

HOUSE BILL 563

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By: **Delegate Braveboy**

Introduced and read first time: February 8, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Control Devices – Permit Process and Requirements**

3 FOR the purpose of altering a certain prohibition on the possession and use of an
4 electronic control device to prohibit a person from purchasing, wearing,
5 carrying, or transporting an electronic control device unless the person has been
6 issued a certain permit; providing a certain exception for a person who is on
7 active assignment engaged in law enforcement in certain circumstances;
8 requiring the manufacturer or seller of an electronic control device to ensure
9 compliance with certain provisions before selling or activating an electronic
10 control device; requiring the seller of an electronic control device to maintain a
11 certain record and confirm that the purchaser may lawfully purchase the
12 electronic control device; establishing a certain penalty for a person who violates
13 certain provisions of law related to the sale and activation of an electronic
14 control device; requiring that an application for a permit be made under oath;
15 providing for an application fee; requiring the Secretary of State Police or the
16 Secretary's designee to apply to the Criminal Justice Information System
17 Central Repository for a certain criminal history records check in a certain
18 manner for each applicant for a permit; requiring the Central Repository to
19 forward certain information to the applicant and the Secretary; providing that
20 certain information obtained from the Central Repository is confidential and
21 may only be used for a certain purpose; authorizing an applicant to contest the
22 printed statement issued by the Central Repository in a certain manner;
23 requiring the Secretary to issue a permit within a reasonable time to a person
24 who meets certain requirements; providing for the validity of the permit for
25 certain electronic control devices; requiring a person who is issued a permit to
26 carry the permit in the person's possession when the person carries, wears, or
27 transports an electronic control device; authorizing the Secretary to revoke a
28 permit on certain findings; requiring the holder of a revoked permit to return
29 the permit to the Secretary within a certain period of time; authorizing a person
30 who is denied a permit or whose permit is revoked to request a certain review;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 requiring the Secretary to take certain actions with regard to a certain review;
2 and generally relating to permits for electronic control devices.

3 BY repealing and reenacting, with amendments,
4 Article – Criminal Law
5 Section 4–109
6 Annotated Code of Maryland
7 (2002 Volume and 2010 Supplement)

8 BY adding to
9 Article – Public Safety
10 Section 5–601 through 5–609 to be under the new subtitle “Subtitle 6.
11 Electronic Control Devices” and the amended title “Title 5. Firearms and
12 Electronic Control Devices”
13 Annotated Code of Maryland
14 (2003 Volume and 2010 Supplement)

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

17 **Article – Criminal Law**

18 4–109.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) “Crime of violence” has the meaning stated in § 14–101 of this
21 article.

22 (3) “Electronic control device” means a portable device designed as a
23 weapon capable of injuring, immobilizing, or inflicting pain on an individual by the
24 discharge of electrical current.

25 (b) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
26 **SUBSECTION, A person may not [possess or use] PURCHASE, WEAR, CARRY, OR**
27 **TRANSPORT an electronic control device unless the person[:**

28 (1) has attained the age of 18 years; and

29 (2) has never been convicted of a crime of violence or a violation of §
30 5–602, § 5–603, § 5–604, § 5–605, § 5–606, § 5–613, or § 5–614 of this article.] **HAS**
31 **BEEN ISSUED A PERMIT TO PURCHASE, WEAR, CARRY, OR TRANSPORT THE**
32 **ELECTRONIC CONTROL DEVICE UNDER TITLE 5, SUBTITLE 6 OF THE PUBLIC**
33 **SAFETY ARTICLE.**

34 (2) **THIS SECTION DOES NOT PROHIBIT THE WEARING, CARRYING,**
35 **OR TRANSPORTING OF AN ELECTRONIC CONTROL DEVICE BY A PERSON WHO IS**

1 ON ACTIVE ASSIGNMENT ENGAGED IN LAW ENFORCEMENT, IS AUTHORIZED AT
2 THE TIME AND UNDER THE CIRCUMSTANCES TO WEAR, CARRY, OR TRANSPORT
3 THE ELECTRONIC CONTROL DEVICE AS PART OF THE PERSON'S OFFICIAL
4 EQUIPMENT, AND IS:

5 (I) A LAW ENFORCEMENT OFFICIAL OF THE UNITED
6 STATES, THE STATE, OR A COUNTY OR MUNICIPAL CORPORATION IN THE
7 STATE;

8 (II) A MEMBER OF THE ARMED FORCES OF THE UNITED
9 STATES OR OF THE NATIONAL GUARD ON DUTY OR TRAVELING TO OR FROM
10 DUTY;

11 (III) A LAW ENFORCEMENT OFFICIAL OF ANOTHER STATE OR
12 SUBDIVISION OF ANOTHER STATE TEMPORARILY IN THIS STATE ON OFFICIAL
13 BUSINESS;

14 (IV) A CORRECTIONAL OFFICER OR WARDEN OF A
15 CORRECTIONAL FACILITY IN THE STATE;

16 (V) A SHERIFF OR FULL-TIME ASSISTANT OR DEPUTY
17 SHERIFF OF THE STATE; OR

18 (VI) A TEMPORARY OR PART-TIME SHERIFF'S DEPUTY.

19 (c) An electronic control device may not be sold and activated in the State
20 unless:

21 (1) an instructional manual or audio or audiovisual instructions are
22 provided to the purchaser;

23 (2) the manufacturer maintains a record of the original owner of the
24 electronic control device; [and]

25 (3) the manufacturer or seller has [obtained a State and federal
26 criminal history records check of] **CONFIRMED THAT** the original owner [to ensure] **IS**
27 **IN** compliance with subsection [(b)(2)] **(B)** of this section;

28 (4) **THE SELLER MAINTAINS A RECORD OF THE SERIAL NUMBER**
29 **FROM THE ANTI-FELON IDENTIFICATION (AFID) TAGS, IF AVAILABLE; AND**

30 (5) **THE SELLER CONFIRMS THAT THE PURCHASER MAY**
31 **LAWFULLY PURCHASE THE ELECTRONIC CONTROL DEVICE.**

1 (d) A manufacturer of electronic control devices shall provide an
2 investigating law enforcement agency with prompt access to the manufacturer's
3 records on electronic control devices and cartridges sold in the State.

4 (e) (1) A person who violates subsection (b) of this section is guilty of a
5 misdemeanor and on conviction is subject to imprisonment not exceeding 2 months or
6 a fine not exceeding \$500 or both.

7 (2) A person who violates subsection (b) of this section while
8 committing a separate crime that is a crime of violence is guilty of a felony and on
9 conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding
10 \$5,000 or both.

11 **(3) A PERSON WHO VIOLATES SUBSECTION (C) OF THIS SECTION**
12 **IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO**
13 **IMPRISONMENT NOT EXCEEDING 2 MONTHS OR A FINE NOT EXCEEDING \$500 OR**
14 **BOTH.**

15 (f) This section does not prohibit a local government from adopting a
16 restriction or requirement concerning the possession of an electronic control device
17 that is more stringent than the requirements of this section.

18 **Article – Public Safety**

19 **Title 5. Firearms AND ELECTRONIC CONTROL DEVICES.**

20 **SUBTITLE 6. ELECTRONIC CONTROL DEVICES.**

21 **5-601.**

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

24 **(B) “ELECTRONIC CONTROL DEVICE” HAS THE MEANING STATED IN §**
25 **4-109 OF THE CRIMINAL LAW ARTICLE.**

26 **(C) “PERMIT” MEANS A PERMIT ISSUED BY THE SECRETARY TO CARRY,**
27 **WEAR, OR TRANSPORT AN ELECTRONIC CONTROL DEVICE.**

28 **(D) “SECRETARY” MEANS THE SECRETARY OF STATE POLICE OR THE**
29 **SECRETARY’S DESIGNEE.**

30 **5-602.**

1 A PERSON SHALL HAVE A PERMIT ISSUED UNDER THIS SUBTITLE BEFORE
2 THE PERSON PURCHASES, CARRIES, WEARS, OR TRANSPORTS AN ELECTRONIC
3 CONTROL DEVICE.

4 **5-603.**

5 (A) AN APPLICATION FOR A PERMIT SHALL BE MADE UNDER OATH.

6 (B) (1) THE SECRETARY MAY CHARGE A NONREFUNDABLE FEE
7 PAYABLE WHEN AN APPLICATION IS FILED FOR A PERMIT.

8 (2) THE FEE UNDER THIS SUBSECTION MAY NOT EXCEED \$75.

9 (3) THE FEE UNDER THIS SUBSECTION IS IN ADDITION TO THE
10 FEES AUTHORIZED UNDER § 5-604 OF THIS SUBTITLE.

11 **5-604.**

12 (A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL
13 JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT
14 OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

15 (B) THE SECRETARY SHALL APPLY TO THE CENTRAL REPOSITORY FOR
16 A STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR EACH
17 APPLICANT FOR A PERMIT.

18 (C) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS
19 CHECK, THE SECRETARY SHALL SUBMIT TO THE CENTRAL REPOSITORY:

20 (1) TWO COMPLETE SETS OF THE APPLICANT'S LEGIBLE
21 FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE
22 CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF
23 INVESTIGATION;

24 (2) THE FEE AUTHORIZED UNDER § 10-221(B)(7) OF THE
25 CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO MARYLAND CRIMINAL
26 HISTORY RECORDS; AND

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

30 (D) IN ACCORDANCE WITH §§ 10-201 THROUGH 10-234 OF THE
31 CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD

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

3 (E) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER
4 THIS SECTION:

5 (1) IS CONFIDENTIAL AND MAY NOT BE DISSEMINATED; AND

6 (2) SHALL BE USED ONLY FOR THE LICENSING PURPOSE
7 AUTHORIZED BY THIS SECTION.

8 (F) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER
9 THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT
10 ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10-223 OF THE
11 CRIMINAL PROCEDURE ARTICLE.

12 5-605.

13 THE SECRETARY SHALL ISSUE A PERMIT WITHIN A REASONABLE TIME TO
14 A PERSON WHO THE SECRETARY FINDS:

15 (1) HAS ATTAINED THE AGE OF 21 YEARS;

16 (2) HAS NEVER BEEN CONVICTED OF A CRIME OF VIOLENCE OR A
17 VIOLATION OF § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-613, OR § 5-614
18 OF THE CRIMINAL LAW ARTICLE;

19 (3) IS NOT A FUGITIVE FROM JUSTICE;

20 (4) IS NOT ADDICTED TO ALCOHOL OR A CONTROLLED
21 DANGEROUS SUBSTANCE AND IS NOT A HABITUAL USER;

22 (5) HAS NOT BEEN CONFINED FOR MORE THAN 30 CONSECUTIVE
23 DAYS TO A FACILITY DEFINED IN § 10-101 OF THE HEALTH - GENERAL
24 ARTICLE, UNLESS THE PERSON HAS A PHYSICIAN'S CERTIFICATE THAT THE
25 PERSON IS CAPABLE OF POSSESSING AN ELECTRONIC CONTROL DEVICE
26 WITHOUT UNDUE DANGER TO THE PERSON OR TO ANOTHER; AND

27 (6) HAS COMPLETED A TRAINING PROGRAM APPROVED BY THE
28 POLICE TRAINING COMMISSION.

29 5-606.

1 **A PERMIT IS VALID FOR EACH ELECTRONIC CONTROL DEVICE LEGALLY IN**
2 **THE POSSESSION OF THE PERSON TO WHOM THE PERMIT IS ISSUED.**

3 **5-607.**

4 **A PERSON TO WHOM A PERMIT IS ISSUED SHALL CARRY THE PERMIT IN**
5 **THE PERSON'S POSSESSION WHENEVER THE PERSON CARRIES, WEARS, OR**
6 **TRANSPORTS AN ELECTRONIC CONTROL DEVICE.**

7 **5-608.**

8 **(A) THE SECRETARY MAY REVOKE A PERMIT ON A FINDING THAT THE**
9 **HOLDER:**

10 **(1) DOES NOT MEET THE QUALIFICATIONS DESCRIBED IN § 5-605**
11 **OF THIS SUBTITLE; OR**

12 **(2) VIOLATED § 5-607 OF THIS SUBTITLE.**

13 **(B) A HOLDER OF A PERMIT THAT IS REVOKED BY THE SECRETARY**
14 **SHALL RETURN THE PERMIT TO THE SECRETARY WITHIN 10 DAYS AFTER**
15 **RECEIPT OF WRITTEN NOTICE OF THE REVOCATION.**

16 **5-609.**

17 **(A) A PERSON WHO IS DENIED A PERMIT OR WHOSE PERMIT IS**
18 **REVOKED MAY REQUEST THE SECRETARY TO CONDUCT AN INFORMAL REVIEW**
19 **BY FILING A WRITTEN REQUEST WITHIN 10 DAYS AFTER RECEIPT OF WRITTEN**
20 **NOTICE OF THE SECRETARY'S INITIAL ACTION.**

21 **(B) AN INFORMAL REVIEW:**

22 **(1) MAY INCLUDE A PERSONAL INTERVIEW OF THE PERSON WHO**
23 **REQUESTED THE INFORMAL REVIEW; AND**

24 **(2) IS NOT SUBJECT TO TITLE 10, SUBTITLE 2 OF THE STATE**
25 **GOVERNMENT ARTICLE.**

26 **(C) IN AN INFORMAL REVIEW, THE SECRETARY SHALL SUSTAIN,**
27 **REVERSE, OR MODIFY THE INITIAL ACTION TAKEN AND NOTIFY THE PERSON**
28 **WHO REQUESTED THE INFORMAL REVIEW OF THE DECISION IN WRITING WITHIN**
29 **30 DAYS AFTER RECEIPT OF THE REQUEST FOR INFORMAL REVIEW.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2011.