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West's Annotated Code of Maryland

Public Safety

Effective: October 1, 2015

West's Annotated Code of Maryland
Public Safety (Refs & Annos)
Title 5. Firearms (Refs & Annos)
Subtitle 1. Regulated Firearms (Refs & Annos)

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MD Code, Public Safety, § 5-133

Formerly cited as MD CODE Art. 27, § 445; MD CODE Art. 27, § 449

§ 5-133. Restrictions on possession of regulated firearms[Currentness](#)**Preemption by State**

(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.

Possession of regulated firearm prohibited

(b) 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(i)(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;
- (8) has been found not criminally responsible under § 3-110 of the Criminal Procedure Article;
- (9) 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 involuntarily committed to a facility as defined in § 10-101 of the Health--General Article;
- (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;
- (12) except as provided in subsection (e) 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
- (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.

Penalty for possession by convicted felon

(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.

Possession by person under age of 21 years prohibited; exceptions

(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;
 - (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.

Transport of regulated firearms

(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.

Credits

Added by Acts 2003, c. 5, § 2, eff. Oct. 1, 2003. Amended by Acts 2003, c. 17, § 1, eff. Oct. 1, 2003; Acts 2010, c. 712, § 1, eff. Oct. 1, 2010; Acts 2011, c. 164, § 1, eff. Oct. 1, 2011; Acts 2011, c. 165, § 1, eff. Oct. 1, 2011; Acts 2011, c. 343, § 1, eff. Oct. 1, 2011; Acts 2012, c. 67, § 1, eff. April 10, 2012; Acts 2012, c. 276, § 1, eff. Oct. 1, 2012; Acts 2012, c. 277, § 1, eff. Oct. 1, 2012; Acts 2013, c. 427, § 1, eff. Oct. 1, 2013; Acts 2015, c. 22, § 5.

Titles 1 through 8 appear in this volume.

Editors' Notes**LEGISLATIVE NOTES**

Revisor's Note (Acts 2003, c. 5):

This section is new language derived without substantive change from former Art. 27, §§ 449(e) and 445(d), (e), and, except as it related to the transfer of regulated firearms, (a).

In subsection (a) of this section, the references to a "local" jurisdiction are substituted for the former references to "subordinate" jurisdictions and "such" jurisdictions to conform to the terminology used throughout this title and in other revised articles of the Code.

Also in subsection (a) of this section, the former reference to restrictions imposed "by the laws, ordinances or regulations" of local jurisdictions is deleted as surplusage.

In subsection (b)(9) of this section, the reference to an adjudication for an "act" that would be a disqualifying crime "if committed by an adult" is added for consistency with § 5-306 of this title.

In subsection (c)(4) of this section, the reference to a "crime" is substituted for the former reference to an "offense" to conform to the terminology used in the Criminal Procedure Article and the Criminal Law Article.

In subsection (d)(2)(i) and (iv) of this section, the former phrases "if the person is under 21 years of age" are deleted as duplicative in light of subsection (d)(1) of this section.

The Public Safety Article Review Committee notes, for consideration by the General Assembly, that the meaning of the reference in former Art. 27, § 449(e) to a person "who is in illegal possession of a firearm as defined in § 445(d)(1)(i) and (ii) of [Art. 27]" is unclear. Former Art. 27, § 445(d)(1)(i) and (ii) prohibited a person who has been convicted of a crime of violence or any violation classified as a felony in this State from possessing a regulated firearm. The General Assembly may wish to clarify the meaning of former Art. 27, § 449(e), which is revised in subsection (c) of this section.

Defined terms: "Crime of violence" § 5-101

"Disqualifying crime" § 5-101

"Firearm" § 5-101

"Fugitive from justice" § 5-101

"Habitual drunkard" § 5-101

"Habitual user" § 5-101

"Person" § 1-101

"Regulated firearm" § 5-101

HISTORICAL AND STATUTORY NOTES**2003 Legislation**

Acts 2003, c. 17, § 1, deleted former subsec. (c)(1)(iii), which read:

"(iii) any other violation classified as a felony in the State".

2011 Legislation

Acts 2011, c. 164, § 1, and Acts 2011, c. 165, § 1, rewrote subsec. (c), which previously had read:

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

"(i) a crime of violence; or

"(ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-607, § 5-608, § 5-609, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article.

"(2) A person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years, no part of which may be suspended.

"(3) A person sentenced under paragraph (1) of this subsection may not be eligible for parole.

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

Acts 2011, c. 343, § 1, in subsecs. (d)(1), (d)(2)(i), and (d)(2)(iv), deleted “or ammunition solely designed for a regulated firearm” after “regulated firearm”; and in subsec. (d)(2)(vi), deleted “or ammunition” after “possession of a firearm”.

2012 Legislation

Acts 2012, c. 67, § 1, repealed and reenacted this section without amendment.

Acts 2012, c. 276, § 1, and Acts 2012, c. 277, § 1, added subsec. (c)(1)(iii).

2013 Legislation

Acts 2013, c. 427, § 1, rewrote subsec. (b), which previously had read:

“(b) 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;

“(7) has been confined for more than 30 consecutive days to a facility as defined in § 10-101 of the Health--General Article, 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;

“(8) 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

“(9) 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.”

2015 Legislation

Acts 2015, c. 22, § 5, in para. (b)(6), corrected a cross-reference.

Derivation:

Former Art. 27, § 445, related to restrictions on transfers of regulated firearms, repealed by Acts 2003, c. 5, § 1, eff. Oct. 1, 2003.

Former Art. 27, § 449, related to penalties, repealed by Acts 2003, c. 5, § 1, eff. Oct. 1, 2003.

MD Code, Public Safety, § 5-133, MD PUBLIC SAFETY § 5-133

Current through Chapters 1 to 4 from the 2018 Regular Session of the General Assembly

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