

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 18.2-308 of the Code of Virginia, relating to concealed handgun permits; residency requirement.

[H 444]

Approved

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-308 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J 1, this section shall not apply to:

1. Any person while in his own place of business;
2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;
3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and
8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least ~~fifteen~~ 15 years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the

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57 requirements of this section.

58 For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege
59 to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and
60 favorable review required, shall be deemed to have been issued a concealed handgun permit.

61 C. This section shall also not apply to any of the following individuals while in the discharge of
62 their official duties, or while in transit to or from such duties:

- 63 1. Carriers of the United States mail;
- 64 2. Officers or guards of any state correctional institution;
- 65 3. [Repealed.]

66 4. Conservators of the peace, except that the following conservators of the peace shall not be
67 permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof:

68 (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle
69 carrier of passengers for hire; or (d) commissioners in chancery;

70 5. Noncustodial employees of the Department of Corrections designated to carry weapons by the
71 Director of the Department of Corrections pursuant to § 53.1-29;

72 6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are
73 otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

74 7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

75 8. Harbormaster of the City of Hopewell.

76 D. Any person ~~twenty-one~~ 21 years of age or older may apply in writing to the clerk of the circuit
77 court of the county or city in which he resides, or if he is a member of the United States armed forces,
78 the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. *There*
79 *shall be no requirement regarding the length of time an applicant has been a resident or domiciliary of*
80 *the county or city.* Notwithstanding § 15.2-915, a county or city may enact an ordinance that requires
81 any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining
82 the applicant's state or national criminal history record. The application shall be made under oath before
83 a notary or other person qualified to take oaths and shall be made only on a form prescribed by the
84 Department of State Police, in consultation with the Supreme Court, requiring only that information
85 necessary to determine eligibility for the permit. The court shall consult with either the sheriff or police
86 department of the county or city and receive a report from the Central Criminal Records Exchange. As a
87 condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if
88 required by local ordinance in the county or city where the applicant resides and provide personal
89 descriptive information to be forwarded with the fingerprints through the Central Criminal Records
90 Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record
91 information regarding the applicant, and obtaining fingerprint identification information from federal
92 records pursuant to criminal investigations by state and local law-enforcement agencies. Where feasible
93 and practical, the local law-enforcement agency may transfer information electronically to the State
94 Police instead of inked fingerprint cards. Upon completion of the criminal history records check, the
95 State Police shall return the fingerprint cards to the submitting local agency or, in the case of scanned
96 fingerprints, destroy the electronic record. The local agency shall then promptly notify the person that he
97 has ~~twenty-one~~ 21 days from the date of the notice to request return of the fingerprint cards, if any. All
98 fingerprint cards not claimed by the applicant within ~~twenty-one~~ 21 days of notification by the local
99 agency shall be destroyed. All optically scanned fingerprints shall be destroyed upon completion of the
100 criminal history records check without requiring that the applicant be notified. Fingerprints taken for the
101 purposes described in this section shall not be copied, held or used for any other purposes. The court
102 shall issue the permit within ~~forty-five~~ 45 days of receipt of the completed application unless it is
103 determined that the applicant is disqualified. An application is deemed complete when all information
104 required to be furnished by the applicant is delivered to and received by the clerk of court before or
105 concomitant with the conduct of a state or national criminal history records check. If the applicant is
106 later found by the court to be disqualified, the permit shall be revoked.

107 E. The following persons shall be deemed disqualified from obtaining a permit:

108 1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or
109 § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

110 2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was
111 discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before
112 the date of his application for a concealed handgun permit.

113 3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose
114 competency or capacity was restored pursuant to former § 37.1-134.1 or § 37.1-134.16 less than five
115 years before the date of his application for a concealed handgun permit.

116 4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released
117 from commitment less than five years before the date of this application for a concealed handgun

118 permit.

119 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
120 § 18.2-308.1:4 from purchasing or transporting a firearm.

121 6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except
122 that a permit may be obtained in accordance with subsection C of that section.

123 7. An individual who has been convicted of two or more misdemeanors within the five-year period
124 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the
125 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.
126 Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

127 8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any
128 controlled substance.

129 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
130 ordinance or of public drunkenness within the three-year period immediately preceding the application,
131 or who is a habitual drunkard as determined pursuant to § 4.1-333.

132 10. An alien other than an alien lawfully admitted for permanent residence in the United States.

133 11. An individual who has been discharged from the Armed Forces of the United States under
134 dishonorable conditions.

135 12. An individual who is a fugitive from justice.

136 13. An individual who it is alleged, in a sworn written statement submitted to the court by the
137 sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police
138 or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger
139 others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based
140 upon personal knowledge or upon the sworn written statement of a competent person having personal
141 knowledge.

142 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
143 discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in
144 violation of § 18.2-282 within the three-year period immediately preceding the application.

145 15. An individual who has been convicted of stalking.

146 16. An individual whose previous convictions or adjudications of delinquency were based on an
147 offense which would have been at the time of conviction a felony if committed by an adult under the
148 laws of any state, the District of Columbia, the United States or its territories. For purposes of this
149 disqualifier, only convictions occurring within ~~sixteen~~ 16 years following the later of the date of (i) the
150 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
151 adjudication shall be deemed to be "previous convictions."

152 17. An individual who has a felony charge pending or a charge pending for an offense listed in
153 subdivision 14 or 15.

154 18. An individual who has received mental health treatment or substance abuse treatment in a
155 residential setting within five years prior to the date of his application for a concealed handgun permit.

156 19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period
157 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
158 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession
159 or distribution of marijuana or any controlled substance, under the laws of any state, the District of
160 Columbia, or the United States or its territories.

161 20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the
162 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
163 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or
164 distribution of marijuana or any controlled substance under the laws of any state, the District of
165 Columbia, or the United States or its territories, the trial court found that the facts of the case were
166 sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially
167 similar law of any other state, the District of Columbia, or the United States or its territories.

168 F. The making of a materially false statement in an application under this section shall constitute
169 perjury, punishable as provided in § 18.2-434.

170 G. The court may further require proof that the applicant has demonstrated competence with a
171 handgun and the applicant may demonstrate such competence by one of the following, but no applicant
172 shall be required to submit to any additional demonstration of competence:

173 1. Completing any hunter education or hunter safety course approved by the Department of Game
174 and Inland Fisheries or a similar agency of another state;

175 2. Completing any National Rifle Association firearms safety or training course;

176 3. Completing any firearms safety or training course or class available to the general public offered
177 by a law-enforcement agency, junior college, college, or private or public institution or organization or
178 firearms training school utilizing instructors certified by the National Rifle Association or the

Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;

6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in subsection D, a new five-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within ~~twenty-one~~ 21 days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or occurrence of any other event which would disqualify a person from obtaining a concealed handgun permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction or other event.

J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

J2. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by the court before which such charge is pending or by the court which issued the permit.

J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed handgun on the premises of such restaurant or club or any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such restaurant or club if such person has a concealed handgun permit.

J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under

§ 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit suspended by the court which issued the permit during the period of incompetency, incapacity or disability.

K. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State Police or with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth, after completing ~~fifteen~~ 15 years of service or after reaching age ~~fifty-five~~ 55; (iii) as a law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, ~~Immigration and Naturalization Service~~ *United States Citizenship and Immigration Services*, Customs Service, Department of State Diplomatic Security Service or Naval Criminal Investigative Service, after completing ~~fifteen~~ 15 years of service or after reaching age ~~fifty-five~~ 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia or any of the territories of the United States, after completing ~~fifteen~~ 15 years of service; or (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing ~~fifteen~~ 15 years of service. The clerk shall charge a fee of ~~ten dollars~~ \$10 for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed ~~thirty-five dollars~~ \$35 to cover the cost of conducting an investigation pursuant to this section. The ~~thirty-five dollar~~ \$35 fee shall include any amount assessed by the Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to exceed ~~five dollars~~ \$5 to cover their costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed ~~fifty dollars~~ \$50, with such fees to be paid in one sum to the person who accepts the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is accepted by the court as a complete application. The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence and current status will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed handgun under the provisions of this section may present a petition for review to the Court of Appeals. The petition for review shall be filed within ~~sixty~~ 60 days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or if an ore tenus hearing is requested, within ~~sixty~~ 60 days of the entry of the final order of the circuit court following the hearing. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of § 17.1-410 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made and intended to fire a projectile by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

N. As used in this article:

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. A valid concealed handgun permit or license issued by another state shall be valid in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible ~~twenty-four~~ 24 hours a day, (ii) the requirements and qualifications of that state's law are adequate to prevent possession of a permit by persons who would be denied a permit in the Commonwealth under this section. The

301 Superintendent of State Police shall (a) in consultation with the Office of the Attorney General
302 determine whether states meet the requirements and qualifications of this section, (b) maintain a registry
303 of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available
304 to law-enforcement officers for investigative purposes.

305 Q. A valid concealed handgun permit issued by the State of Maryland shall be valid in the
306 Commonwealth provided, (i) the holder of the permit is licensed in the State of Maryland to perform
307 duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9
308 (§ 54.1-900 et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the
309 holder of the permit is 21 years of age or older.

310 R. The provisions of this statute or the application thereof to any person or circumstances which are
311 held invalid shall not affect the validity of other provisions or applications of this statute which can be
312 given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is
313 not meant to add to or delete from that provision.