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HOUSE BILL NO. 1199

Offered January 15, 2016

A *BILL to amend and reenact §§ 18.2-308, as it is currently effective and as it shall become effective, and 18.2-308.1 of the Code of Virginia, relating to school resource officers; possession of firearms and other weapons; penalty.*

Patron—Kory

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308, as it is currently effective and as it shall become effective, and 18.2-308.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308. (Effective until July 1, 2018) Carrying concealed weapons; exceptions; penalty.

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, machete, 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 is 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. 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. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

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

C. Except as provided in subsection A of § 18.2-308.012, this section shall not apply to:

1. Any person while in his own place of business;

2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth, *with the exception of school resource officers as provided in subsection C of § 18.2-308.1*;

3. Any person 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. 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, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on

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59 long-term leave from such law-enforcement agency or board due to a service-related injury, provided
60 such officer carries with him written proof of consultation with and favorable review of the need to
61 carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from
62 which the officer retired or the agency that employs the officer or, in the case of special agents, issued
63 by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of
64 consultation and favorable review shall be forwarded by the chief or the Board to the Department of
65 State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer
66 shall not without cause withhold such written proof if the retired law-enforcement officer otherwise
67 meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of
68 consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work
69 or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be
70 forwarded to the Department of State Police for entry into the Virginia Criminal Information Network.
71 However, if such officer retires on disability because of the service-related injury, and would be eligible
72 under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the
73 previously issued written proof of consultation. A retired law-enforcement officer who receives proof of
74 consultation and favorable review pursuant to this subdivision is authorized to carry a concealed
75 handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun
76 pursuant to subdivision 2;

77 7a. Any person who is eligible for retirement with at least 20 years of service with a
78 law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from
79 such law-enforcement agency or board to accept a position covered by a retirement system that is
80 authorized under Title 51.1, provided such person carries with him written proof of consultation with
81 and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement
82 officer of the agency from which he resigned or, in the case of special agents, issued by the State
83 Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation
84 and favorable review shall be forwarded by the chief, Board or Commission to the Department of State
85 Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall
86 not without cause withhold such written proof if the law-enforcement officer otherwise meets the
87 requirements of this section.

88 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the
89 privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the
90 proof of consultation and favorable review required, shall be deemed to have been issued a concealed
91 handgun permit.

92 For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired
93 or resigned law-enforcement officer who receives proof of consultation and review pursuant to
94 subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or
95 resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is
96 required of active law-enforcement officers in the Commonwealth. If such retired or resigned
97 law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer
98 shall issue the retired or resigned officer certification, valid one year from the date of issuance,
99 indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

100 8. Any State Police officer who is a member of the organized reserve forces of any of the armed
101 services of the United States or National Guard, while such officer is called to active military duty,
102 provided such officer carries with him written proof of consultation with and favorable review of the
103 need to carry a concealed handgun issued by the Superintendent of State Police. The proof of
104 consultation and favorable review shall be valid as long as the officer is on active military duty and
105 shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of
106 consultation and favorable review shall be entered into the Virginia Criminal Information Network. The
107 Superintendent of State Police shall not without cause withhold such written proof if the officer is in
108 good standing and is qualified to carry a weapon while on active law-enforcement duty.

109 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the
110 privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of
111 consultation and favorable review required, shall be deemed to have been issued a concealed handgun
112 permit;

113 9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such
114 attorney may travel in the Commonwealth;

115 10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal,
116 private motor vehicle or vessel and such handgun is secured in a container or compartment in the
117 vehicle or vessel; and

118 11. Any enrolled participant of a firearms training course who is at, or going to or from, a training
119 location, provided that the weapons are unloaded and securely wrapped while being transported.

120 D. This section shall also not apply to any of the following individuals while in the discharge of

their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;
2. Officers or guards of any state correctional institution;
3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;
4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29; and
5. Harbormaster of the City of Hopewell.

§ 18.2-308. (Effective July 1, 2018) Carrying concealed weapons; exceptions; penalty.

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, machete, 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 is 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. 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. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

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1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth, *with the exception of school resource officers as provided in subsection C of § 18.2-308.1*;
3. Any person 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. 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, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;
7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, 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 the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or

182 the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable
183 review shall be forwarded by the chief or the Board to the Department of State Police for entry into the
184 Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause
185 withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of
186 this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a
187 concealed handgun shall surrender such proof of consultation upon return to work or upon termination
188 of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the
189 Department of State Police for entry into the Virginia Criminal Information Network. However, if such
190 officer retires on disability because of the service-related injury, and would be eligible under clause (i)
191 for written proof of consultation to carry a concealed handgun, he may retain the previously issued
192 written proof of consultation. A retired law-enforcement officer who receives proof of consultation and
193 favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same
194 manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;

195 7a. Any person who is eligible for retirement with at least 20 years of service with a
196 law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from
197 such law-enforcement agency or board to accept a position covered by a retirement system that is
198 authorized under Title 51.1, provided such person carries with him written proof of consultation with
199 and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement
200 officer of the agency from which he resigned or, in the case of special agents, issued by the State
201 Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of
202 consultation and favorable review shall be forwarded by the chief, Board or Commission to the
203 Department of State Police for entry into the Virginia Criminal Information Network. The chief
204 law-enforcement officer shall not without cause withhold such written proof if the law-enforcement
205 officer otherwise meets the requirements of this section.

206 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the
207 privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the
208 proof of consultation and favorable review required, shall be deemed to have been issued a concealed
209 handgun permit.

210 For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired
211 or resigned law-enforcement officer who receives proof of consultation and review pursuant to
212 subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or
213 resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is
214 required of active law-enforcement officers in the Commonwealth. If such retired or resigned
215 law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer
216 shall issue the retired or resigned officer certification, valid one year from the date of issuance,
217 indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

218 8. Any State Police officer who is a member of the organized reserve forces of any of the armed
219 services of the United States or National Guard, while such officer is called to active military duty,
220 provided such officer carries with him written proof of consultation with and favorable review of the
221 need to carry a concealed handgun issued by the Superintendent of State Police. The proof of
222 consultation and favorable review shall be valid as long as the officer is on active military duty and
223 shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of
224 consultation and favorable review shall be entered into the Virginia Criminal Information Network. The
225 Superintendent of State Police shall not without cause withhold such written proof if the officer is in
226 good standing and is qualified to carry a weapon while on active law-enforcement duty.

227 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the
228 privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of
229 consultation and favorable review required, shall be deemed to have been issued a concealed handgun
230 permit;

231 9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such
232 attorney may travel in the Commonwealth;

233 10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal,
234 private motor vehicle or vessel and such handgun is secured in a container or compartment in the
235 vehicle or vessel; and

236 11. Any enrolled participant of a firearms training course who is at, or going to or from, a training
237 location, provided that the weapons are unloaded and securely wrapped while being transported.

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

240 1. Carriers of the United States mail;

241 2. Officers or guards of any state correctional institution;

242 3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for
243 the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following

conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29; and

5. Harbormaster of the City of Hopewell.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited; penalties.

A. If any person knowingly possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm; upon (a) the property of any public, private or religious elementary, middle or high school, including buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or religious elementary, middle or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony.

C. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material within a public, private or religious elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall be guilty of a Class 6 felony and sentenced to a mandatory minimum term of imprisonment of five years to be served consecutively with any other sentence.

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer, *with the exception of school resource officers*; (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school; or (viii) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, hired by a private or religious school for the protection of students and employees as authorized by such school. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

As used in this section:

"Stun weapon" means any device that emits a momentary or pulsed output, which is electrical, audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.