

HOUSE BILL 745

L3, E2

8lr1995
CF SB 613

By: **Delegate Donoghue**

Introduced and read first time: February 4, 2008

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2008

CHAPTER _____

1 AN ACT concerning

2 **City of Hagerstown – Fire and Explosives Investigators – Authority**

3 FOR the purpose of providing that under certain circumstances, a City of Hagerstown
4 fire and explosive investigator operating in the City of Hagerstown has the
5 same authority as the State Fire Marshal and a full-time investigative and
6 inspection assistant in the Office of the State Fire Marshal to make arrests
7 without a warrant and to exercise certain powers of arrest; authorizing a City of
8 Hagerstown fire and explosive investigator to exercise certain authority while
9 operating outside the City of Hagerstown under certain circumstances;
10 authorizing the City of Hagerstown Fire Chief to limit certain authority of a fire
11 and explosive investigator to make an arrest without a warrant or exercise
12 certain powers of arrest; requiring the City of Hagerstown Fire Chief to express
13 the limitation in writing; excluding a City of Hagerstown fire and explosive
14 investigator from the definition of “law enforcement officer” under the law
15 relating to the Law Enforcement Officers’ Bill of Rights; including a City of
16 Hagerstown fire and explosive investigator in the definition of “police officer” in
17 connection with provisions of law relating to the Maryland Police Training
18 Commission and in the definition of “law enforcement official” in connection
19 with the authorized carrying of a handgun by a person engaged in law
20 enforcement; defining certain terms; requiring the Maryland Police Training
21 Commission to certify certain fire and explosive investigators as police officers
22 by a certain date under certain circumstances; and generally relating to the
23 authority of the City of Hagerstown fire and explosive investigators.

24 BY repealing and reenacting, without amendments,
25 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 4–201(a)
2 Annotated Code of Maryland
3 (2002 Volume and 2007 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Criminal Law
6 Section 4–201(d)
7 Annotated Code of Maryland
8 (2002 Volume and 2007 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article – Criminal Procedure
11 Section 2–208
12 Annotated Code of Maryland
13 (2001 Volume and 2007 Supplement)

14 BY adding to
15 Article – Criminal Procedure
16 Section 2–208.5
17 Annotated Code of Maryland
18 (2001 Volume and 2007 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Public Safety
21 Section 3–101(a) and 3–201(a)
22 Annotated Code of Maryland
23 (2003 Volume and 2007 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Public Safety
26 Section 3–101(e)(2) and 3–201(e)(2)
27 Annotated Code of Maryland
28 (2003 Volume and 2007 Supplement)

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

31 **Article – Criminal Law**

32 4–201.

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

34 (d) “Law enforcement official” means:

35 (1) a full–time member of a police force or other unit of the United
36 States, a state, a county, a municipal corporation, or other political subdivision of a
37 state who is responsible for the prevention and detection of crime and the enforcement

1 of the laws of the United States, a state, a county, a municipal corporation, or other
2 political subdivision of a state;

3 (2) a part-time member of a police force of a county or municipal
4 corporation who is certified by the county or municipal corporation as being trained
5 and qualified in the use of handguns;

6 (3) a fire and explosive investigator of the Prince George's County
7 Fire/EMS Department as defined in § 2-208.3 of the Criminal Procedure Article;

8 (4) a Montgomery County fire and explosive investigator as defined in
9 § 2-208.1 of the Criminal Procedure Article;

10 (5) an Anne Arundel County or City of Annapolis fire and explosive
11 investigator as defined in § 2-208.2 of the Criminal Procedure Article; [or]

12 (6) a Worcester County fire and explosive investigator as defined in §
13 2-208.4 of the Criminal Procedure Article; **OR**

14 (7) **A CITY OF HAGERSTOWN FIRE AND EXPLOSIVE INVESTIGATOR**
15 **AS DEFINED IN § 2-208.5 OF THE CRIMINAL PROCEDURE ARTICLE.**

16 **Article - Criminal Procedure**

17 2-208.

18 (a) (1) The State Fire Marshal or a full-time investigative and inspection
19 assistant of the Office of the State Fire Marshal may arrest a person without a
20 warrant if the State Fire Marshal or assistant has probable cause to believe:

21 (i) a felony that is a crime listed in paragraph (2) of this
22 subsection has been committed or attempted; and

23 (ii) the person to be arrested has committed or attempted to
24 commit the felony whether or not in the presence or within the view of the State Fire
25 Marshal or assistant.

26 (2) The powers of arrest set forth in paragraph (1) of this subsection
27 apply only to the crimes listed in this paragraph and to attempts, conspiracies, and
28 solicitations to commit these crimes:

29 (i) murder under § 2-201(4) of the Criminal Law Article;

30 (ii) setting fire to a dwelling or occupied structure under § 6-102
31 of the Criminal Law Article;

1 (iii) setting fire to a structure under § 6–103 of the Criminal Law
2 Article;

3 (iv) a crime that relates to destructive devices under § 4–503 of
4 the Criminal Law Article; and

5 (v) making a false statement or rumor as to a destructive device
6 under § 9–504 of the Criminal Law Article.

7 (b) (1) The State Fire Marshal or a full–time investigative and inspection
8 assistant of the Office of the State Fire Marshal may arrest a person without a
9 warrant if the State Fire Marshal or assistant has probable cause to believe:

10 (i) the person has committed a crime listed in paragraph (2) of
11 this subsection; and

12 (ii) unless the person is arrested immediately, the person:

13 1. may not be apprehended;

14 2. may cause physical injury or property damage to
15 another; or

16 3. may tamper with, dispose of, or destroy evidence.

17 (2) The crimes referred to in paragraph (1) of this subsection are:

18 (i) a crime that relates to a device that is constructed to
19 represent a destructive device under § 9–505 of the Criminal Law Article;

20 (ii) malicious burning in the first or second degree under §
21 6–104 or § 6–105 of the Criminal Law Article;

22 (iii) burning the contents of a trash container under § 6–108 of
23 the Criminal Law Article;

24 (iv) making a false alarm of fire under § 9–604 of the Criminal
25 Law Article;

26 (v) a crime that relates to burning or attempting to burn
27 property as part of a religious or ethnic crime under § 10–304 or § 10–305 of the
28 Criminal Law Article;

29 (vi) a crime that relates to interference, obstruction, or false
30 representation of fire and safety personnel under § 6–602 or § 7–402 of the Public
31 Safety Article; and

1 (vii) threatening arson or attempting, causing, aiding,
2 counseling, or procuring arson in the first or second degree or malicious burning in the
3 first or second degree under Title 6, Subtitle 1 of the Criminal Law Article.

4 (c) (1) The State Fire Marshal or a full-time investigative and inspection
5 assistant in the Office of the State Fire Marshal may act under the authority granted
6 by § 2-102 of this title to police officers as provided under paragraph (2) of this
7 subsection.

8 (2) When acting under the authority granted by § 2-102 of this title,
9 the State Fire Marshal or a full-time investigative and inspection assistant in the
10 Office of the State Fire Marshal has the powers of arrest set forth in §§ 2-202, 2-203,
11 and 2-204 of this subtitle.

12 (d) (1) The State Fire Marshal or a full-time investigative and inspection
13 assistant in the Office of the State Fire Marshal who acts under the authority granted
14 by this section shall notify the following persons of an investigation or enforcement
15 action:

16 (i) 1. the chief of police, if any, or chief's designee, when in
17 a municipal corporation;

18 2. the Police Commissioner or Police Commissioner's
19 designee, when in Baltimore City;

20 3. the chief of police or chief's designee, when in a county
21 with a county police department, except Baltimore City;

22 4. the sheriff or sheriff's designee, when in a county
23 without a county police department;

24 5. the Secretary of Natural Resources or Secretary's
25 designee, when on property owned, leased, operated by, or under the control of the
26 Department of Natural Resources; or

27 6. the respective chief of police or chief's designee, when
28 on property owned, leased, operated by, or under the control of the Maryland
29 Transportation Authority, Maryland Aviation Administration, or Maryland Port
30 Administration; and

31 (ii) the Department of State Police barrack commander or
32 commander's designee, unless there is an agreement otherwise with the Department
33 of State Police.

34 (2) When the State Fire Marshal or a full-time investigative and
35 inspection assistant in the Office of the State Fire Marshal participates in a joint
36 investigation with officials from another state, federal, or local law enforcement unit,
37 the State Fire Marshal or a full-time investigative and inspection assistant in the

1 Office of the State Fire Marshal shall give the notice required under paragraph (1) of
2 this subsection reasonably in advance.

3 (e) A State Fire Marshal or a full-time investigative and inspection assistant
4 in the Office of the State Fire Marshal who acts under the authority granted by this
5 section:

6 (1) has the same immunities from liability and exemptions as a State
7 Police officer in addition to any other immunities and exemptions to which the State
8 Fire Marshal or full-time investigative and inspection assistant is otherwise entitled;
9 and

10 (2) remains at all times and for all purposes an employee of the
11 employing unit.

12 (f) (1) This section does not impair a right of arrest otherwise existing
13 under the Code.

14 (2) This section does not deprive a person of the right to receive a
15 citation for a traffic violation as provided in the Maryland Vehicle Law or a criminal
16 violation as provided by law or the Maryland Rules.

17 **2-208.5.**

18 (A) **IN THIS SECTION, "FIRE AND EXPLOSIVE INVESTIGATOR" MEANS AN**
19 **INDIVIDUAL WHO:**

20 (1) **IS ASSIGNED FULL TIME TO THE FIRE AND EXPLOSIVE**
21 **INVESTIGATIONS SECTION OF THE CITY OF HAGERSTOWN FIRE MARSHAL'S**
22 **OFFICE AND IS A PAID EMPLOYEE;**

23 (2) ~~HAS ATTAINED THE POSITION OF DEPUTY FIRE MARSHAL OR~~
24 ~~HIGHER; AND~~ **BEEN EMPLOYED BY THE CITY OF HAGERSTOWN FIRE**
25 **DEPARTMENT AS A FIREFIGHTER FOR AT LEAST 5 YEARS;**

26 (3) **HAS SUCCESSFULLY COMPLETED A TRAINING PROGRAM FROM**
27 **A POLICE TRAINING SCHOOL APPROVED BY THE POLICE TRAINING**
28 **COMMISSION ESTABLISHED UNDER TITLE 3, SUBTITLE 2 OF THE PUBLIC**
29 **SAFETY ARTICLE; AND**

30 (4) **AT ALL TIMES MAINTAINS ACTIVE CERTIFICATION BY THE**
31 **POLICE TRAINING COMMISSION.**

32 (B) **EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A FIRE**
33 **AND EXPLOSIVE INVESTIGATOR HAS THE SAME AUTHORITY GRANTED TO THE**
34 **STATE FIRE MARSHAL OR A FULL-TIME INVESTIGATIVE AND INSPECTION**

1 ASSISTANT OF THE OFFICE OF THE STATE FIRE MARSHAL UNDER § 2-208 OF
2 THIS SUBTITLE:

3 (1) WHILE OPERATING IN THE CITY OF HAGERSTOWN; AND

4 (2) WHILE OPERATING OUTSIDE THE CITY OF HAGERSTOWN
5 WHEN:

6 (I) THE FIRE AND EXPLOSIVE INVESTIGATOR IS
7 PARTICIPATING IN A JOINT INVESTIGATION WITH OFFICIALS FROM ANOTHER
8 STATE, FEDERAL, OR LOCAL LAW ENFORCEMENT UNIT, AT LEAST ONE OF WHICH
9 HAS LOCAL JURISDICTION;

10 (II) THE FIRE AND EXPLOSIVE INVESTIGATOR IS
11 RENDERING ASSISTANCE TO ANOTHER LAW ENFORCEMENT OFFICER;

12 (III) THE FIRE AND EXPLOSIVE INVESTIGATOR IS ACTING AT
13 THE REQUEST OF A LAW ENFORCEMENT OFFICER OR STATE LAW
14 ENFORCEMENT OFFICER; OR

15 (IV) AN EMERGENCY EXISTS.

16 (c) THE CITY OF HAGERSTOWN FIRE CHIEF:

17 (1) MAY LIMIT THE AUTHORITY OF A FIRE AND EXPLOSIVE
18 INVESTIGATOR UNDER THIS SECTION; AND

19 (2) SHALL EXPRESS THE LIMITATION IN A WRITTEN POLICY.

20 **Article - Public Safety**

21 3-101.

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

23 (e) (2) "Law enforcement officer" does not include:

24 (i) an individual who serves at the pleasure of the Police
25 Commissioner of Baltimore City;

26 (ii) an individual who serves at the pleasure of the appointing
27 authority of a charter county;

28 (iii) the police chief of a municipal corporation;

1 (iv) an officer who is in probationary status on initial entry into
2 the law enforcement agency except if an allegation of brutality in the execution of the
3 officer's duties is made;

4 (v) a Montgomery County fire and explosive investigator as
5 defined in § 2-208.1 of the Criminal Procedure Article;

6 (vi) an Anne Arundel County or City of Annapolis fire and
7 explosive investigator as defined in § 2-208.2 of the Criminal Procedure Article;

8 (vii) a Prince George's County fire and explosive investigator as
9 defined in § 2-208.3 of the Criminal Procedure Article; [or]

10 (viii) a Worcester County fire and explosive investigator as
11 defined in § 2-208.4 of the Criminal Procedure Article; **OR**

12 **(IX) A CITY OF HAGERSTOWN FIRE AND EXPLOSIVE**
13 **INVESTIGATOR AS DEFINED IN § 2-208.5 OF THE CRIMINAL PROCEDURE**
14 **ARTICLE.**

15 3-201.

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

17 (e) (2) "Police officer" includes:

18 (i) a member of the Field Enforcement Bureau of the
19 Comptroller's Office;

20 (ii) the State Fire Marshal or a deputy State fire marshal;

21 (iii) an investigator of the Internal Investigative Unit of the
22 Department;

23 (iv) a Montgomery County fire and explosive investigator as
24 defined in § 2-208.1 of the Criminal Procedure Article;

25 (v) an Anne Arundel County or City of Annapolis fire and
26 explosive investigator as defined in § 2-208.2 of the Criminal Procedure Article;

27 (vi) a Prince George's County fire and explosive investigator as
28 defined in § 2-208.3 of the Criminal Procedure Article; [and]

29 (vii) a Worcester County fire and explosive investigator as
30 defined in § 2-208.4 of the Criminal Procedure Article; **AND**

1 (VIII) A CITY OF HAGERSTOWN FIRE AND EXPLOSIVE
2 INVESTIGATOR AS DEFINED IN § 2-208.5 OF THE CRIMINAL PROCEDURE
3 ARTICLE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That on July 1, 2008, the
5 Maryland Police Training Commission shall certify as a police officer each City of
6 Hagerstown fire and explosive investigator who meets the requirements of § 2-208.5
7 of the Criminal Procedure Article, as enacted by Section 1 of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 July 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.