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SENATE BILL NO. 99

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on January 21, 2004)

(Patrons Prior to Substitute—Senators Devolites and O'Brien [SB 287])

A BILL to amend and reenact § 18.2-308 of the Code of Virginia, relating to concealed handgun permits; retired law-enforcement officers.

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 J1, 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, other than an officer or agent terminated for cause, (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, or (iii) who has reached 55 years of age, 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 requirements of

SENATE SUBSTITUTE

SB99S1

60 this section.

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

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

- 66 1. Carriers of the United States mail;
- 67 2. Officers or guards of any state correctional institution;
- 68 3. [Repealed.]

69 4. Conservators of the peace, except that the following conservators of the peace shall not be  
70 permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof:  
71 (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle  
72 carrier of passengers for hire; or (d) commissioners in chancery;

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

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

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

78 8. Harbormaster of the City of Hopewell.

79 D. Any person ~~twenty-one~~21 years of age or older may apply in writing to the clerk of the circuit  
80 court of the county or city in which he resides, or if he is a member of the United States armed forces,  
81 the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun.  
82 Notwithstanding § 15.2-915, a county or city may enact an ordinance that requires any applicant for a  
83 concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or  
84 national criminal history record. The application shall be made under oath before a notary or other  
85 person qualified to take oaths and shall be made only on a form prescribed by the Department of State  
86 Police, in consultation with the Supreme Court, requiring only that information necessary to determine  
87 eligibility for the permit. The court shall consult with either the sheriff or police department of the  
88 county or city and receive a report from the Central Criminal Records Exchange. As a condition for  
89 issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if required by local  
90 ordinance in the county or city where the applicant resides and provide personal descriptive information  
91 to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal  
92 Bureau of Investigation for the purpose of obtaining criminal history record information regarding the  
93 applicant, and obtaining fingerprint identification information from federal records pursuant to criminal  
94 investigations by state and local law-enforcement agencies. Where feasible and practical, the local  
95 law-enforcement agency may transfer information electronically to the State Police instead of inked  
96 fingerprint cards. Upon completion of the criminal history records check, the State Police shall return the  
97 fingerprint cards to the submitting local agency or, in the case of scanned fingerprints, destroy the  
98 electronic record. The local agency shall then promptly notify the person that he has ~~twenty-one~~21 days  
99 from the date of the notice to request return of the fingerprint cards, if any. All fingerprint cards not  
100 claimed by the applicant within ~~twenty-one~~21 days of notification by the local agency shall be  
101 destroyed. All optically scanned fingerprints shall be destroyed upon completion of the criminal history  
102 records check without requiring that the applicant be notified. Fingerprints taken for the purposes  
103 described in this section shall not be copied, held or used for any other purposes. The court shall issue  
104 the permit within ~~forty-five~~45 days of receipt of the completed application unless it is determined that  
105 the applicant is disqualified. An application is deemed complete when all information required to be  
106 furnished by the applicant is delivered to and received by the clerk of court before or concomitant with  
107 the conduct of a state or national criminal history records check. If the applicant is later found by the  
108 court to be disqualified, the permit shall be revoked.

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

110 1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or  
111 § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

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

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

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

121 5. An individual who is subject to a restraining order, or to a protective order and prohibited by

- 122 § 18.2-308.1:4 from purchasing or transporting a firearm.
- 123 6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except
- 124 that a permit may be obtained in accordance with subsection C of that section.
- 125 7. An individual who has been convicted of two or more misdemeanors within the five-year period
- 126 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the
- 127 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.
- 128 Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.
- 129 8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any
- 130 controlled substance.
- 131 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
- 132 ordinance or of public drunkenness within the three-year period immediately preceding the application,
- 133 or who is a habitual drunkard as determined pursuant to § 4.1-333.
- 134 10. An alien other than an alien lawfully admitted for permanent residence in the United States.
- 135 11. An individual who has been discharged from the Armed Forces of the United States under
- 136 dishonorable conditions.
- 137 12. An individual who is a fugitive from justice.
- 138 13. An individual who it is alleged, in a sworn written statement submitted to the court by the
- 139 sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police
- 140 or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger
- 141 others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based
- 142 upon personal knowledge or upon the sworn written statement of a competent person having personal
- 143 knowledge.
- 144 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
- 145 discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in
- 146 violation of § 18.2-282 within the three-year period immediately preceding the application.
- 147 15. An individual who has been convicted of stalking.
- 148 16. An individual whose previous convictions or adjudications of delinquency were based on an
- 149 offense which would have been at the time of conviction a felony if committed by an adult under the
- 150 laws of any state, the District of Columbia, the United States or its territories. For purposes of this
- 151 disqualifier, only convictions occurring within ~~sixteen~~ 16 years following the later of the date of (i) the
- 152 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
- 153 adjudication shall be deemed to be "previous convictions."
- 154 17. An individual who has a felony charge pending or a charge pending for an offense listed in
- 155 subdivision 14 or 15.
- 156 18. An individual who has received mental health treatment or substance abuse treatment in a
- 157 residential setting within five years prior to the date of his application for a concealed handgun permit.
- 158 19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period
- 159 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
- 160 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession
- 161 or distribution of marijuana or any controlled substance, under the laws of any state, the District of
- 162 Columbia, or the United States or its territories.
- 163 20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the
- 164 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
- 165 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or
- 166 distribution of marijuana or any controlled substance under the laws of any state, the District of
- 167 Columbia, or the United States or its territories, the trial court found that the facts of the case were
- 168 sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially
- 169 similar law of any other state, the District of Columbia, or the United States or its territories.
- 170 F. The making of a materially false statement in an application under this section shall constitute
- 171 perjury, punishable as provided in § 18.2-434.
- 172 G. The court may further require proof that the applicant has demonstrated competence with a
- 173 handgun and the applicant may demonstrate such competence by one of the following, but no applicant
- 174 shall be required to submit to any additional demonstration of competence:
- 175 1. Completing any hunter education or hunter safety course approved by the Department of Game
- 176 and Inland Fisheries or a similar agency of another state;
- 177 2. Completing any National Rifle Association firearms safety or training course;
- 178 3. Completing any firearms safety or training course or class available to the general public offered
- 179 by a law-enforcement agency, junior college, college, or private or public institution or organization or
- 180 firearms training school utilizing instructors certified by the National Rifle Association or the
- 181 Department of Criminal Justice Services;
- 182 4. Completing any law-enforcement firearms safety or training course or class offered for security

183 guards, investigators, special deputies, or any division or subdivision of law enforcement or security  
184 enforcement;

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

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

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

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

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

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

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

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

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

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

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

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

241 J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under  
242 § 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit  
243 suspended by the court which issued the permit during the period of incompetency, incapacity or  
244 disability.

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

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

282 M. For purposes of this section:  
 283 "Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed,  
 284 made and intended to fire a projectile by means of an explosion of a combustible material from one or  
 285 more barrels when held in one hand.

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

289 N. As used in this article:  
 290 "Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated  
 291 mechanism.

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

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

297 P. A valid concealed handgun permit or license issued by another state shall be valid in the  
 298 Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of  
 299 the validity of all such permits or licenses issued within that state, accessible ~~twenty-four~~24 hours a day,  
 300 (ii) the requirements and qualifications of that state's law are adequate to prevent possession of a permit  
 301 by persons who would be denied a permit in the Commonwealth under this section. The Superintendent  
 302 of State Police shall (a) in consultation with the Office of the Attorney General determine whether states  
 303 meet the requirements and qualifications of this section, (b) maintain a registry of such states on the  
 304 Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement  
 305 officers for investigative purposes.

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

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