POSSESSION, OR RECEIPT OF A FIREARM BY 18 U.S.C. §§ 922(D)(4) OR (G)(4) AS A RESULT OF AN ADJUDICATION OR COMMITMENT THAT OCCURRED IN THE STATE;

(2) A STATEMENT WHY THE APPLICANT SHOULD BE RELIEVED FROM THE PROHIBITION DESCRIBED IN ITEM (1) OF THIS SUBSECTION;

(3) IF THE APPLICANT IS SUBJECT TO A PROHIBITION DESCRIBED IN ITEM (1) OF THIS SUBSECTION, A CERTIFICATE ISSUED WITHIN 30 DAYS OF THE SUBMISSION OF THE APPLICATION ON A FORM APPROVED BY THE HEALTH DEPARTMENT AND SIGNED BY AN INDIVIDUAL LICENSED IN THE STATE AS A PHYSICIAN WHO IS BOARD CERTIFIED IN PSYCHIATRY OR AS A PSYCHOLOGIST STATING:

(I) THE LENGTH OF TIME THAT THE APPLICANT HAS NOT HAD SYMPTOMS THAT CAUSE THE APPLICANT TO BE A DANGER TO THE APPLICANT OR OTHERS, OR, IF THE DISQUALIFICATION RELATES TO AN INTELLECTUAL DISABILITY, THE LENGTH OF TIME THAT THE APPLICANT HAS NOT ENGAGED IN BEHAVIORS THAT CAUSE THE APPLICANT TO BE A DANGER TO THE APPLICANT OR OTHERS;

(II) THE LENGTH OF TIME THAT THE APPLICANT HAS BEEN COMPLIANT WITH THE TREATMENT PLAN FOR THE APPLICANT'S MENTAL ILLNESS, OR, IF THE DISQUALIFICATION RELATES TO AN INTELLECTUAL DISABILITY, THE LENGTH OF TIME THAT THE APPLICANT HAS BEEN COMPLIANT WITH ANY BEHAVIOR PLAN OR BEHAVIOR MANAGEMENT PLAN;

(III) AN OPINION AS TO WHETHER THE APPLICANT, BECAUSE OF MENTAL ILLNESS, WOULD BE A DANGER TO THE APPLICANT IF ALLOWED TO POSSESS A FIREARM AND A STATEMENT OF REASONS FOR THE OPINION; AND

(IV) AN OPINION AS TO WHETHER THE APPLICANT, BECAUSE OF MENTAL ILLNESS, WOULD BE A DANGER TO ANOTHER PERSON OR POSES A RISK TO PUBLIC SAFETY IF ALLOWED TO POSSESS A FIREARM;

(4) IF THE APPLICANT IS PROHIBITED FROM POSSESSING A FIREARM UNDER § 5–133(B)(11) OF THIS SUBTITLE OR § 5–205(B)(11) OF THIS TITLE:

(I) A COPY OF ALL PLEADINGS, AFFIDAVITS, AND CERTIFICATES SUBMITTED INTO EVIDENCE AT THE GUARDIANSHIP PROCEEDING; AND

(II) ALL ORDERS ISSUED BY THE COURT RELATING TO THE GUARDIANSHIP, INCLUDING, IF APPLICABLE, AN ORDER INDICATING THAT THE GUARDIANSHIP IS NO LONGER IN EFFECT;

(5) A SIGNED AUTHORIZATION, ON A FORM APPROVED BY THE HEALTH DEPARTMENT, ALLOWING THE HEALTH DEPARTMENT TO ACCESS ANY RELEVANT HEALTH CARE, MENTAL HEALTH, DISABILITY, GUARDIANSHIP, AND CRIMINAL JUSTICE RECORDS, INCLUDING COURT ORDERED OR REQUIRED MENTAL HEALTH RECORDS, OF THE APPLICANT FOR USE IN DETERMINING WHETHER THE APPLICANT SHOULD BE RELIEVED FROM A FIREARMS DISQUALIFICATION;

(6) THREE STATEMENTS SIGNED AND DATED WITHIN 30 DAYS OF SUBMISSION TO THE HEALTH DEPARTMENT ON A FORM DESIGNATED BY THE HEALTH DEPARTMENT ATTESTING TO THE APPLICANT'S REPUTATION AND CHARACTER RELEVANT TO FIREARM OWNERSHIP OR POSSESSION INCLUDING:

(I) AT LEAST TWO STATEMENTS PROVIDED BY AN INDIVIDUAL WHO IS NOT RELATED TO THE APPLICANT; AND

(II) CONTACT INFORMATION FOR EACH INDIVIDUAL PROVIDING A STATEMENT; AND

(7) ANY OTHER INFORMATION REQUIRED BY THE HEALTH DEPARTMENT.

(E) THE HEALTH DEPARTMENT MAY NOT APPROVE AN APPLICATION UNDER THIS SECTION IF A DETERMINATION IS MADE THAT:

(1) THE APPLICANT SUPPLIED INCOMPLETE OR FALSE INFORMATION OR MADE A FALSE STATEMENT;

(2) THE APPLICATION IS NOT PROPERLY COMPLETED; OR

(3) ON REVIEW OF THE APPLICATION AND SUPPORTING DOCUMENTATION AND ANY OTHER INFORMATION RELATING TO THE APPLICATION REQUESTED BY THE HEALTH DEPARTMENT, INCLUDING ANY CRIMINAL HISTORY RECORDS AND MENTAL HEALTH RECORDS OF THE APPLICANT, THE APPLICANT HAS NOT SHOWN BY A PREPONDERANCE OF THE EVIDENCE THAT THE APPLICANT WILL BE UNLIKELY TO ACT IN A MANNER DANGEROUS TO THE APPLICANT OR TO PUBLIC SAFETY AND THAT GRANTING A LICENSE TO POSSESS A REGULATED FIREARM OR AUTHORIZING THE POSSESSION OF A RIFLE OR SHOTGUN WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST.

(F) (1) IF THE HEALTH DEPARTMENT DETERMINES THAT THE APPLICATION SHALL BE APPROVED, THE HEALTH DEPARTMENT SHALL PROVIDE THE APPLICANT WITH A CERTIFICATE AFFIRMING THE APPLICANT'S MENTAL COMPETENCE TO POSSESS A FIREARM.

(2) A CERTIFICATE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION OR A WRITTEN STATEMENT THAT THE INDIVIDUAL IS NOT MENTALLY COMPETENT TO POSSESS A FIREARM SHALL BE PROVIDED TO THE APPLICANT WITHIN 60 DAYS FROM THE HEALTH DEPARTMENT'S RECEIPT OF A COMPLETED APPLICATION, WHICH INCLUDES ANY RECORDS NECESSARY TO REVIEW AN APPLICATION.

(3) A CERTIFICATE ISSUED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE PRESENTED TO THE DEPARTMENT OF STATE POLICE AS EVIDENCE OF THE APPLICANT'S ELIGIBILITY TO POSSESS A FIREARM.

(G) (1) AN APPLICANT WHO IS AGGRIEVED BY THE ACTION OF THE HEALTH DEPARTMENT UNDER SUBSECTION (E) OF THIS SECTION MAY REQUEST A HEARING IN WRITING TO THE SECRETARY OF HEALTH AND MENTAL HYGIENE WITHIN 30 DAYS AFTER THE HEALTH DEPARTMENT MAILS NOTICE OF THE DECISION TO THE APPLICANT.

(2) (I) THE HEARING REQUESTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE HELD IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE WITHIN 60 DAYS AFTER THE HEALTH DEPARTMENT RECEIVES THE REQUEST.

(II) AT THE HEARING, THE INFORMATION DESCRIBED IN SUBSECTIONS (D) AND (E) OF THIS SECTION SHALL BE CONSIDERED AND USED TO DETERMINE WHETHER THE APPLICANT, IF ALLOWED TO POSSESS A FIREARM, WOULD NOT BE LIKELY TO ACT IN A MANNER DANGEROUS TO THE PUBLIC SAFETY AND WHETHER GRANTING THE RELIEF WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST.

(3) (I) JUDICIAL REVIEW OF THE DETERMINATION ON AN APPLICATION UNDER THIS SECTION FOR RELIEF FROM A FIREARMS PROHIBITION MAY BE SOUGHT IN ACCORDANCE WITH §§ 10–222 AND 10–223 OF THE STATE GOVERNMENT ARTICLE.

(II) NOTWITHSTANDING THE PROVISIONS OF § 10–222 OF THE STATE GOVERNMENT ARTICLE, THE CIRCUIT COURT MAY GIVE DEFERENCE TO THE FINAL DECISION OF THE HEALTH DEPARTMENT AND MAY IN ITS DISCRETION RECEIVE ADDITIONAL EVIDENCE THAT IT DETERMINES TO BE NECESSARY TO CONDUCT AN ADEQUATE REVIEW.

(H) THE BOARD OF REVIEW OF THE HEALTH DEPARTMENT DOES NOT HAVE JURISDICTION TO REVIEW A FINAL DECISION OF THE HEALTH DEPARTMENT UNDER THIS SECTION.

(I) AFTER A DETERMINATION ON THE MERITS OF A HEARING REQUESTED UNDER THIS SECTION, AN APPLICANT MAY NOT REQUEST A SUBSEQUENT HEARING WITHIN 1 YEAR AFTER THE COMPLETION OF THE HEARING PROCESS AND ANY JUDICIAL REVIEW OF THE ADMINISTRATIVE DECISION.

(J) THE SECRETARY OF HEALTH AND MENTAL HYGIENE MAY ADOPT REGULATIONS ESTABLISHING FEES TO COVER THE ADMINISTRATIVE COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS SECTION.

(K) AN INDIVIDUAL LICENSED IN THE STATE AS A PHYSICIAN WHO IS BOARD CERTIFIED IN PSYCHIATRY, OR A PSYCHOLOGIST WHO, IN GOOD FAITH AND WITH REASONABLE GROUNDS, ACTS IN COMPLIANCE WITH THIS SECTION, MAY NOT BE HELD CIVILLY OR CRIMINALLY LIABLE FOR ACTIONS AUTHORIZED BY THIS SECTION.

5–143.

(A) (1) A PERSON WHO MOVES INTO THE STATE WITH THE INTENT OF BECOMING A RESIDENT SHALL REGISTER ALL REGULATED FIREARMS WITH THE SECRETARY WITHIN ~~30~~ *90* DAYS AFTER ESTABLISHING RESIDENCY.

(2) THE SECRETARY SHALL PREPARE AND, ON REQUEST OF AN APPLICANT, PROVIDE AN APPLICATION FORM FOR REGISTRATION UNDER THIS SECTION.

(B) AN APPLICATION FOR REGISTRATION UNDER THIS SECTION SHALL CONTAIN:

(1) THE MAKE, MODEL, MANUFACTURER'S SERIAL NUMBER, CALIBER, TYPE, BARREL LENGTH, FINISH, AND COUNTRY OF ORIGIN OF ~~THE~~ *EACH* REGULATED FIREARM; AND

(2) THE FIREARM APPLICANT'S NAME, ADDRESS, SOCIAL SECURITY NUMBER, PLACE AND DATE OF BIRTH, HEIGHT, WEIGHT, RACE, EYE AND HAIR COLOR, SIGNATURE, DRIVER'S OR PHOTOGRAPHIC IDENTIFICATION SOUNDEX NUMBER, AND OCCUPATION.

(C) ~~EACH~~ *AN* APPLICATION FOR REGISTRATION FILED WITH THE SECRETARY OF STATE POLICE SHALL BE ACCOMPANIED BY A NONREFUNDABLE *TOTAL* REGISTRATION FEE OF $15*, REGARDLESS OF THE NUMBER OF FIREARMS REGISTERED*.

(D) REGISTRATION DATA PROVIDED UNDER THIS SECTION IS NOT OPEN TO PUBLIC INSPECTION.

[5–143.**] 5–144.**

(a) Except as otherwise provided in this subtitle, a dealer or other person may not:

(1) knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm in violation of this subtitle; or

(2) knowingly violate § 5–142 of this subtitle.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $10,000 or both.

(c) Each violation of this section is a separate crime.

5–145.

(A) (1) A LICENSED DEALER SHALL KEEP RECORDS OF ALL RECEIPTS, SALES, AND OTHER DISPOSITIONS OF FIREARMS AFFECTED IN CONNECTION WITH THE LICENSED DEALER'S BUSINESS.

(2) THE SECRETARY SHALL ADOPT REGULATIONS SPECIFYING:

(I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE INFORMATION THAT THE RECORDS SHALL CONTAIN;

(II) THE TIME PERIOD FOR WHICH THE RECORDS ARE TO BE KEPT; AND

(III) THE FORM IN WHICH THE RECORDS ARE TO BE KEPT.

(3) THE RECORDS SHALL INCLUDE:

(I) THE NAME AND ADDRESS OF EACH PERSON FROM WHOM THE DEALER ACQUIRES A FIREARM AND TO WHOM THE DEALER SELLS OR OTHERWISE DISPOSES OF A FIREARM;

(II) A PRECISE DESCRIPTION, INCLUDING MAKE, MODEL, CALIBER, AND SERIAL NUMBER OF EACH FIREARM ACQUIRED, SOLD, OR OTHERWISE DISPOSED OF; AND

(III) THE DATE OF EACH ACQUISITION, SALE, OR OTHER DISPOSITION.

(4) ~~THE SECRETARY MAY PROVIDE THAT RECORDS~~ *RECORDS* MAINTAINED UNDER 18 U.S.C. § 923(G)(1)(A) MAY BE USED TO SATISFY THE REQUIREMENTS OF THIS SECTION, *IF THE SECRETARY IS GRANTED ACCESS TO THOSE RECORDS*.

(B) (1) WHEN REQUIRED BY A LETTER ISSUED BY THE SECRETARY, A LICENSEE SHALL SUBMIT TO THE SECRETARY THE INFORMATION REQUIRED TO BE KEPT UNDER SUBSECTION (A) OF THIS SECTION FOR THE TIME PERIODS SPECIFIED BY THE SECRETARY.

(2) THE SECRETARY SHALL DETERMINE THE FORM AND METHOD BY WHICH THE RECORDS SHALL BE MAINTAINED.

(C) WHEN A FIREARMS BUSINESS IS DISCONTINUED AND SUCCEEDED BY A NEW LICENSEE, THE RECORDS REQUIRED TO BE KEPT UNDER THIS SECTION SHALL REFLECT THE BUSINESS DISCONTINUANCE AND SUCCESSION AND SHALL BE DELIVERED TO THE SUCCESSOR LICENSEE.

(D) (1) A LICENSEE SHALL RESPOND WITHIN 48 HOURS AFTER RECEIPT OF A REQUEST FROM THE SECRETARY FOR INFORMATION CONTAINED IN THE RECORDS REQUIRED TO BE KEPT UNDER THIS SECTION WHEN THE INFORMATION IS REQUESTED IN CONNECTION WITH A BONA FIDE CRIMINAL INVESTIGATION.

(2) THE INFORMATION REQUESTED UNDER THIS SUBSECTION SHALL BE PROVIDED ORALLY OR IN WRITING, AS REQUIRED BY THE SECRETARY.

(3) THE SECRETARY MAY IMPLEMENT A SYSTEM BY WHICH A LICENSEE CAN POSITIVELY ESTABLISH THAT A PERSON REQUESTING INFORMATION BY TELEPHONE IS AUTHORIZED BY THE SECRETARY TO REQUEST THE INFORMATION.

(E) THE SECRETARY MAY MAKE AVAILABLE TO A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY ANY INFORMATION THAT THE SECRETARY OBTAINS UNDER THIS SECTION RELATING TO THE IDENTITIES OF PERSONS WHO HAVE UNLAWFULLY PURCHASED OR RECEIVED FIREARMS.

(F) THE SECRETARY:

(1) SHALL INSPECT THE INVENTORY AND RECORDS OF A LICENSED DEALER AT LEAST ONCE EVERY 2 YEARS; AND

(2) MAY INSPECT THE INVENTORY AND RECORDS AT ANY TIME DURING THE NORMAL BUSINESS HOURS OF THE LICENSED DEALER'S BUSINESS.

(G) (1) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $1,000 IMPOSED BY THE SECRETARY.

(2) FOR A SECOND OR SUBSEQUENT OFFENSE, A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING $10,000 OR BOTH.

(3) THE PENALTIES PROVIDED IN THIS SUBSECTION ARE NOT INTENDED TO APPLY TO INCONSEQUENTIAL OR INADVERTENT ERRORS.

5–146.

(A) A DEALER OR ANY OTHER PERSON WHO SELLS OR TRANSFERS A REGULATED FIREARM SHALL NOTIFY THE PURCHASER OR RECIPIENT OF THE REGULATED FIREARM AT THE TIME OF PURCHASE OR TRANSFER THAT THE PURCHASER OR RECIPIENT IS REQUIRED TO REPORT A LOST OR STOLEN REGULATED FIREARM TO THE LOCAL LAW ENFORCEMENT AGENCY AS REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.

(B) IF A REGULATED FIREARM IS LOST OR STOLEN, THE OWNER OF THE REGULATED FIREARM SHALL REPORT THE LOSS OR THEFT TO THE LOCAL LAW ENFORCEMENT AGENCY WITHIN 72 HOURS AFTER THE OWNER FIRST DISCOVERS THE LOSS OR THEFT.

(C) ON RECEIPT OF A REPORT OF A LOST OR STOLEN REGULATED FIREARM, A LOCAL LAW ENFORCEMENT AGENCY SHALL REPORT TO THE SECRETARY AND ENTER INTO THE NATIONAL CRIME INFORMATION CENTER (NCIC) DATABASE, TO THE EXTENT KNOWN, THE CALIBER, MAKE, MODEL, MANUFACTURER, AND SERIAL NUMBER OF THE REGULATED FIREARM AND ANY OTHER DISTINGUISHING NUMBER OR IDENTIFICATION MARK ON THE REGULATED FIREARM.

(D) (1) A KNOWING AND WILLFUL FIRST–TIME VIOLATION OF THIS SECTION IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING $500.

(2) A PERSON WHO KNOWINGLY AND WILLFULLY VIOLATES THIS SECTION FOR A SECOND OR SUBSEQUENT TIME IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING $500 OR BOTH.

(E) THE IMPOSITION OF A CIVIL OR CRIMINAL PENALTY UNDER THIS SECTION DOES NOT PRECLUDE THE PURSUIT OF ANY OTHER CIVIL REMEDY OR CRIMINAL PROSECUTION AUTHORIZED BY LAW.

5–205.

(A) THIS SUBTITLE DOES NOT APPLY TO A RIFLE OR SHOTGUN THAT IS AN ANTIQUE FIREARM AS DEFINED IN § 4–201 OF THE CRIMINAL LAW ARTICLE.

(B) A PERSON MAY NOT POSSESS A RIFLE OR SHOTGUN IF THE PERSON:

(1) HAS BEEN CONVICTED OF A DISQUALIFYING CRIME AS DEFINED IN § 5–101 OF THIS TITLE;

(2) HAS BEEN CONVICTED OF A VIOLATION CLASSIFIED AS A CRIME UNDER COMMON LAW AND RECEIVED A TERM OF IMPRISONMENT OF MORE THAN 2 YEARS;

(3) IS A FUGITIVE FROM JUSTICE;

(4) IS A HABITUAL DRUNKARD AS DEFINED IN § 5–101 OF THIS TITLE;

(5) IS ADDICTED TO A CONTROLLED DANGEROUS SUBSTANCE OR IS A HABITUAL USER AS DEFINED IN § 5–101 OF THIS TITLE;

(6) SUFFERS FROM A MENTAL DISORDER AS DEFINED IN § 10–101(F)(2) OF THE HEALTH – GENERAL ARTICLE AND HAS A HISTORY OF VIOLENT BEHAVIOR AGAINST THE PERSON OR ANOTHER~~, UNLESS THE PERSON HAS A PHYSICIAN'S CERTIFICATE THAT THE PERSON IS CAPABLE OF POSSESSING A REGULATED FIREARM WITHOUT UNDUE DANGER TO THE PERSON OR TO ANOTHER~~;

(7) HAS BEEN FOUND INCOMPETENT TO STAND TRIAL UNDER § 3–106 OF THE CRIMINAL PROCEDURE ARTICLE;

(8) HAS BEEN FOUND NOT CRIMINALLY RESPONSIBLE UNDER § 3–110 OF THE CRIMINAL PROCEDURE ARTICLE;

(9) ~~HAS BEEN BEFORE OCTOBER 1, 2013, WAS~~ *HAS BEEN* VOLUNTARILY ADMITTED FOR MORE THAN 30 CONSECUTIVE DAYS TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE;

~~(10) HAS BEEN ADMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE AS THE RESULT OF AN EMERGENCY EVALUATION UNDER § 10–622 OF THE HEALTH – GENERAL ARTICLE, UNLESS THE PERSON HAS A CERTIFICATE FROM THE FACILITY THAT THE PERSON IS CAPABLE OF POSSESSING A REGULATED FIREARM WITHOUT UNDUE DANGER TO THE PERSON OR TO ANOTHER;~~

~~(10)~~ ~~(11)~~ *(10)* HAS BEEN INVOLUNTARILY COMMITTED TO A FACILITY AS DEFINED IN § 10–101 OF THE HEALTH – GENERAL ARTICLE;

~~(11)~~ ~~(12)~~ *(11)* IS UNDER THE PROTECTION OF A GUARDIAN APPOINTED BY A COURT UNDER § 13–201(C) OR § 13–705 OF THE ESTATES AND TRUSTS ARTICLE, *EXCEPT FOR CASES IN WHICH THE APPOINTMENT OF A GUARDIAN IS SOLELY A RESULT OF A PHYSICAL DISABILITY*;

~~(6)~~ ~~(12)~~ ~~(13)~~ *(12)* **EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, IS A RESPONDENT AGAINST WHOM:**

(I) A CURRENT NON EX PARTE CIVIL PROTECTIVE ORDER HAS BEEN ENTERED UNDER § 4–506 OF THE FAMILY LAW ARTICLE; OR

(II) AN ORDER FOR PROTECTION, AS DEFINED IN § 4–508.1 OF THE FAMILY LAW ARTICLE, HAS BEEN ISSUED BY A COURT OF ANOTHER STATE OR A NATIVE AMERICAN TRIBE AND IS IN EFFECT; OR

~~(7)~~ ~~(13)~~ ~~(14)~~ *(13)* **IF UNDER THE AGE OF 30 YEARS AT THE TIME OF POSSESSION, HAS BEEN ADJUDICATED DELINQUENT BY A JUVENILE COURT FOR AN ACT THAT WOULD BE A DISQUALIFYING CRIME IF COMMITTED BY AN ADULT.**

~~[~~(a)~~] (C)~~ ~~Unless the person possesses a physician's certificate that the person is capable of possessing a rifle or shotgun without undue danger to the person or to another, a person may not possess a rifle or shotgun if the person:~~

~~(1) suffers from a mental disorder as defined in § 10–101(f)(2) of the Health – General Article and has a history of violent behavior against the person or another; or~~

~~(2) has been confined for more than 30 consecutive days in a facility as defined in § 10–101 of the Health – General Article.~~

~~(D)~~ **(C) THIS SECTION DOES NOT APPLY TO A PERSON TRANSPORTING A RIFLE OR SHOTGUN IF THE PERSON IS CARRYING A CIVIL PROTECTIVE ORDER REQUIRING THE SURRENDER OF THE RIFLE OR SHOTGUN AND:**

(1) THE RIFLE OR SHOTGUN IS UNLOADED;

(2) THE PERSON HAS NOTIFIED THE LAW ENFORCEMENT UNIT, BARRACKS, OR STATION THAT THE RIFLE OR SHOTGUN IS BEING TRANSPORTED IN ACCORDANCE WITH THE CIVIL PROTECTIVE ORDER; AND

(3) THE PERSON TRANSPORTS THE RIFLE OR SHOTGUN DIRECTLY TO THE LAW ENFORCEMENT UNIT, BARRACKS, OR STATION.

[(b)**]** ~~(E)~~ **(D)** A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $1,000 or both.

(E) A PERSON WHO IS DISQUALIFIED FROM OWNING A RIFLE OR SHOTGUN UNDER SUBSECTION (B)(6), (7), (8), (9), (10), OR (11) OF THIS

SECTION MAY SEEK RELIEF FROM THE DISQUALIFICATION IN ACCORDANCE WITH § 5–133.3 OF THIS TITLE.

5–206.

(a) A person may not possess a rifle or shotgun if the person was previously convicted of:

(1) a crime of violence **AS DEFINED IN § 5–101 OF THIS TITLE**;

(2) a violation of § 5–602, § 5–603, § 5–604, § 5–605, § 5–612, § 5–613, or § 5–614 of the Criminal Law Article; or

(3) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (1) or (2) of this subsection if committed in this State.

(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years.

(c) Each violation of this subsection is a separate crime.

5–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Handgun Permit Review Board.

(c) "Handgun" has the meaning stated in § 4–201 of the Criminal Law Article.

(d) "Permit" means a permit issued by the Secretary to carry, wear, or transport a handgun.

(E) "QUALIFIED HANDGUN INSTRUCTOR" HAS THE MEANING STATED IN § 5–101 OF THIS TITLE.

[(e)**] (F)** "Secretary" means the Secretary of State Police or the Secretary's designee.

5–306.

(a) Subject to subsection **[**(b)**] (C)** of this section, the Secretary shall issue a permit within a reasonable time to a person who the Secretary finds:

(1) is an adult;

(2) (i) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than 1 year has been imposed; or

(ii) if convicted of a crime described in item (i) of this item, has been pardoned or has been granted relief under 18 U.S.C. § 925(c);

(3) has not been convicted of a crime involving the possession, use, or distribution of a controlled dangerous substance;

(4) is not presently an alcoholic, addict, or habitual user of a controlled dangerous substance unless the habitual use of the controlled dangerous substance is under legitimate medical direction; **[**and**]**

(5) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, HAS SUCCESSFULLY COMPLETED PRIOR TO APPLICATION AND EACH RENEWAL, A FIREARMS TRAINING COURSE APPROVED BY THE SECRETARY THAT INCLUDES:

(I) 1. FOR AN INITIAL APPLICATION, A MINIMUM OF 16 HOURS OF INSTRUCTION BY A QUALIFIED HANDGUN INSTRUCTOR; OR

2. FOR A RENEWAL APPLICATION, 8 HOURS OF INSTRUCTION BY A QUALIFIED HANDGUN INSTRUCTOR;

(II) CLASSROOM INSTRUCTION ON:

1. STATE FIREARM LAW;

2. HOME FIREARM SAFETY; AND

3. HANDGUN MECHANISMS AND OPERATION; AND

(III) A FIREARMS QUALIFICATION COMPONENT THAT DEMONSTRATES THE APPLICANT'S PROFICIENCY AND USE OF THE FIREARM; AND

[(5)**] (6)** based on an investigation:

(i) has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another; and

(ii) has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.

(B) AN APPLICANT FOR A PERMIT IS NOT REQUIRED TO COMPLETE A CERTIFIED FIREARMS TRAINING COURSE UNDER SUBSECTION (A) OF THIS SECTION IF THE APPLICANT:

(1) IS A LAW ENFORCEMENT OFFICER OR A PERSON WHO IS RETIRED IN GOOD STANDING FROM SERVICE WITH A LAW ENFORCEMENT AGENCY OF THE UNITED STATES, THE STATE, OR ANY LOCAL LAW ENFORCEMENT AGENCY IN THE STATE;

(2) IS A MEMBER ~~OR~~, RETIRED MEMBER, OR HONORABLY DISCHARGED MEMBER OF THE ARMED FORCES OF THE UNITED STATES OR THE NATIONAL GUARD~~; OR~~;

(3) IS ~~CURRENTLY A CERTIFIED FIREARMS INSTRUCTOR WHO:~~

~~(I) IS RECOGNIZED BY THE MARYLAND POLICE AND CORRECTIONAL TRAINING COMMISSIONS;~~

~~(II) HAS A QUALIFIED HANDGUN INSTRUCTOR LICENSE ISSUED BY THE SECRETARY; OR~~

~~(III) HAS A CERTIFICATION ISSUED AND RECOGNIZED BY A NATIONAL ORGANIZATION~~ *A QUALIFIED HANDGUN INSTRUCTOR*; OR

~~(3)~~ (4) HAS COMPLETED A FIREARMS TRAINING COURSE APPROVED BY THE SECRETARY.

[(b)**]** **(C)** An applicant under the age of 30 years is qualified only if the Secretary finds that the applicant has not been:

(1) committed to a detention, training, or correctional institution for juveniles for longer than 1 year after an adjudication of delinquency by a juvenile court; or

(2) adjudicated delinquent by a juvenile court for:

(i) an act that would be a crime of violence if committed by an adult;

(ii) an act that would be a felony in this State if committed by an adult; or

(iii) an act that would be a misdemeanor in this State that carries a statutory penalty of more than 2 years if committed by an adult.

(D) THE SECRETARY MAY ISSUE A HANDGUN QUALIFICATION LICENSE, WITHOUT AN ADDITIONAL APPLICATION OR FEE, TO A PERSON WHO:

(1) MEETS THE REQUIREMENTS FOR ISSUANCE OF A PERMIT UNDER THIS SECTION; AND

(2) DOES NOT HAVE A HANDGUN QUALIFICATION LICENSE ISSUED UNDER § 5–117.1 OF THIS TITLE.

Article – State Government

10–616.

(a) Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

(V) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A CUSTODIAN SHALL DENY INSPECTION OF ALL RECORDS OF A PERSON AUTHORIZED TO:

(I) SELL, PURCHASE, RENT, OR TRANSFER A REGULATED FIREARM UNDER TITLE 5, SUBTITLE 1 OF THE PUBLIC SAFETY ARTICLE; OR

(II) CARRY, WEAR, OR TRANSPORT A HANDGUN UNDER TITLE 5, SUBTITLE 3 OF THE PUBLIC SAFETY ARTICLE.

(2) A CUSTODIAN SHALL ALLOW INSPECTION OF FIREARM OR HANDGUN RECORDS BY:

(I) THE INDIVIDUAL NAMED IN THE RECORD; OR

(II) THE ATTORNEY OF RECORD OF THE INDIVIDUAL NAMED IN THE RECORD.

(3) THE PROVISIONS OF THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT THE DEPARTMENT OF STATE POLICE OR THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES FROM ACCESSING FIREARM OR HANDGUN RECORDS IN THE PERFORMANCE OF THAT DEPARTMENT'S OFFICIAL DUTY.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013:

(a) The Department of State Police shall investigate illegal transfers, possession, and transport of firearms within the State, including the number and types of firearms seized by the Department of State Police and the best information available as to the source of the seized firearms.

(b) On or before December 31, 2015, the Department of State Police shall report its findings to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013. *Section 2 of this Act shall remain effective for a period of 3 years and, at the end of September 30, 2016, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.*

Approved by the Governor, May 16, 2013.

FIREARMS

REGULATED FIREARMS – ASSAULT WEAPONS – WHETHER A WEAPON IS A "COPY" OF A DESIGNATED ASSAULT WEAPON AND THEREFORE SUBJECT TO THE REGULATED FIREARMS LAW

May 24, 2010

Colonel Terrence B. Sheridan
Superintendent, Maryland State Police

You have asked for an interpretation of the part of Maryland's regulated firearms law that describes the weapons covered by that law. The statutory definition of "regulated firearm" specifies a list of designated assault weapons "or their copies." You have asked for our opinion on the meaning of the word "copies" in that context.

In our opinion, to come within the definition of "regulated firearm," a copy of a designated assault weapon must be similar in its internal components and function to the designated weapon. Cosmetic similarity to an enumerated assault weapon alone would not bring a weapon within the regulated firearms law.

I

Assault Weapons as "Regulated Firearms"

The State's regulated firearms law governs the possession, sale, and transfer of certain weapons. Annotated Code of Maryland, Public Safety Article ("PS"), §5-101 *et seq*. Under that law, for example, an individual may be disqualified from obtaining a regulated firearm for various reasons – *e.g.,* conviction of certain crimes. *See* PS §5-134. Accordingly, an individual seeking to purchase, rent, or transfer a regulated firearm must submit an application for review and approval of the transaction by the Department of State Police. PS §5-117 *et seq*.

The statute defines "regulated firearm" to include two categories of firearms. The first category is handguns. PS §5-101(p)(1). The second category consists of "a firearm that is any of

the following specific assault weapons *or their copies, regardless of which company produced and manufactured that assault weapon*..." PS §5-101(p)(2) (emphasis added). The statute then identifies specific assault weapons, listed by manufacturer and model. *Id.*[1]

[1] The statute lists the following assault weapons:

(i) American Arms Spectre da Semiautomatic carbine;
(ii) AK-47 in all forms;
(iii) Algimec AGM-1 type semi-auto;
(iv) AR 100 type semi-auto;
(v) AR 180 type semi-auto;
(vi) Argentine L.S.R. semi-auto;
(vii) Australian Automatic Arms SAR type semi-auto;
(viii) Auto-Ordnance Thompson M1 and 1927 semi-automatics;
(ix) Barrett light .50 cal. semi-auto;
(x) Beretta AR70 type semi-auto;
(xi) Bushmaster semi-auto rifle;
(xii) Calico models M-100 and M-900;
(xiii) CIS SR 88 type semi-auto;
(xiv) Claridge HI TEC C-9 carbines;
(xv) Colt AR-15, CAR-15, and all imitations except Colt AR-15 Sporter H-BAR rifle;
(xvi) Daewoo MAX 1 and MAX 2, aka AR 100, 110C, K-1, and K-2;
(xvii) Dragunov Chinese made semi-auto;
(xviii) Famas semi-auto (.223 caliber);
(xix) Feather AT-9 semi-auto;
(xx) FN LAR and FN FAL assault rifle;
(xxi) FNC semi-auto type carbine;
(xxii) F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun;
(xxiii) Steyr-AUG-SA semi-auto;
(xxiv) Galil models AR and ARM semi-auto;
(xxv) Heckler and Koch HK-91 A3, HK-93 A2, HK-94 A2 and A3;
(xxvi) Holmes model 88 shotgun;
(xxvii) Avtomat Kalashnikov semiautomatic rifle in any format;
(xxviii) Manchester Arms "Commando" MK-45, MK-9;
(xxix) Mandell TAC-1 semi-auto carbine;
(xxx) Mossberg model 500 Bullpup assault shotgun;

(continued...)

The statute does not further define the word "copies" in this context.

II

Analysis

You have asked for an interpretation of the regulated firearms statute. The goal of statutory construction is to discern and carry out the intention of the Legislature. *See, e.g.*, *Dutta v. State Farm Ins. Co.*, 363 Md. 540, 549-50, 769 A.2d 948 (2001). While legislative intent is generally derived from the words of the statute, "external manifestations" or "persuasive evidence," including amendments that occurred as a bill passed through the Legislature, the bill's relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goals, may be considered. *Id*.

A. Statutory Language

As indicated above, the statute defines "regulated firearm" to encompass a list of specific firearms, "or their copies, regardless of which company produced and manufactured that assault weapon." You state that there has been disagreement about whether a copy in

---

[1] (...continued)

(xxxi)	Sterling Mark 6;
(xxxii)	P.A.W.S. carbine;
(xxxiii)	Ruger mini-14 folding stock model (.223 caliber);
(xxxiv)	SIG 550/551 assault rifle (.223 caliber);
(xxxv)	SKS with detachable magazine;
(xxxvi)	AP-74 Commando type semi-auto;
(xxxvii)	Springfield Armory BM-59, SAR-48, G3, SAR-3, -21 sniper rifle, M1A, excluding the M1 Garand;
(xxxviii)	Street sweeper assault type shotgun;
(xxxix)	Striker 12 assault shotgun in all formats;
(xl)	Unique F11 semi-auto type;
(xli)	Daewoo USAS 12 semi-auto shotgun;
(xlii)	UZI 9mm carbine or rifle;
(xliii)	Valmet M-76 and M-78 semi-auto;
(xliv)	Weaver Arms "Nighthawk" semi-auto carbine; or
(xlv)	Wilkinson Arms 9mm semi-auto "Terry."

this context would mean a firearm with internal functions and mechanisms similar to an enumerated firearm or would extend to a firearm that is simply similar in appearance to one of the enumerated weapons.

Other than to indicate that there is no special limitation as to the maker of a copy, the definition of "regulated firearm" does not resolve this debate. Nor does the statute expressly define "copies." A common dictionary definition states that a "copy" is "a reproduction or imitation of an original." Webster's II New College Dictionary (1995) at p. 249; *see also* <http://dictionary.reference.com/browse/copy>. What must be reproduced or imitated to create a "copy" in this context? Other parts of the statute offer some clues.

The statute defines "firearm" to mean, among other things, "the frame or receiver" of a weapon that "expels ... a projectile by the action of an explosive." PS §5-101(h)(1)(ii). This suggests that the Legislature deemed the frame or receiver[2] as a distinctive component of a firearm. Presumably, a "copy" of a firearm would incorporate a reproduction or imitation of the frame or receiver of that firearm. Thus, an analysis of whether the frame or receiver of a given firearm are similar to the frame or receiver of an enumerated firearm would appear to be one criterion that could be considered in determining whether a firearm is a "copy" of an assault weapon.

The list of assault weapons in the statute that would be the subject of any "copy" suggests that cosmetic similarity alone would not suffice. For example, three of the firearms listed in PS 5-101(p)(2)[3] are described by specific calibers. The specification of

---

[2] The State firearms law does not define "frame or receiver." Federal law, which contains a similar definition of "firearm," defines "frame or receiver" as "[t]hat part of a firearm which provides housing for the hammer, bolt or breechlock, and firing mechanism, and which is usually threaded at its forward position to receive the barrel." 27 CFR §478.11.

[3] *See* PS §5-101(p)(2)(xviii) (Famas semi-auto (.223 caliber)); PS §5-101(p)(2)(xxxiii) (Ruger mini-14 folding stock model (.223 caliber)); and PS §5-101(p)(2)(xxxiv) (SIG 550/551 assault rifle (.223 caliber)).

the caliber indicates that an otherwise identical weapon of a different caliber would not be a regulated firearm.[4]

These textual clues indicate that it is not merely the appearance of a weapon, but its internal components and function, that determine whether the weapon is a copy of a listed weapon. Ultimately, that determination must be guided by the legislative purpose in regulating copies. We turn to the legislative history of the regulated firearms law for a fuller understanding of why the General Assembly included "copies" in this definition.

B. Legislative History of Definition of "Assault Weapon"

The reference to "copies" originally entered the firearms law as part of a definition of "assault weapon" in a statute regulating assault weapons. That definition was later consolidated with a reference to handguns to create the current definition of "regulated firearm."

Definition and Regulation of "Assault Weapons"

The precursor of PS §5-101(p) was enacted in 1989 as part of the original legislation regulating assault weapons. In that year, bills were introduced to prohibit the sale, transfer, importation, possession, or purchase of assault weapons, except in narrowly defined circumstances. Senate Bill 531 (1989) and House Bill 1118 (1989). The proposed definition of "assault weapon" in the original bills included several generic descriptions: any semi-automatic rifle or semi-automatic handgun that would accept a detachable magazine with a capacity of 20 rounds or more; a shotgun with a magazine capacity of 6 rounds or more; any part, or combination of parts, designed or intended to readily convert a firearm into an assault weapon. *See* Senate Bill 531 (1989), first reader; House Bill 1118 (1989), first reader. It also included a list of eight specific firearms, "or their copies regardless of which company produced that firearm." *Id.*

---

[4] By contrast, the federal assault weapon law, enacted in 1994, defined "semiautomatic assault weapon" to include a list of nine specific firearms, "or copies or duplicates of the firearms in any caliber." 18 U.S.C. §921(a)(30)(A). The federal semiautomatic assault weapons law expired in 2004. *See* Pub.L. 103-322, Title XI, §110105(2), 108 Stat. 2000 (September 13, 1994).

The reference to "copies" in the original bills thus pertained only to the specifically-named firearms, not to the generically-described weapons. Presumably, a reference to "copies" was not included for the generic categories because it was considered unnecessary; the generic categories already included *any* weapon meeting the specified criteria, thus encompassing any weapons that had similar internal components and function, but not necessarily weapons with only superficial similarities. If the term "copies" was understood to refer to cosmetic similarities, the definition in the original bills would have reached superficial imitations of only eight weapons, but not of the majority of assault weapons covered by the generic descriptions. Therefore, it seems clear that the term "copies" in the original bills was not intended to mean "look alike." More likely, the reference to "copies" of specific weapons was intended to ensure that the requirements of the law could not be avoided simply by rebranding or superficially changing a named weapon. This also suggests that "copies" was intended to relate to components and function, not simply appearance.

The proponents of the bills testified that the legislation was intended to limit the availability of military style assault weapons and other anti-personnel firearms. *See* Testimony of Delegate Peter Franchot concerning House Bill 1118. However, concerns were expressed that the proposed definition of "assault weapon" in the bills was too broad and might encompass "legitimate sporting, hunting, and recreational arms." *See, e.g.*, Letter of Colonel Leonard J. Supenski to Delegate Robert L. Flanagan concerning House Bill 1118 (February 19, 1989) ("Supenski Letter"); Testimony of Izaak Walton League concerning House Bill 1118.

With assistance from Maryland law enforcement officials, the proponents developed amendments to the bills to "provide a workable bill which balances the rights of hunters and sportsmen with the right of the public to be protected from the proliferation of such anti-personnel firearms." Supenski Letter; *see also* Letter of Delegates John Gary and Peter Franchot (February 22, 1989). The amendments deleted the generic language in the definition of "assault weapon" and, instead, expanded the list of named weapons to 24 enumerated firearms "or their copies regardless of which company produced and manufactured that firearm." The amendments also provided that the sale or transfer of assault weapons would be regulated in the same manner as the sale or transfer of pistols and revolvers and directed the State Police to adopt regulations for that purpose. The House version of the bill received an unfavorable report, but the Senate version, as thus

amended, was enacted as Chapter 293, Laws of Maryland 1989. The new assault weapons law, including that definition, was codified at Annotated Code of Maryland, Article 27, §481E.[5]

Thus, the apparent compromise that was struck to achieve passage of the bill was to eliminate the generically-described categories and limit the range of weapons subject to the new law to "copies" of specifically-named weapons. Given the objections to the original proposed definition, it seems unlikely that the General Assembly contemplated that a superficial similarity alone to a listed gun would suffice to bring a weapon within the statute. Instead, it limited the reach of regulation to weapons that functioned in a very similar manner.

"Assault Weapons" Included in the Definition of "Regulated Firearm"

In 1996, the Legislature further tightened regulation of assault weapons and handguns in the Maryland Gun Violence Act of 1996. Chapters 561, 562, Laws of Maryland 1996. As part of that legislation, the term "regulated firearm" was added to the law to encompass both assault weapons and handguns. The definition of "assault weapon," newly codified in Article 27, §441(d), contained the same list of specific weapons as the prior version and continued to include "copies" of the listed firearms, "regardless of which company produced and manufactured that firearm." As originally drafted, the bill would have expanded the list of enumerated weapons to include "any other firearm defined as an assault weapon by federal law"; however, that provision was amended out of the final versions of the bills.

In 2003, as part of the code revision process, the regulation of firearms was recodified in the new Public Safety Article. As part of that revision, the definition of "assault weapon" was incorporated into the definition of "regulated firearm," in new PS §5-101(p). Minor changes in the wording of the definition were not intended to

---

[5] In 1994, the Legislature revised the list of specific firearms set forth in the definition of "assault weapon." Chapter 456, Laws of Maryland 1994. As part of that revision, the legislation removed from the list certain assault pistols that were otherwise being banned under other provisions of that legislation; the bill also added to the list other assault weapons "that have come into existence since the creation of the list." Senate Floor Report for Senate Bill 619 (1994). The statute continued to cover "copies" of all listed firearms.

effect any substantive change. *See* Chapter 5, §2, Revisor's Note, Laws of Maryland 2003 at p. 211.

C. Summary

While the regulated firearms law does not define "copy," the statutory definition of "firearm" and the specifications in the list of named assault weapons both suggest that a weapon must have more than a cosmetic similarity to be a "copy." Moreover, in enacting and amending the law regarding "assault weapons," the General Assembly has rejected attempts to define "assault weapons" broadly, based on general characteristics or a reference to the more inclusive federal definition. Instead, it has chosen to establish a list of specific weapons, and in some cases, specific calibers. Interpreting "copy" to include any firearm that merely looked like one of the enumerated firearms would run contrary to the choices made by the Legislature.

As the proponents of the original 1989 legislation indicated when they crafted the amendments to achieve its passage, the purpose of listing specific weapons and their "copies" was to distinguish "anti-personnel" assault weapons from firearms used by hunters and sportsmen that might fall within a more generic definition. Consistent with the General Assembly's apparent intent to create a definition with an eye toward the function of the weapon, a "copy" would include a firearm whose internal components and function, necessary to the operation of the firearm, are similar to those of one of the specifically enumerated assault weapons. As the agency charged with administering the regulated firearms law, the Department of State Police must make that assessment.

III

Conclusion

For the reasons set forth above, it is our opinion that the reference to "copies" in PS §5-101(p)(2) does not extend the regulated firearms law to weapons that bear a mere cosmetic similarity to a listed weapon. Rather, in order for a firearm to be considered a copy of a listed assault weapon, and therefore governed by the regulated firearms law, there must be a similarity between the internal components and function of the firearm in question and those of one of the listed weapons. A determination as to whether

a particular firearm bears such similarity is a factual question entrusted in the first instance to the Department of State Police.

Douglas F. Gansler
Attorney General

Mark H. Bowen
Assistant Attorney General

Robert N. McDonald
Chief Counsel
Opinions and Advice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAWN J. TARDY, *et al.*,	*	
Plaintiffs,	*	
v.	*	Civil Case No. 13-cv-02841-CCB
MARTIN O'MALLEY, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * *

ORDER

It is, this _____ day of _____ 2013, by the United States District Court for the District of Maryland:

ORDERED that the defendants' motion to dismiss the third amended complaint (ECF No. 32) is GRANTED; and it is further

ORDERED that Counts Two, Three, and Four of the third amended complaint (ECF No. 30) are DISMISSED; and it is further

ORDERED that the claims of plaintiffs Wink's Sporting Goods, Inc., Atlantic Guns, Inc., Maryland Licensed Firearm Dealers Association, Inc., and, to the extent it purports to represent the interests of member firearms sellers, the National Sports Shooting Foundation, in Count One of the third amended complaint (ECF No. 30) are dismissed.

_____
Catherine C. Blake
United States District Judge