



President
Mark W. Pennak

April 10, 2018

Mr. Christopher S. Shank
Chief Legislative Officer
Legislative Office
State House
100 State Circle
Annapolis, MD 21401-1925

Re: Veto Request for HB 819

Dear Mr. Shank:

This letter is submitted on behalf of Maryland Shall Issue, its officers and Board and all its members, to request that Governor Hogan veto HB 819, as enacted by the General Assembly. As you may know, Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners' rights in Maryland. The undersigned President of Maryland Shall Issue is an attorney and an active member of the Bar of the District of Columbia, having recently retired from the United States Department of Justice, after 33 years of practicing before the federal Courts of Appeals and the Supreme Court of the United States. For the reasons set forth below, HB 819 is an unfounded attack on the Handgun Permit Review Board whose members are appointed by you. It deserves to be vetoed.

House Bill 819, as enacted, blunted the attempt of partisan Democrats to abolish the Handgun Permit Review Board. Under MD Code Public Safety § 5-302, the Board consists of five persons appointed by the Governor. It sits to review decisions of the Maryland State Police concerning applications for the Maryland Wear and Carry Permit, including outright denials by the State Police as well as restrictions placed on such permits, if issued. Decisions of the Board are appealable to circuit court by either the applicant or by the State Police. The initial version of HB 819 that passed the House on a party-line vote would have eliminated the Board entirely and replaced it with appeals to the Office of Administrative Hearings, an administrative body which employs approximately 55 administrative law judges to conduct trial-type hearings in disputes over agency decisions. The House's attempt to abolish the Board failed in the Senate, which retained the Board, but then amended the bill to add a new layer of *de novo* administrative review of Board decisions before the Office of Administrative Hearings. Board decisions are given no weight in such *de novo* proceedings and the applicant is forced to begin the appeal process all over again. Under the bill, the entire administrative appeal process must be completed before an appeal can be taken to circuit court.

There is nothing remotely defensible about adding this new layer of *de novo* administrative proceedings. The Board is accessible to citizens who cannot afford

a lawyer. It is a true citizen oversight board. Such citizen access is simply not reasonably possible if the Maryland State Police decisions are appealable to the Board and then again by the State Police to administrative law judges. ALJs conduct formal, trial-type hearings under rules and procedures that are well beyond the ability of lay persons to understand or follow. Applicants would thus be forced to retain counsel and bear the burden of substantial attorneys' fees. HB 819 would thus unjustly impact the ability of ordinary citizens to seek justice from arbitrary State Police action by limiting the right of appeal to the well-off. The Board has admirably corrected arbitrary State Police actions and that should be applauded, not limited.

The Board has been especially conscientious in overturning vaguely worded restrictions placed on permits by the State Police. These are persons who have already demonstrated a good and substantial reason for a permit and thus have been issued a restricted permit by the State Police. Yet, those vaguely worded restrictions needlessly expose law-abiding citizens who have been issued permits to detentions and arrests for allegedly carrying outside their restrictions. As amended in 2013 with passage of the Firearms Safety Act of 2013, MD Code Criminal Law § 4-203 now punishes carrying outside one's permit restrictions with severe criminal penalties, including up to three years in prison for the first offense. Conviction of this crime imposes a lifetime federal disability from ever possessing any firearm or modern ammunition.

Such wrongful arrests and detentions have actually happened to permit holders. As interpreted by the State Police, the Board has thus rightly found that such vague restrictions violate the permit holder's constitutional rights, including their due process rights and Fifth Amendment rights. Significantly, the State Police have not appealed a single one of these decisions by the Board to circuit court. Yet, again and again the State Police have refused to follow the Board's decisions in other cases presenting the same or similar facts. One can reasonably expect similar obstinate refusals with respect to decisions by the Office of Administrative Hearings. Yet, with 55 ALJs, no one administrative law judge is likely to gain enough experience with these appeals to develop any sort of subject matter expertise or familiarity with State Police practices. That gives the State Police an unfair advantage on these appeals.

The State Police have been deaf to these concerns, ignoring the reality that permit restrictions not only impose unacceptable legal risks of criminal proceedings on the permit holders, but also that such restrictions are neither legally required nor practically necessary. Specifically, nothing in MD Code Public Safety § 5-307 requires restrictions; Section 5-307 merely says that restrictions "may" be imposed, thus leaving imposition completely discretionary. Such restrictions are not imposed by other jurisdictions. For example, the District of Columbia Metropolitan Police Department has never imposed restrictions on carry permits, even though it has been and is statutorily authorized to do so in language that is very similar to Section 5-307. It has continued that practice of unrestricted permits even now after it was required to begin issuing permits on a "shall issue" basis under the D.C. Circuit's decision in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017). In that case, the court invalidated the DC "good reason" requirement for a carry permit

under the Second Amendment. As far as we know, no Maryland permit holder has ever been charged with any gun crime or crime of violence (it is possible that permit holders speed on occasion, like everyone else). Studies show conclusively that permit holders across the nation are the most law-abiding citizens in the United States, with crime rates significantly less than that of commissioned police officers. If the District of Columbia Metropolitan Police Department can recognize these realities by issuing unrestricted permits, so can the Maryland State Police. The Board has rightly insisted that the State Police recognize the need for unrestricted permits on a case-by-case basis. This bill will impose additional costs and burdens on applicants in securing such relief.

In addition to needlessly imposing these burdens on applicants, allowing the State Police to appeal to the Office of Administrative Hearings for a *de novo* hearing will also needlessly delay final resolution of disputes. Under Maryland law, MD Code Public Safety § 5-309, initial permits are issued only for two years and renewals are issued only for three years. By contrast, the majority of other states issue 5-year carry permits and some (like Florida) issue 7-year permits. By the time all these appeals are exhausted, the two years will have nearly run and the permit will be up for renewal (if a restricted permit was previously granted) or delayed for many months (if a complete denial is successfully appealed).

That sort of delay wholly unacceptable. Permits in Maryland require a showing of **need**, *e.g.*, a “good and substantial reason” under MD Code Public Safety § 5-306. Any delay necessarily increases the risk borne by applicants. This delay is made especially intolerable by the State Police official policy that prior Board decisions do not have any effect on renewals by the **same** permit holder, thus requiring the same permit holder to repeat the whole appeal process over and over again for every renewal. For a law enforcement agency to be so arbitrary is shameful. This bill, if not vetoed, will simply encourage more such lawlessness by allowing the State Police to conduct repeated appeals to the Office of Administrative Hearing, all the while avoiding court review of its arbitrary actions. We respectfully request a veto of HB 819.

Sincerely,



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