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Martin O'Malley
Governor

Anthony Brown
Lt. Governor

Kristen Mahoney
Executive Director

March 19, 2012

The Honorable Martin O'Malley
Governor of Maryland
100 State Circle
Annapolis MD 21401

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House, H-107
Annapolis MD 21401-1991

The Honorable Michael Erin Busch
Speaker of the House of Delegates
State House H-101
Annapolis MD 21401-1991

Senator Brian E. Frosh
Chair, Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
Annapolis, MD 21401

Delegate Joseph F. Vallario, Jr.
Chair, House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

Dear Governor O'Malley, President Miller, Speaker Busch, Senator Frosh, and Delegate Vallario:

As required by Maryland Criminal Law Article §4-109 and SB 850/Ch. 320, 2009/HB539/Ch. 321, 2009, please find enclosed a copy of the Maryland Statistical Analysis Center's report entitled, *Report to the State of Maryland Under Senate Bill 850/House Bill 539 (Chapter 320, 2009)* regarding the compliance by Electronic Control Device (ECD) manufacturers with the relevant requirements and provisions of this act.

Maryland's Statistical Analysis Center is located in the Governor's Office of Crime Control and Prevention. Should you have any questions relating to the information provided in this report, please feel free to contact me at 410-821-2828.

Sincerely,

Kristen Mahoney
Executive Director

Enclosure

REPORT TO THE STATE OF MARYLAND
UNDER SENATE BILL 850/HOUSE BILL 539 (Chapter 320, 2009)

Maryland Statistical Analysis Center,
Governor's Office of Crime Control & Prevention

March 19, 2012

INTRODUCTION

In April 2009, Governor O'Malley signed into law Senate Bill 850/ House Bill 539. This law prohibits a person from possessing or using an electronic control device¹ (ECD) unless the person meets specified requirements and also provides that an ECD may not be sold and activated in the State unless specified requirements are met. More specifically:

A person may not possess or use an ECD in Maryland unless the person:

1. Is 18 years of age or older
2. Has never been convicted of a crime of violence or a felony drug crime

A manufacturer/distributor may not sell or activate an ECD in Maryland unless:

1. An instructional manual or audio or audiovisual instructions are provided to the purchaser
2. The manufacturer maintains a record of the original owner of the ECD
3. The manufacturer or seller has obtained a state and federal criminal history records check of the original owner to ensure compliance

This law also requires ECD manufacturers to provide an investigating law enforcement agency with prompt access to the manufacturer's records on ECD devices and cartridges sold in the State.

In addition, the law also required the Governor's Office of Crime Control & Prevention (GOCCP) to submit a report to the Maryland General Assembly on the compliance by ECD manufacturers with the relevant requirements and provisions of this act. The Maryland Statistical Analysis Center (MSAC) at GOCCP created this report.

TASER ECDs VS. STUN GUNS

It is first important to examine the types of ECDs commonly available for purchase to citizens for protection and security. First, there are ECDs commonly known as TASERS derived from the manufacturer TASER International, which are the most advanced and effective ECDs that a citizen can purchase. Although lesser known, PHAZZER products modeled similarly to TASER, are also sold to civilians. TASER and PHAZZER are the only brands sold to citizens where ECD contact can be made from a distance and cause the physical incapacitation of the target. Other less effective and much less expensive stun gun models sold to citizens, where only direct contact can be made to the target and function solely on pain compliance, include but not limited to: Zap, Monster, Guard Dog, Cheetah, Streetwise, Stun Master, Bestex, Sec Pro USA, Hot Shot, Freedom, Scorpion, Z Force, Runt, Small Fry, and Monarch.

¹ Electronic Control Device means a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electric current.

It is unknown how many TASER/PHAZZER ECDs are bought compared to the direct contact stun guns distributors, but the price discrepancies probably result in more of the latter being purchased. TASER and PHAZZER ECDs retail at \$400-\$1,000 per device with additional cartridges also needing to be purchased if those provided are used up. Direct contact stun guns are commonly found in the \$20-\$100 price range depending upon the form of the stun gun (traditional, phone, baton etc.). No cartridges are needed for these models.

METHODOLOGY

In current times, the vast majority of all businesses/distributors provide an option to purchase merchandise online. This is no exception when it comes to purchasing ECDs and other self defense weapons. Other than retailers that serve law enforcement, there are very few if any self defense weapon distributors for consumers that have a walk-in address in Maryland. A challenge arises in that out of state online distributors can sell ECDs to Maryland residents and the State of Maryland cannot control online purchases. Given these circumstances, there is no way to know which ECD distributors are selling their products to Marylanders.

As a result, MSAC conducted an online overview of approximately 20 self defense weapons/ECD distributors and manufacturers around the country to gauge whether or not these businesses are in compliance with Maryland laws. MSAC simulated purchasing these weapons to determine what policies were in place before each item could be shipped.

SAMPLE

Approximately 20 stun gun/TASER distributors' websites were reviewed. The distributors' locations ranged from California to Florida. These websites can sell to any state or location around the country other than those areas where stun guns are illegal to possess. Nearly 100% of these sites sold products from TASER International while also offering some of the other stun gun brands previously mentioned. This sample did not include online merchandise sites such as eBay, Amazon, or Overstock. The sample only contained online distributors specific to self defense weapons and technology.

RESULTS

Age

The majority of the online distributors noted that you have to be 18 years of age to purchase stun guns or TASERS. A few sites required you to manually type in your date of birth while most sites required you to check a waiver stating that you are 18 years of age or older.

BACKGROUND CHECK

Just over half of the websites explicitly noted that the buyer had to pass a felony background check to purchase the TASER ECD. TASER International provides all background checks on the purchaser. Some websites emailed the customer a background check form to fill out while other sites stated that a background check would be made before the product could be shipped. Some sites allow the TASER to be shipped but it can't be activated until a background check has been complete. Whether or not the website clearly stated that a felony background check had to be passed, all TASER consumers from these sites must first pass this background check. TASER International has a record of all distributors as they have to apply to TASER directly and be approved to sell their products so it can be assured that background checks will be made on all purchases.

PHAZZER differentiates itself from TASER and explicitly notes that no background check or registration is required in order to purchase their ECDs. None of the other direct stun gun manufacturers (Zap, Monster, Guard Dog etc.) appear to require background checks prior to purchase.

INSTRUCTION MANUAL, AUDIO, OR AUDIOVISUAL INSTRUCTIONS

Regardless of the distributor, all models of TASER ECDs are packaged with an instructional manual and a training CD. PHAZZER ECDs are also packaged with an instruction manual. None of the other stun gun brands mentioned above come with an instruction manual or a training CD and are much easier to operate than the long range ECDs.

RECORD OF THE ORIGINAL OWNER

Any online distributor has to follow proper privacy and security guidelines to ensure that purchaser information cannot be seen by anyone other than the distributor. These distributors have to maintain a copy of the original purchase for their own internal records, so it seems that records of the original owner must be stored somewhere. From the information provided on these websites, it is unknown how prompt certain records can be given to law enforcement agencies on ECD purchases, especially Maryland agencies. The fact that most of the purchases are made online makes it extremely hard to control and monitor ECD purchases that are being conducted in Maryland.

TASER International does have a protocol when it comes to storing records and providing information to law enforcement. This passage below came directly from the TASER International website: *"TASER International does not rent, sell or exchange information about its customers. Access to information about customers is restricted to TASER International and third parties that need access to customer information in order to provide operational or other support services to TASER International. We may disclose personally identifiable information in*

response to legal process, for example, in response to a court order or a subpoena. We also may disclose such information in response to a law enforcement agency's request, or where we believe it is necessary to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of our terms of use, or as otherwise."

TASER cartridges do have unique serial numbers and are equipped with an Anti-Felon Identification system, which discharges 20-30 serialized paper tags when deployed. Law enforcement can later retrieve this confetti from the scene and contact TASER International to get the name of the owner of the TASER device, allowing police to track any potential misuse.

RESPONSIBILITY OF THE BUYER NOT THE SELLER

These online distributors make it very clear that it is the responsibility of the buyer not the seller to be aware of ECD laws in their area. The following language comes from one of the online distributor's websites: *"Laws vary widely from state to state and change often. We make an all out effort to keep up on all the laws concerning the items that we sell, but we sometimes cannot keep track of the ever-changing legal landscape. Therefore please note that it is the responsibility of the buyer, not the seller, to ascertain, comply with and abide by all applicable federal, state and local laws applying to the purchase, possession, shipment or use of any items purchased. The BUYER will hold harmless the seller or any agent or affiliate thereof in any event associated with the purchase, use, misuse or legality of any product. Buyer also holds harmless the seller for any injury of any kind associated with any item purchased."*

DISCUSSION

ECDs are legal to purchase in most states around the country including Maryland with the exception of Annapolis, Baltimore City, Baltimore County, and Howard County. It is unanimous regardless of where you purchase an ECD for self defense purposes that you have to be at least 18 years of age. As far as the other aspects of SB 850, the best controls involve products distributed by TASER International. TASER is the only manufacturer that ensures a felony background check is passed prior to the purchase or activation of their ECD products. TASER conducts all of the background checks in house and also provides an instruction manual with every purchase. All distributors of TASER products follow TASER International protocols to ensure compliance with their policies. PHAZZER, another long range ECD manufacturer, does not require background checks and neither do the various other stun gun manufacturers around the country.

Due to the fact that the majority of ECD distributors selling to civilians around the country conduct their sales online puts law enforcement at a disadvantage when obtaining records from sellers with no clear business address in Maryland. Consumers could also resell their ECD products on eBay, Amazon.com and other online retailers, and consumer to consumer

corporations, which add another layer of monitoring to the tracking of these products to make sure that they don't wind up in the hands of felons. This makes it nearly impossible to track every ECD sale to a person living in Maryland. It is also difficult to hold these distributors accountable when they explicitly note that the responsibility is placed on the buyer and not the seller of these products.

CONCLUSION

Based on the parameters set in SB 850, the only ECD manufacturer that appears to be in total compliance with Maryland law is TASER International. Although TASER is the most popular brand of ECD sold to consumers, a plethora of other smaller stun gun manufacturer as well as PHAZZER, who are not in compliance with Maryland law, distribute their products around the country. The fact that the vast majority of security product distributors sell their products online and other online stores such as eBay and Amazon also sell ECDs allow for these products to be sold to consumers in Maryland from anywhere in the country. These distributors also defer all responsibility to the consumer which shifts accountability from sellers who are not complaint with these laws.

In summary, persons who illegally distribute and purchase ECDs in Maryland generally remain anonymous and avoid enforcement. In fact, only 6 arrests were made in Maryland in 2011 for persons illegally possessing ECDs. The prevalence of online commerce gives distributors and purchasers a high degree of anonymity from law enforcement agencies who prioritize resources to track illegal selling and possession of firearms rather than ECDs.