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HOUSE BILL NO. 1303

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Militia, Police and Public Safety
on February 6, 2004)

(Patron Prior to Substitute—Delegate Lingamfelter)

A BILL to amend and reenact §§ 18.2-299 and 22.1-277.07 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-287.01, relating to use of pneumatic guns.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-299 and 22.1-277.07 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-287.01 as follows:

§ 18.2-287.01. Counties, cities and towns authorized to regulate use of pneumatic guns.

A. The governing body of any county, city or town may, by ordinance, regulate, prohibit, or restrict the use of pneumatic guns to designated areas, and may require supervision by a parent, guardian, or other adult supervisor approved by a parent or guardian of any minor below the age of 16 in all uses of pneumatic guns on private or public property. The ordinance may specify that minors above the age of 16 may, with the written consent of a parent or guardian, use a pneumatic gun at any place designated for such use by the local governing body or on private property with the consent of the owner. The ordinance may specify that any minor, whether permitted by a parent or guardian to use a pneumatic gun or not, shall be responsible for obeying all laws, regulations and restrictions governing such use. Any penalty for a pneumatic gun offense set forth in such an ordinance shall not exceed a Class 3 misdemeanor.

B. No such ordinance authorized by subsection A shall prohibit the use of pneumatic guns at facilities approved for shooting ranges or on other property where firearms may be discharged.

C. Training of minors shall be done only under direct supervision of a parent, guardian, JROTC instructor, or a certified instructor. Training of minors above the age of 16 may also be done without direct supervision if approved by the minor's instructor, with the permission of and under the responsibility of a parent or guardian, and in compliance with all requirements of this section. Ranges and instructors may be certified by the National Rifle Association, a state or federal agency that has developed a certification program, any service of the Department of Defense, or any person authorized by these authorities to certify ranges and instructors.

D. Commercial or private areas designated for use of pneumatic paintball guns may be established and operated for recreational use. Equipment designed to protect the face and ears shall be provided to participants at such recreational areas, and signs must be posted to warn against entry into the paintball area by persons who are unprotected or unaware that paintball guns are in use.

E. As used in this section, "pneumatic gun" means any implement, designed as a gun, which will expel a BB or a pellet by action of pneumatic pressure. "Pneumatic gun" includes a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

§ 18.2-299. Definitions.

When used in this article:

"Sawed-off shotgun" ~~applies to~~ means any weapon, loaded or unloaded, originally designed as a shoulder weapon, utilizing a self-contained cartridge from which a number of ball shot pellets or projectiles may be fired simultaneously from a smooth or rifled bore by a single function of the firing device and which has a barrel length of less than ~~eighteen~~ 18 inches for smooth bore weapons and ~~sixteen~~ 16 inches for rifled weapons. Weapons of less than .225 caliber shall not be included.

"Sawed-off rifle" means a rifle of any caliber, loaded or unloaded, which expels a projectile by action of an explosion of a combustible material and is designed as a shoulder weapon with a barrel or barrels length of less than ~~sixteen~~ 16 inches or which has been modified to an overall length of less than ~~twenty-six~~ 26 inches.

"Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault with intent to maim, disable, disfigure or kill, robbery, burglary, housebreaking, breaking and entering and larceny.

"Person" applies to and includes firm, partnership, association or corporation.

§ 22.1-277.07. Expulsion of students under certain circumstances; exceptions.

A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of an air rifle or BB

60 ~~gun on school property or to a school-sponsored activity~~*E, or any firearm muffler or firearm silencer. A*
61 school administrator, pursuant to school board policy, or a school board may, however, determine, based
62 on the facts of a particular situation, that special circumstances exist and no disciplinary action or
63 another disciplinary action or another term of expulsion is appropriate. A school board may promulgate
64 guidelines for determining what constitutes special circumstances. In addition, a school board may, by
65 regulation, authorize the division superintendent or his designee to conduct a preliminary review of such
66 cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations
67 shall ensure that, if a determination is made that another disciplinary action is appropriate, any such
68 subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.
69 *Students determined through the procedures set forth in this article to have brought onto school*
70 *property or to a school-sponsored activity a pneumatic gun, as defined in subsection E of § 18.2-287.01,*
71 *without permission from the school administrator or the military commanding officer of any Junior*
72 *Reserve Officers Training Corps operated at the school may be suspended from school attendance for a*
73 *period not to exceed one year.*

74 B. The Board of Education is designated as the state education agency to carry out the provisions of
75 the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated
76 to the Commonwealth under this act.

77 C. Each school board shall revise its standards of student conduct no later than three months after the
78 date on which this act becomes effective. Local school boards requesting moneys apportioned to the
79 Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the
80 Department of Education an application requesting such assistance. Applications for assistance shall
81 include:

82 1. Documentation that the local school board has adopted and implemented student conduct policies
83 in compliance with this section; and

84 2. A description of the circumstances pertaining to expulsions imposed under this section, including
85 (i) the schools from which students were expelled under this section, (ii) the number of students
86 expelled from each such school in the school division during the school year, and (iii) the types of
87 firearms involved in the expulsions.

88 *D. No school operating a Junior Reserve Officers Training Corps (JROTC) program shall prohibit*
89 *the JROTC from conducting the marksmanship training that is a normal element of such programs. Such*
90 *programs may include training in use of pneumatic guns, and safety and responsibility with pneumatic*
91 *guns. The school administrator shall provide space suitable for such training, which shall be designed*
92 *and operated for the safety of all people and property within the range of the pneumatic guns in use,*
93 *and approved by the range safety officials of the National Rifle Association, the JROTC training*
94 *authority, or any state or federal agency that has established a pneumatic gun training certification*
95 *program. Schools lacking the capability to provide for such ranges at the school shall provide*
96 *off-campus facilities for use by the students and instructors in this program, and shall provide all*
97 *transportation necessary to full implementation of the program.*

98 ~~DE.~~ As used in this section:

99 "Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket
100 having a propellant charge of more than four ounces, missile having an explosive or incendiary charge
101 of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a
102 shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name
103 known that will, or may be readily converted to, expel a projectile by the action of an explosive or
104 other propellant, and that has any barrel with a bore of more than one-half inch in diameter *that is*
105 *homemade or was not made by a duly licensed weapon manufacturer, any fully automatic firearm, any*
106 *sawed-off shotgun or sawed-off rifle as defined in § 18.2-299 or any firearm prohibited from civilian*
107 *ownership by federal law; and (iii) any combination of parts either designed or intended for use in*
108 *converting any device into any destructive device described in this subsection and from which a*
109 *destructive device may be readily assembled. "Destructive device" shall not include any device that is*
110 *not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon*
111 *and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.*

112 "Firearm" means any weapon prohibited on school property or at a school-sponsored activity
113 pursuant to § 18.2-308.1, or ~~(i)~~ any weapon, including a starter gun, that will, or is designed or may
114 readily be converted to, expel single or multiple projectiles by the action of an explosion of a
115 combustible material; ~~(ii) or the frame or receiver of any such weapon; (iii) any firearm muffler or~~
116 ~~firearm silencer; or (iv) any destructive device.~~ "Firearm" shall not include any weapon in which
117 ammunition may be discharged by pneumatic pressure *pneumatic gun, as defined in subsection E of*
118 *§ 18.2-287.01.*

119 "One year" means 365 calendar days as required in federal regulations.

120 "School property" means any real property owned or leased by the school board or any vehicle
121 owned or leased by the school board or operated by or on behalf of the school board.

122 E. The exemptions set out in § 18.2-308 regarding concealed weapons shall apply, mutatis mutandis,
123 to the provisions of this section. The provisions of this section shall not apply to persons who possess
124 such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the
125 school division or any organization permitted by the school to use its premises or to any
126 law-enforcement officer while engaged in his duties as such.

127 F. This section shall not be construed to diminish the authority of the Board of Education or the
128 Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the
129 federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate
130 and provide policy direction on official communications between the Commonwealth and the United
131 States government.