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August 19, 2014

VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Colonel Marcus L. Brown
Secretary of State Police
Office of the Secretary
Department of State Police
1201 Reisterstown Road
Pikesville, Maryland 21208

**VIA ELECTRONIC MAIL (dalaine.brady@maryland.gov)
AND CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

Captain Dalaine M. Brady
Licensing Division Commander
Licensing Division
Department of State Police
1111 Reisterstown Road
Pikesville, Maryland 21208

RE: Maryland State Police Licensing Division Advisory LD-FRS-14-002

Dear Colonel Brown and Captain Brady:

I write on behalf of my clients, Andrew S. Raymond ("Mr. Raymond") and Engage Armament LLC ("Engage"). Specifically, I write in regard to the Maryland State Police Licensing Division's erroneous conclusion that a "short-barreled rifle" is subject to a minimum length requirement of 29 inches.

I. Background

A. The Maryland State Police's Advisory Opinion

On May 2, 2014, the Maryland State Police ("MSP") issued an advisory opinion stating:

A short-barreled rifle or short-barreled shotgun that meets the definition of a "copycat weapon" set forth in CR § 4-301(e) (for example "a semi-automatic centerfire rifle that has an overall length of less than 29 inches" or "a semi-automatic shotgun that has a folding stock") is an "assault weapon" and subject to the restriction on transportation, possession, sale and receipt set forth in Title 4, Subtitle 3, of the Criminal Law Article.

See Maryland State Police Advisory LD-FRS-14-002 – REVISED, attached hereto as Exhibit 1.

B. The MSP's Written Guidance to Engage

In a subsequent letter to my clients, the MSP correctly noted that "[a] short-barreled rifle or short-barreled shotgun, because it is defined as a handgun, is not subject to the ban on the sale of 'assault long guns.'" *See* Letter from Captain Dalaine M. Brady to Andrew S. Raymond, May 15, 2014, attached hereto as Exhibit 2. Though "long gun" is not defined in the Maryland Code, the MSP seems to interpret the statute to mean that a weapon cannot be both a "handgun" and "long gun." That interpretation is correct. *See, e.g.,* COMAR 12.10.04.02 (distinguishing between a "handgun" and a "long gun"). The letter incorrectly states, however, that "[a] short-barreled rifle with an overall length of less than 29 inches would be a 'copycat weapon' and so banned for sale to non-exempt persons." Apparently, the MSP concludes that a weapon *can* be both a "short-barreled rifle" (which is a "handgun") and a "copycat weapon" unless the weapon is at least 29 inches long. Exhibit 2. That conclusion is wrong.

C. The Maryland Handgun Roster Board's Posting

In addition to the Licensing Division's administrative ruling, a statement by the Maryland Handgun Roster Board (the "Board") appeared in the July 11, 2014 issue of the Maryland Register, contending that¹

[w]ith regard to short-barrel rifles included on the Handgun Roster, please note that a semi-automatic rifle with an overall length of less than 29" is a "copycat weapon" and is not eligible for sale to the general public . . .

Volume 41 Md. Reg. pp. 867-68, July 11, 2014.

II. Current MSP Ruling is Based on a Mistaken Premise

The MSP's and Board's interpretation of Md. Code Ann., Crim. Law § 4-301(e)(1)(iii), as it relates to "short-barreled rifles," is erroneous. "Short-barreled rifles" (which are "handguns") are *not* "copycat weapons" under § 4-301(e)(1)(iii) because that subsection pertains exclusively to "semiautomatic centerfire rifles." Therefore, the MSP's requirement that a "short-barreled rifle" (a "handgun," per the Maryland Code) measure more than 29 inches in length is improper and should be rescinded.

III. Declaratory Ruling

Accordingly, Mr. Raymond and Engage Armament, LLC, as interested persons, respectfully request that the MSP clarify the manner in which the MSP will apply Md. Code Ann., Crim. Law § 4-301(e)(1)(iii) with regard to the transfer of "short-barreled rifles." Md. Code Ann., State Gov't § 10-304.

¹ The Maryland Handgun Roster Board, as explained more fully below, lacks any statutory authority to make such a proclamation.

The MSP should harmonize its application of the statute with the Maryland Code's definition sections, which provide that a "short-barreled rifle" is not a "rifle" under Maryland law – it is a "handgun." As a "handgun," it is not a "semiautomatic centerfire rifle" subject to the length requirement provided for in § 4-301(e)(1)(iii), and referenced in prior regulatory rulings on this subject.

IV. Statutory Definitions and Application

A. "Copycat Weapons"

For a weapon under 29 inches in length to be a "copycat weapon" pursuant to § 4-301(e)(1)(iii), it must have certain features *to the exclusion of other features*. For example, the weapon must be "centerfire," meaning that rimfire weapons are excluded. The weapon must have a "detachable magazine," meaning that weapons with fixed magazines or no magazines at all do not qualify. It must also be "semiautomatic," meaning that bolt action, pump action, single shot, and revolving cylinder weapons are excluded. Most important for the issue at hand, to qualify as a "copycat weapon" under § 4-301(e)(1)(iii), the weapon must be a "rifle," meaning that "handguns" including "short-barreled rifles" are excluded from the 29-inch length requirement.

The precision of the "copycat" portion of the subtitle is consistent with the General Assembly's intent that the statute be narrowly construed. *See* 95 Md. Op. Att'y Gen. 101 (2010) ("the General Assembly has rejected attempts to define 'assault weapons' broadly"). Furthermore, other non-length-based "copycat weapons" require numerous specific, independent features to qualify as banned. *See* Md. Code Ann., Crim. Law § 4-301(e) (requiring that, to be banned, certain weapons be "semiautomatic," "centerfire," a "rifle" able to "accept a detachable magazine," have "a folding stock, "grenade launcher," "flare launcher," or a "flash suppressor," "a fixed magazine with the capacity to accept more than 10 rounds," be "semiautomatic" and a "shotgun" with a "folding stock" or a "revolving cylinder," and specifying that a "copycat weapon" cannot be an "assault long gun.").

The list of applicable designations and features is exhaustive. It follows, therefore, that had the General Assembly intended that the section apply to "short-barreled rifles," it would have provided for them in the subtitle.

B. "Short-Barreled Rifles"

1. "Short-barreled rifle" is a legal term of art.

Even though the word "rifle" appears in the statutory definition of a "short-barreled rifle," counterintuitively, the two are in fact mutually exclusive; a "short-barreled rifle" cannot be a "rifle" as defined by Maryland law. A "short-barreled rifle" is

- (1) a rifle that has one or more barrels less than 16 inches long; or
- (2) a weapon that has an overall length of less than 26 inches and that was made from a rifle, whether by alteration, modification, or otherwise.

Md. Code Ann., Crim. Law § 4-201(f).

The statutory definitions are binding on the MSP, notwithstanding the apparent misnomer, and the MSP cannot substitute a misreading of the statute as a basis for regulatory rulings. Sub-part 2 of § 4-201(f) provides for a weapon that is not a "rifle," but that *was* a "rifle" and then was modified into a legally distinct weapon, that is no longer a rifle due to "alteration, modification" or some other reason. Sub-part 1 of § 4-201(f) describes a weapon that is a "rifle" *only* in the sense that it is "designed or redesigned, made or remade, and intended to be fired from the shoulder" as contemplated by § 4-201(e). There is no indication, however, that the weapon described in § 4-201(f) is a "rifle," for the purposes of § 4-301(e)(1)(iii). Considering that nearly every reference to "handgun" in the Maryland Code also references "short-barreled rifle," a more accurate description of § 4-201(f)(1) would be a "shoulder-fired handgun."

2. Other sections of the Code are consistent with this construction.

While the wording is imperfect, the meaning is evident: when a weapon does not have a 16 inch or longer barrel *it is no longer a "rifle."* This interpretation is consistent with other sections of the Maryland Code. For example, the definition section of the Public Safety Article, expressly provides that "[h]andgun" means a firearm with a barrel less than 16 inches in length." Md. Code Ann., Public Safety § 5-101(n)(1); *cf. Neal v. State*, 191 Md. App. 297, 313 (2010) (reading section 5-101 of the Public Safety Article in *pari materia* with portions of the Criminal Law Article in order to give the term "firearm" consistent meaning).

The "handgun cannot be a rifle" interpretation is also consistent with the Maryland Handgun Roster Board's enabling legislation, which does not apply to "a rifle or other weapon that is not defined as a handgun in § 4-201 of the Criminal Law Article." Md. Code Ann., Public Safety § 5-402. So, if the weapon *is* described in § 4-201 of the Criminal Law Article it *is not* a "rifle." Otherwise, the provision excluding rifles would make no sense. If a weapon is not a "rifle," it cannot be a "semiautomatic rifle" pursuant to the provision prohibiting copycat weapons. *See* Md. Code Ann., Crim. Law § 4-301(e)(1)(iii).

C. § 4-301(e)(1)(iii) does not pertain to "short-barreled rifles"

MSP's current interpretation of the statute is based on the premise that a weapon may be a "rifle" and "handgun" at the same time. Section 4-301(e)(1)(iii) provides a length criterion for "rifles" but no corresponding requirement for "handguns." It follows, of course, that there is no minimum length for "handguns." Because "short-barreled rifles" are "handguns," the conclusion is inescapable: There is no minimum length for "short-barreled rifles."

V. The Maryland Handgun Roster Board

A. The Handgun Roster Board Has Exceeded its Authority by Purporting to Regulate "Rifles"

Other than approving or refusing to add handguns to the Roster, the Handgun Roster Board has no authority to make proclamations on Maryland law. As mentioned above, the July 11, 2014 issue of the Maryland Register's contained an unsupported, *ultra vires* statement of law by the Maryland Handgun Roster Board (the "Board"):²

With regard to short-barrel rifles included on the Handgun Roster, please note that a semi-automatic rifle with an overall length of less than 29" is a "copycat weapon" and is not eligible for sale to the general public (unless the purchaser had a purchase order for, or a completed application to purchase, the firearm prior to October 1, 2013). See, Sections 4-301 through 4-303 of the Criminal Law Article, Annotated Code of Maryland.

Overall length is measured between the extreme ends of the rifle along a line parallel to the center line of the bore. An attachment to the barrel, such as a muzzle brake or flash suppressor, should not be included in the measurement unless it is permanently affixed.

Volume 41 Md. Reg. pp. 867-68, July 11, 2014.

² This is not the first time that the Board has exceeded its legal authority. According to the MSP, "in 1994 when the assault pistols ban went into effect the 15 listed firearms were removed from the approved handgun roster." The Board, however, does not have the authority to remove firearms from the Roster. The Board also adds unauthorized commentary to the text of the Roster without any basis in law.

The Board's authority and responsibilities are codified in section 5-401 *et. seq* of the Public Safety Article, and its perceived authority over "copycat weapon" "rifles" highlights the confusion regarding the proper classification of "short-barreled rifles." The Board has no authority to issue such proclamations regarding what constitutes a "copycat weapon." The enabling legislation of the Handgun Roster Board provides that the Board shall, among other things "compile and maintain a handgun roster of authorized handguns." Md. Code Ann., Pub. Safety § 5-405(e)(1). To be sold in Maryland, handguns (with certain exceptions) must appear on the Roster. Md. Code Ann., Pub. Safety § 5-406(a). For the purposes of the Board and the Roster, "handgun" includes "a short-barreled rifle." *See* Md. Code Ann., Crim. Law § 4-201(c).

B. The Board's Statement Actually Clarifies that a "Short-Barreled Rifle" is not a "Rifle"

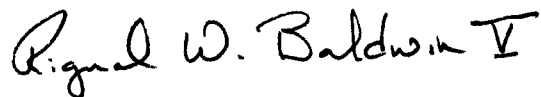
The Code unambiguously states what the Board may *not* regulate. For example, the "subtitle does not affect a person's right to . . . sell . . . a rifle or other weapon that is not defined as a handgun in § 4-201 of the Criminal Law Article." Md. Code Ann., Pub. Safety § 5-402(a)(1). The Maryland Regulations are even more clear. "Handgun" means any pistol, revolver, or other firearm capable of being concealed on the person, including a short-barreled shotgun and a short-barreled rifle . . . *except it does not include [a] rifle.*" COMAR 29.03.03.01 (emphasis added). Most important, in § 4-201 of the Criminal Law Article, "handgun" and "rifle" are mutually exclusive – a weapon cannot be a "rifle" and "handgun" at the same time. Because the Board has no authority over "rifles," by asserting authority over "short-barreled rifles", the Board necessarily admits that a "short-barreled rifle" is not a "rifle" and cannot be a copycat weapon.

Colonel Marcus L. Brown
Captain Dalaine M. Brady
August 19, 2014
Page 9

VI. Conclusion

Considering the foregoing, my clients request that the MSP confirm, in writing, that contrary to prior MSP advisories opinions and guidance, a "short-barreled rifle" need not measure more than 29 inches in length, and the sale of such weapons is legal provided the buyer and seller abide by all other applicable firearm laws.

Sincerely,



Rignal W. Baldwin V

RWBV/sas

Enclosures

cc: Ronald M. Levitan, Esquire (Via Electronic Mail - ronald.levitan@maryland.gov and First Class Mail w/enclosures)
Mark H. Bowen, Esquire (Via Electronic Mail - mark.bowen@maryland.gov and First Class Mail w/enclosures)
David J. Rose, Esquire (Via Electronic Mail - david.rose@atf.gov and First Class Mail w/enclosures)

EXHIBIT 1



Maryland State Police
Licensing Division
ADVISORY
LD-FRS-14-002 - REVISED



May 2, 2014

Short-Barreled Shotguns and Short-Barreled Rifles

This Advisory is being published in response to a number of inquiries received by the Firearms Registration Unit. Citizens and firearms dealers alike have questioned whether or not short-barreled rifles or short-barreled shotguns are regulated in Maryland.

I. Definitions

Maryland Law, Criminal Law Article ("CR") § 4-201(f), defines "short-barreled rifle" as a rifle that has:

1. One or more barrels with one or both measuring less than 16 inches long; OR
2. Has an overall length of less than 26 inches AND was manufactured from a rifle either by alteration or modification.

CR § 4-201(g) defines "short-barreled shotgun" as a shotgun that has:

1. One or more barrels with one or both measuring less than 18 inches long; OR
2. Has an overall length of less than 26 inches AND was manufactured from a shotgun either by alteration or modification.

II. Possession

Maryland's Public Safety Article § 5-203 specifically addresses the possession of short-barreled rifles or short-barreled shotguns. A person may not possess a short-barreled rifle or short-barreled shotgun in Maryland unless the person,

1. While on official business is
 - a. A member of the law enforcement
 - b. A member of the armed forces
 - c. A warden or correctional officer
 - d. A sheriff or deputy sheriff; OR
2. Is a citizen who has registered with the federal government the short-barreled shotgun or short-barreled rifle in accordance with federal law.

The revision was made in Section VI **Approval for Sale or Manufacture by Handgun Roster Board** and consisted ONLY of the removal of a comma in the last sentence located between the phrase "distribution or sale" and "or sold or offered for sale in Maryland."

LICENSING DIVISION
Short Barrel Shotguns and Short Barrel Rifles
REVISION
May 2, 2014

III. Possession of "Copycat" weapon

A short-barreled rifle or short-barreled shotgun that meets the definition of "copycat weapon" set forth in CR § 4-301(e) (for example, "a semi-automatic centerfire rifle that has an overall length of less than 29 inches" or "a semi-automatic shotgun that has a folding stock") is an "assault weapon" and subject to the restrictions on transportation, possession, sale and receipt set forth in Title 4, Subtitle 3, of the Criminal Law Article.

IV. Wear, Carry or Transport

CR § 4-201 (c) (2) defines "handgun" to include a short-barreled shotgun and a short-barreled rifle. As such, short-barreled rifles and short-barreled shotguns are subject to the same wear, carry and transport restrictions, under CR § 4-203, as pistols. Accordingly, a person may not wear, carry or transport a short-barreled rifle or short-barreled shotgun unless the person has a valid Maryland Handgun Carry Permit or one of the other exceptions set forth in CR § 4-203(b) applies.

V. Transfer

Public Safety Article ("PS") § 5-101(r) defines "regulated firearm" to include a "handgun" which is defined in § 5-101(n)(1) to mean "a firearm with a barrel less than 16 inches in length." Therefore, if a short-barreled rifle or short-barreled shotgun has a barrel length of less than 16 inches, the firearm is a "handgun" and subject to the application, background check and other requirements relating to the transfer of "regulated firearms" under Public Safety Article Title 5, Subtitle 1.

VI. Approval for Sale or Manufacture by Handgun Roster Board

Additionally, because PS 5-401(c) uses the definition of "handgun" from CR 4-201, a short-barreled rifle or short-barreled shotgun must be approved by the Handgun Roster Board before it may be manufactured for distribution or sale or sold or offered for sale in Maryland.

The revision was made in Section VI **Approval for Sale or Manufacture by Handgun Roster Board** and consisted ONLY of the removal of a comma in the last sentence located between the phrase "distribution or sale" and "or sold or offered for sale in Maryland."

EXHIBIT 2



MARTIN O'MALLEY
GOVERNOR

ANTHONY G. BROWN
LT. GOVERNOR

STATE OF MARYLAND
MARYLAND STATE POLICE
Licensing Division
1111 Reisterstown Road
Pikesville, Maryland 21208
410-653-4500



COLONEL
MARCUS L. BROWN
SUPERINTENDENT

May 15, 2014

Mr. Andrew Raymond
Engage Armament LLC
701 E. Gude Drive
Suite 101
Rockville MD 20850

Dear Mr. Raymond,

Thank you for your electronic message, dated March 28, 2014, to Corporal Jason Edwards, supervisor of our Firearms Registration Section. In your email, you express your concerns regarding a recently published Advisory, LDS-FRS-14-002 entitled "Short-Barreled Shotguns and Short-Barreled Rifles." The information below is submitted to address your questions and concerns.

The Advisory was issued in response to questions raised concerning the ability to sell receivers for assault long guns listed in Public Safety Article 5-101(r)(2). In reviewing the laws concerning the sale of regulated firearms while preparing the Advisory, it was noted the Handgun Roster Board law, Public Safety Article, Section 5-401(c), uses the definition of "handgun" contained in the Criminal Law Article, Section 4-201(c)(2), which includes short-barreled rifles and short-barreled shotguns. I cannot address why the issue of approval of short-barreled rifles and short-barreled shotguns for sale by the Handgun Roster Board had not come up before.

It is unclear as to the basis of your statement that there is "no way" the Handgun Roster Board would approve a short-barreled rifle or short-barreled shotgun that could be lawfully sold under Maryland law. A short-barreled rifle or short-barreled shotgun, because it is defined as a "handgun," is not subject to the ban on the sale of "assault long guns." A short-barreled rifle with an overall length of less than 29 inches would be a "copycat weapon" and so banned for sale to non-exempt persons. However, a short-barreled rifle with an overall length of 29 inches or more can be sold to citizens. Additionally, "copycat weapons" ordered prior to October 1, 2013, may be lawfully sold to citizens after that date, as long as a purchase order is included with the State's paperwork.

Finally, law enforcement agencies may still purchase short-barreled rifles with an overall length of less than 29 inches or any short-barreled shotgun. The Handgun Roster Board approval is required even for sale to law enforcement agencies.

Mr. Andrew Raymond
May 15, 2014
Page Two

The Advisory simply restates the law that currently exists. Short-barreled rifles and short-barreled shotguns are included in the definition of "handgun" under Public Safety Title 5, Subtitle 4, Handgun Roster, which existed prior to the Firearms Safety Act of 2013.

I trust this response has adequately addressed your concerns. Please feel free to contact me directly at dalaine.brady@maryland.gov. You may also contact me by telephone at 410-653-4502, should you have additional questions.

Sincerely,

A handwritten signature in black ink, reading "Dalaine Brady", with a stylized flourish at the end.

Dalaine M. Brady
Commander
Licensing Division

DMB:cmh