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SENATE BILL NO. 2

Offered January 10, 2018

Prefiled November 20, 2017

A *BILL to amend and reenact §§ 18.2-308, 18.2-308.09, and 18.2-308.016, as it is currently effective and as it shall become effective, of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 18.2-56.3; and to repeal § 18.2-308.012 of the Code of Virginia, relating to carrying loaded firearms in public while under the influence of alcohol or illegal drugs; penalties.*

Patrons—Ebbin; Delegate: Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308, 18.2-308.09, and 18.2-308.016, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-56.3 as follows:

§ 18.2-56.3. Carrying a loaded firearm while under the influence of alcohol or illegal drugs; penalty.

A person who is under the influence of alcohol or illegal drugs while carrying a loaded firearm on or about his person in a public place is 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 of alcohol or illegal drugs for the 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. A person convicted of a violation of this section shall be ineligible to apply for a concealed handgun permit for a period of five years.

§ 18.2-308. 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, or retired law-enforcement officer pursuant to § 18.2-308.016, wherever such law-enforcement officer may travel in the Commonwealth;
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;

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59 7. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such
60 attorney may travel in the Commonwealth;

61 8. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal,
62 private motor vehicle or vessel and such handgun is secured in a container or compartment in the
63 vehicle or vessel;

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

66 10. Any judge or justice of the Commonwealth, wherever such judge or justice may travel in the
67 Commonwealth.

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

70 1. Carriers of the United States mail;

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

72 3. Conservators of the peace, except that a judge or justice of the Commonwealth, an attorney for the
73 Commonwealth, or an assistant attorney for the Commonwealth may carry a concealed handgun pursuant
74 to subdivisions C 7 and 10. However, the following conservators of the peace shall not be permitted to
75 carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii)
76 registrars; (iii) drivers, operators, or other persons in charge of any motor vehicle carrier of passengers
77 for hire; or (iv) commissioners in chancery;

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

80 5. Harbormaster of the City of Hopewell.

81 **§ 18.2-308.09. Disqualifications for a concealed handgun permit.**

82 The following persons shall be deemed disqualified from obtaining a permit:

83 1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or
84 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

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

88 3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose
89 competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his
90 application for a concealed handgun permit.

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

94 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
95 § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

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

98 7. An individual who has been convicted of two or more misdemeanors within the five-year period
99 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the
100 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.
101 Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this
102 disqualification.

103 8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic
104 cannabinoids, or any controlled substance.

105 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
106 ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other
107 state, the District of Columbia, the United States, or its territories within the three-year period
108 immediately preceding the application, or who is a habitual drunkard as determined pursuant to
109 § 4.1-333.

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

111 11. An individual who has been discharged from the armed forces of the United States under
112 dishonorable conditions.

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

114 13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by
115 the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief
116 of police, or attorney for the Commonwealth may submit to the court a sworn, written statement
117 indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based
118 upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is
119 likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief
120 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such

individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

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

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge.

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

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

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

21. *An individual who has been convicted of a violation of § 18.2-56.3 within the five-year period immediately preceding the application.*

§ 18.2-308.016. Retired law-enforcement officers; carrying a concealed handgun.

A. ~~Except as provided in subsection A of § 18.2-308.012,~~ § Section 18.2-308 shall not apply to:

1. 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 employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 retired from the Department of Corrections, any conservation police officer retired from the Department of Game and Inland Fisheries, any conservation officer retired from the Department of Conservation and Recreation, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 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 10 years of service with any such law-enforcement agency, commission, 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 the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or 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 this section. An officer set forth in clause (iv) who receives written proof of

consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation.

2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such law-enforcement agency, commission, or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person 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 agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or 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 law-enforcement officer otherwise meets the requirements of this section.

3. Any State Police officer who is a member of the organized reserve forces of any of the Armed Services of the United States or National Guard, while such officer is called to active military duty, 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 Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

4. Any retired or resigned attorney for the Commonwealth or assistant attorney for the Commonwealth who (i) was not terminated for cause and served at least 10 years prior to his retirement or resignation; (ii) during the most recent 12-month period, has met, at his own expense, the standards for qualification in firearms training for active law-enforcement officers in the Commonwealth; (iii) carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the attorney for the Commonwealth from whose office he retired or resigned; and (iv) meets the requirements of a "qualified retired law enforcement officer" pursuant to the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926C). A copy of the proof of consultation and favorable review shall be forwarded by the attorney for the Commonwealth to the Department of State Police for entry into the Virginia Criminal Information Network.

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

C. A retired or resigned law-enforcement officer, including a retired or resigned attorney for the Commonwealth or assistant attorney for the Commonwealth, who receives proof of consultation and review pursuant to this section may annually participate and meet the training and qualification standards to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief, Commission, Board, or attorney for the Commonwealth to the Department of State Police for entry into the Virginia Criminal Information Network.

D. For all purposes, including for the purpose of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this section, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

2. That § 18.2-308.012 of the Code of Virginia is repealed.