

HOUSE BILL 942

E4, E1

0lr1624
CF 0lr3048

By: **Delegates Aumann, Bates, Boteler, Eckardt, Frank, Haddaway, Jones, Lafferty, McComas, Morhaim, Myers, Smigiel, Stocksdale, Stull, and Wood**

Introduced and read first time: February 12, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Electronic Control Devices – Training Program and Permit**
3 **Process**

4 FOR the purpose of prohibiting a person from possessing or using an electronic control
5 device unless the person has been issued a certain permit; prohibiting the sale
6 and activation of an electronic control device in the State unless the purchaser
7 provides valid proof to the seller that the purchaser has completed successfully
8 an electronic control device training program approved by the Maryland Police
9 and Correctional Training Commission; requiring the Commission to establish
10 standards for the approval and continuation of approval of a certain electronic
11 control device training program; prohibiting a person from engaging in the
12 business of selling, renting, or transferring an electronic control device without
13 possessing a dealer's license issued by the Secretary of State Police; authorizing
14 a person who lawfully possesses a certain license on or before a certain date to
15 engage in a certain business; altering the Handgun Permit Review Board to
16 establish the Handgun and Electronic Control Device Permit Review Board;
17 requiring a person to have a certain permit issued before the person possesses
18 or uses an electronic control device; providing that nothing in this Act is
19 intended to preempt a county, municipality, or special taxing district from
20 prohibiting the sale or possession of electronic control devices; requiring that an
21 application for a permit to possess and use an electronic control device be under
22 oath; authorizing the Secretary of State Police to charge certain permit fees;
23 prohibiting the Secretary from charging a certain permit fee in certain
24 circumstances; requiring the Secretary to apply to the Central Repository for a
25 State and national criminal history records check for each applicant for a permit
26 in a certain manner; authorizing the Secretary to issue the permit within a
27 reasonable time to a certain person if the Secretary makes certain findings;
28 providing that a certain permit is valid for each electronic control device legally
29 in possession of the person to whom the permit is issued; requiring a person to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 whom a permit is issued or renewed to carry the permit in the person's
 2 possession whenever the person possesses or uses an electronic control device;
 3 providing for the expiration of a permit; authorizing the Secretary to revoke a
 4 permit in certain circumstances; requiring the holder of a revoked permit to
 5 return the permit to the Secretary within a certain period after receipt of notice
 6 of the revocation; authorizing a person who is denied a permit or renewal of a
 7 permit or whose permit is revoked or limited to request a certain review in a
 8 certain manner; authorizing the Secretary to conduct a certain review;
 9 authorizing the Board to conduct a certain review; authorizing the Board to
 10 sustain, reverse, or modify a certain decision by the Secretary; requiring the
 11 Board to provide a certain writing to a certain applicant or holder of a permit in
 12 certain circumstances; providing for a certain judicial review; prohibiting a
 13 person from failing to return a revoked permit; prohibiting a person who holds a
 14 certain permit from possessing or using an electronic control device while the
 15 person is under the influence of alcohol or drugs; providing penalties for a
 16 violation of this Act; and generally relating to electronic control devices.

17 BY repealing and reenacting, with amendments,
 18 Article – Criminal Law
 19 Section 4–109
 20 Annotated Code of Maryland
 21 (2002 Volume and 2009 Supplement)

22 BY repealing and reenacting, with amendments,
 23 Article – Public Safety
 24 Section 3–207 and 5–106; and 5–301 through 5–304, 5–306, 5–307, 5–308, and
 25 5–314 to be under the amended subtitle “Subtitle 3. Handgun and
 26 Electronic Control Device Permits”
 27 Annotated Code of Maryland
 28 (2003 Volume and 2009 Supplement)

29 BY repealing and reenacting, without amendments,
 30 Article – Public Safety
 31 Section 5–305 and 5–309 through 5–313
 32 Annotated Code of Maryland
 33 (2003 Volume and 2009 Supplement)

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

36 **Article – Criminal Law**

37 4–109.

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

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

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

4 (b) A person may not possess or use an electronic control device unless the
5 person[:

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

7 (2) has never been convicted of a crime of violence or a violation of §
8 5–602, § 5–603, § 5–604, § 5–605, § 5–606, § 5–613, or § 5–614 of this article] **HAS A**
9 **PERMIT TO POSSESS AND USE AN ELECTRONIC CONTROL DEVICE ISSUED IN**
10 **ACCORDANCE WITH TITLE 5, SUBTITLE 3 OF THE PUBLIC SAFETY ARTICLE.**

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

13 (1) [an instructional manual or audio or audiovisual instructions are
14 provided to] the purchaser **PROVIDES VALID PROOF TO THE SELLER THAT THE**
15 **PURCHASER HAS COMPLETED SUCCESSFULLY AN ELECTRONIC CONTROL**
16 **DEVICE TRAINING PROGRAM APPROVED BY THE MARYLAND POLICE AND**
17 **CORRECTIONAL TRAINING COMMISSION IN ACCORDANCE WITH § 3–207 OF THE**
18 **PUBLIC SAFETY ARTICLE; AND**

19 (2) the manufacturer maintains a record of the original owner of the
20 electronic control device[; and

21 (3) the manufacturer or seller has obtained a State and federal
22 criminal history records check of the original owner to ensure compliance with
23 subsection (b)(2) of this section].

24 (d) A manufacturer of electronic control devices shall provide an
25 investigating law enforcement agency with prompt access to the manufacturer’s
26 records on electronic control devices and cartridges sold in the State.

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

30 (2) A person who violates subsection (b) of this section while
31 committing a separate crime that is a crime of violence is guilty of a felony and on
32 conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding
33 \$5,000 or both.

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

4 **Article – Public Safety**

5 3–207.

6 Subject to the authority of the Secretary, the Commission has the following
7 powers and duties:

8 (1) to establish standards for the approval and continuation of
9 approval of schools that conduct police entrance–level and in–service training courses
10 required by the Commission, including State, regional, county, and municipal training
11 schools;

12 (2) to approve and issue certificates of approval to police training
13 schools;

14 (3) to inspect police training schools;

15 (4) to revoke, for cause, the approval or certificate of approval issued
16 to a police training school;

17 (5) to establish the following for police training schools:

18 (i) curriculum;

19 (ii) minimum courses of study;

20 (iii) attendance requirements;

21 (iv) eligibility requirements;

22 (v) equipment and facilities;

23 (vi) standards of operation; and

24 (vii) minimum qualifications for instructors;

25 (6) to require, for entrance–level police training and at least every 3
26 years for in–service level police training conducted by the State and each county and
27 municipal police training school, that the curriculum and minimum courses of study
28 include special training, attention to, and study of the application and enforcement of
29 the criminal laws concerning rape and sexual offenses, including:

30 (i) the sexual abuse of children;

1 (ii) related evidentiary procedures; and

2 (iii) the contact with and treatment of victims of these crimes;

3 (7) to certify and issue appropriate certificates to qualified instructors
4 for police training schools authorized by the Commission to offer police training
5 programs;

6 (8) to verify that police officers have satisfactorily completed training
7 programs and issue diplomas to those police officers;

8 (9) to conduct and operate police training schools authorized by the
9 Commission to offer police training programs;

10 (10) to make a continuous study of entrance-level and in-service
11 training methods and procedures;

12 (11) to consult with and accept the cooperation of any recognized
13 federal, State, or municipal law enforcement agency or educational institution;

14 (12) to consult and cooperate with universities, colleges, and
15 institutions in the State to develop specialized courses of study for police officers in
16 police science and police administration;

17 (13) to consult and cooperate with other agencies and units of the State
18 concerned with police training;

19 (14) to develop, with the cooperation of the Office of the Chief Medical
20 Examiner and the Federal Bureau of Investigation, a uniform missing person report
21 form to be available for use by each law enforcement agency of the State on or before
22 October 1, 2008;

23 (15) to require, for entrance-level police training and annually for
24 in-service level police training conducted by the State and each county and municipal
25 police training school, that the curriculum and minimum courses of study include, for
26 police officers who are issued an electronic control device by a law enforcement agency,
27 special training in the proper use of electronic control devices, as defined in § 4-109 of
28 the Criminal Law Article, consistent with established law enforcement standards and
29 federal and State constitutional provisions; [and]

30 **(16) TO ESTABLISH STANDARDS FOR THE APPROVAL AND**
31 **CONTINUATION OF APPROVAL OF AN ELECTRONIC CONTROL DEVICE TRAINING**
32 **PROGRAM REQUIRED UNDER § 4-109(C) OF THE CRIMINAL LAW ARTICLE; AND**

33 **[(16)] (17)** to perform any other act that is necessary or appropriate to
34 carry out the powers and duties of the Commission under this subtitle.

1 5-106.

2 (a) A person must lawfully possess a dealer's license issued by the Secretary
3 before the person engages in the business of selling, renting, or transferring regulated
4 firearms **OR ELECTRONIC CONTROL DEVICES**.

5 (b) One dealer's license is required for each place of business where
6 regulated firearms are sold.

7 **(C) A PERSON WHO LAWFULLY POSSESSES A DEALER'S LICENSE ISSUED**
8 **BY THE SECRETARY ON OR BEFORE OCTOBER 1, 2010 MAY ENGAGE IN THE**
9 **BUSINESS OF SELLING, RENTING, OR TRANSFERRING ELECTRONIC CONTROL**
10 **DEVICES.**

11 Subtitle 3. Handgun **AND ELECTRONIC CONTROL DEVICE** Permits.

12 5-301.

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

14 (b) "Board" means the Handgun **AND ELECTRONIC CONTROL DEVICE**
15 Permit Review Board.

16 **(C) "ELECTRONIC CONTROL DEVICE" HAS THE MEANING STATED IN §**
17 **4-109(A) OF THE CRIMINAL LAW ARTICLE.**

18 **[(c)] (D)** "Handgun" has the meaning stated in § 4-201 of the Criminal Law
19 Article.

20 **[(d)] (E)** "Permit" means a permit issued by the Secretary to carry, wear, or
21 transport a handgun **OR TO POSSESS AND USE AN ELECTRONIC CONTROL DEVICE**.

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

24 5-302.

25 (a) There is a Handgun **AND ELECTRONIC CONTROL DEVICE** Permit
26 Review Board in the Department of Public Safety and Correctional Services.

27 (b) The Board consists of five members appointed from the public by the
28 Governor with the advice and consent of the Senate.

29 (c) (1) The term of a member is 3 years.

1 (2) The terms of the members are staggered as required by the terms
2 provided for members of the Board on October 1, 2003.

3 (3) At the end of a term, a member continues to serve until a successor
4 is appointed and qualifies.

5 (4) A member who is appointed after a term has begun serves only for
6 the rest of the term and until a successor is appointed and qualifies.

7 (5) A member of the Board is eligible for reappointment.

8 (d) A member of the Board is entitled to:

9 (1) compensation in accordance with the State budget for each day
10 that the member actually is engaged in the discharge of the member's official duties;
11 and

12 (2) reimbursement for expenses under the Standard State Travel
13 Regulations, as provided in the State budget.

14 5-303.

15 **(A)** A person shall have a permit issued under this subtitle before the person
16 carries, wears, or transports a handgun **OR POSSESSES OR USES AN ELECTRONIC**
17 **CONTROL DEVICE.**

18 **(B)** **NOTHING IN THIS SUBTITLE IS INTENDED TO PREEMPT A COUNTY,**
19 **MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT FROM PROHIBITING**
20 **THE SALE OR POSSESSION OF ELECTRONIC CONTROL DEVICES.**

21 5-304.

22 (a) An application for a permit shall be made under oath.

23 (b) (1) Subject to subsections (c) and (d) of this section, the Secretary may
24 charge a nonrefundable fee payable when an application is filed for a permit.

25 (2) The fee may not exceed:

26 (i) \$75 for an initial application;

27 (ii) \$50 for a renewal or subsequent application; and

28 (iii) \$10 for a duplicate or modified permit.

29 (3) The fees under this subsection are in addition to the fees
30 authorized under § 5-305 of this subtitle.

1 (c) The Secretary may reduce the fee under subsection (b) of this section
2 accordingly for a permit that is granted for one day only and at one place only.

3 (d) The Secretary may not charge a fee under subsection (b) of this section to:

4 (1) a State, county, or municipal public safety employee who is
5 required to carry, wear, or transport a handgun **OR ELECTRONIC CONTROL DEVICE**
6 as a condition of governmental employment; or

7 (2) a retired law enforcement officer of the State or a county or
8 municipal corporation of the State.

9 (e) The applicant may pay a fee under this section by a personal check,
10 business check, certified check, or money order.

11 5–305.

12 (a) In this section, “Central Repository” means the Criminal Justice
13 Information System Central Repository of the Department of Public Safety and
14 Correctional Services.

15 (b) The Secretary shall apply to the Central Repository for a State and
16 national criminal history records check for each applicant for a permit.

17 (c) As part of the application for a criminal history records check, the
18 Secretary shall submit to the Central Repository:

19 (1) two complete sets of the applicant’s legible fingerprints taken on
20 forms approved by the Director of the Central Repository and the Director of the
21 Federal Bureau of Investigation;

22 (2) the fee authorized under § 10–221(b)(7) of the Criminal Procedure
23 Article for access to Maryland criminal history records; and

24 (3) the mandatory processing fee required by the Federal Bureau of
25 Investigation for a national criminal history records check.

26 (d) In accordance with §§ 10–201 through 10–234 of the Criminal Procedure
27 Article, the Central Repository shall forward to the applicant and the Secretary a
28 printed statement of the applicant’s criminal history record information.

29 (e) Information obtained from the Central Repository under this section:

30 (1) is confidential and may not be disseminated; and

1 (2) shall be used only for the licensing purpose authorized by this
2 section.

3 (f) The subject of a criminal history records check under this section may
4 contest the contents of the printed statement issued by the Central Repository as
5 provided in § 10–223 of the Criminal Procedure Article.

6 5–306.

7 (a) Subject to subsection (b) of this section, the Secretary shall issue a permit
8 within a reasonable time to a person who the Secretary finds:

9 (1) is an adult;

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

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

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

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

19 (5) based on an investigation:

20 (i) has not exhibited a propensity for violence or instability that
21 may reasonably render the person's possession of a handgun **OR ELECTRONIC**
22 **CONTROL DEVICE** a danger to the person or to another; and

23 (ii) has good and substantial reason to wear, carry, or transport
24 a handgun, **OR POSSESS OR USE AN ELECTRONIC CONTROL DEVICE, AS THE CASE**
25 **MAY BE**, such as a finding that the permit is necessary as a reasonable precaution
26 against apprehended danger.

27 (b) An applicant under the age of 30 years is qualified only if the Secretary
28 finds that the applicant has not been:

29 (1) committed to a detention, training, or correctional institution for
30 juveniles for longer than 1 year after an adjudication of delinquency by a juvenile
31 court; or

32 (2) adjudicated delinquent by a juvenile court for:

1 (i) an act that would be a crime of violence if committed by an
2 adult;

3 (ii) an act that would be a felony in this State if committed by
4 an adult; or

5 (iii) an act that would be a misdemeanor in this State that
6 carries a statutory penalty of more than 2 years if committed by an adult.

7 5-307.

8 (a) A permit is valid for each handgun **OR ELECTRONIC CONTROL DEVICE**
9 legally in the possession of the person to whom the permit is issued.

10 (b) The Secretary may limit the geographic area, circumstances, or times of
11 the day, week, month, or year in which a permit is effective.

12 5-308.

13 A person to whom a permit is issued or renewed shall carry the permit in the
14 person's possession whenever the person carries, wears, or transports a handgun **OR**
15 **POSSESSES OR USES AN ELECTRONIC CONTROL DEVICE.**

16 5-309.

17 (a) A permit expires on the last day of the holder's birth month following 2
18 years after the date the permit is issued.

19 (b) A permit may be renewed for successive periods of 3 years each if, at the
20 time of an application for renewal, the applicant possesses the qualifications for the
21 issuance of a permit and pays the renewal fee stated in this subtitle.

22 5-310.

23 (a) The Secretary may revoke a permit on a finding that the holder:

24 (1) does not meet the qualifications described in § 5-306 of this
25 subtitle; or

26 (2) violated § 5-308 of this subtitle.

27 (b) A holder of a permit that is revoked by the Secretary shall return the
28 permit to the Secretary within 10 days after receipt of written notice of the revocation.

29 5-311.

1 (a) A person who is denied a permit or renewal of a permit or whose permit
2 is revoked or limited may request the Secretary to conduct an informal review by filing
3 a written request within 10 days after receipt of written notice of the Secretary's
4 initial action.

5 (b) An informal review:

6 (1) may include a personal interview of the person who requested the
7 informal review; and

8 (2) is not subject to Title 10, Subtitle 2 of the State Government
9 Article.

10 (c) In an informal review, the Secretary shall sustain, reverse, or modify the
11 initial action taken and notify the person who requested the informal review of the
12 decision in writing within 30 days after receipt of the request for informal review.

13 (d) A person need not file a request for an informal review under this section
14 before requesting review under § 5-312 of this subtitle.

15 5-312.

16 (a) (1) A person who is denied a permit or renewal of a permit or whose
17 permit is revoked or limited may request the Board to review the decision of the
18 Secretary by filing a written request with the Board within 10 days after receipt of
19 written notice of the Secretary's final action.

20 (2) A person whose application for a permit or renewal of a permit is
21 not acted on by the Secretary within 90 days after submitting the application to the
22 Secretary may request a hearing before the Board by filing a written request with the
23 Board.

24 (b) Within 90 days after receiving a request to review a decision of the
25 Secretary, the Board shall:

26 (1) review the record developed by the Secretary; or

27 (2) conduct a hearing.

28 (c) The Board may receive and consider additional evidence submitted by a
29 party in conducting a review of the decision of the Secretary.

30 (d) (1) Based on the Board's consideration of the record and any
31 additional evidence, the Board shall sustain, reverse, or modify the decision of the
32 Secretary.

33 (2) If the action by the Board results in the denial of a permit or
34 renewal of a permit or the revocation or limitation of a permit, the Board shall submit

1 in writing to the applicant or the holder of the permit the reasons for the action taken
2 by the Board.

3 (e) (1) Any hearing and any subsequent proceedings of judicial review
4 shall be conducted in accordance with Title 10, Subtitle 2 of the State Government
5 Article.

6 (2) Notwithstanding paragraph (1) of this subsection, a court may not
7 order the issuance or renewal of a permit or alter a limitation on a permit pending a
8 final determination of the proceeding.

9 5-313.

10 (a) A person may not fail to return a revoked permit.

11 (b) A person who violates this section is guilty of a misdemeanor and on
12 conviction is subject to imprisonment not exceeding 1 year or a fine of not less than
13 \$100 or exceeding \$1,000 or both.

14 5-314.

15 (a) A person who holds a permit may not wear, carry, or transport a handgun
16 **OR POSSESS OR USE AN ELECTRONIC CONTROL DEVICE** while the person is under
17 the influence of alcohol or drugs.

18 (b) A person who violates this section is guilty of a misdemeanor and on
19 conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding
20 \$1,000 or both.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2010.