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SENATE BILL NO. 420

Offered January 25, 1994

A BILL to amend and reenact §§ 18.2-308, 19.2-12, 19.2-187 and 19.2-187.01 of the Code of Virginia, relating generally to the United States Naval Investigative Service.

Patrons—Stolle, Barry, Bell, Benedetti, Calhoun, Chichester, Hawkins, Holland, C.A., Miller, K.G., Norment, Potts, Quayle, Robb, Russell, Stosch, Trumbo, Wampler and Woods; Delegates: Callahan, Croshaw, Crouch, Dudley, Howell, McDonnell, Mims, Purkey, Wagner and Wardrup

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308, 19.2-12, 19.2-187 and 19.2-187.01 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308. 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, or (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, blackjack, or (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, or (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:

1. Any person while in his own place of abode or the curtilage thereof;
2. Any 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; and

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.

C. 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 in rural districts;

2. Officers or guards of any state correctional institution;

3. [Repealed.]

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

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the

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60 Director of the Department of Corrections pursuant to § 53.1-29;

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

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

64 8. Harbormaster of the City of Hopewell.

65 D. Any person may apply in writing to the clerk of the circuit court of the county or city in which
66 he resides for a two-year permit to carry a specific type of concealed weapon. The application shall be
67 made on a form prescribed by the Supreme Court, requiring only that information necessary to
68 determine eligibility for the permit. The court, after consulting the law-enforcement authorities of the
69 county or city and receiving a report from the Central Criminal Records Exchange, shall issue such
70 permit if the applicant is of good character, has demonstrated a need to carry such concealed weapon,
71 which need may include but is not limited to lawful defense and security, is physically and mentally
72 competent to carry such weapon and is not prohibited by law from receiving, possessing, or transporting
73 such weapon. The court may further require proof that the applicant has demonstrated competence with
74 a handgun by one of the following:

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

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

78 3. Completing any firearms safety or training course or class available to the general public offered
79 by a law-enforcement agency, junior college, college, or private or public institution or organization or
80 firearms training school utilizing instructors certified by the National Rifle Association or the
81 Department of Criminal Justice Services;

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

85 5. Presenting evidence of equivalent experience with a firearm through participation in organized
86 shooting competition or military service;

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

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

91 8. Completing any other firearms training which the court deems adequate.

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

97 Persons who previously have held a concealed weapons permit shall be issued, upon application, a
98 new two-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit
99 court denies the permit, the specific reasons for the denial shall be stated in the order of the court
100 denying the permit. Upon denial of the application and request of the applicant made within ten days,
101 the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented
102 by counsel, but counsel shall not be appointed. The final order of the court shall include the court's
103 findings of fact and conclusions of law.

104 No fee shall be charged for the issuance of such permit to a person who has retired from service as a
105 magistrate in the Commonwealth or as a law-enforcement officer with the Department of State Police, or
106 with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth
107 of Virginia, after completing twenty years' service or after reaching age fifty-five nor to any person who
108 has retired after completing twenty years' service or after reaching age fifty-five from service as a
109 law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol,
110 Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration or Naval *Criminal*
111 Investigative Service. Any fee charged by the court associated with the processing of an application,
112 including costs associated with the consultation with law-enforcement agencies, shall not exceed
113 twenty-five dollars. The order issuing such permit shall be provided to the State Police and the
114 law-enforcement agencies of the county or city.

115 Any person denied a permit to carry a concealed weapon under the provisions of this subsection
116 may, within thirty days of the final decision, present a petition for review to the Court of Appeals or
117 any judge thereof. The petition shall be accompanied by a copy of the original papers filed in the circuit
118 court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of
119 § 17-116.07 B, the decision of the Court of Appeals or judge shall be final.

120 E. As used in this article:

121 "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.

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

§ 19.2-12. Who are conservators of the peace.

Every judge throughout the Commonwealth and every magistrate within the geographical area for which he is appointed or elected, shall be a conservator of the peace. In addition, every commissioner in chancery, while sitting as such commissioner, and any special agent of the United States Department of Justice, Department of Treasury, Department of Agriculture, Department of State, and Department of Interior, any inspector and special investigator of the United States Postal Inspection Service and any United States marshal or deputy United States marshal whose duties involve the enforcement of the criminal laws of the United States, any officer of the Virginia Marine Patrol, any criminal investigator of the United States Department of Labor, and any ~~civilian~~ special agent of the United States Naval Criminal Investigative Service shall be a conservator of the peace.

§ 19.2-187. Admission into evidence of certain certificates of analysis.

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, a certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or the Division of Forensic Science or authorized by such Division to conduct such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval *Criminal* Investigative Service, or the federal Drug Enforcement Administration when such certificate is duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the hearing or trial and (ii) a copy of such certificate is mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at least seven days prior to the hearing or trial upon request of such counsel.

The certificate of analysis of any examination conducted by the Division of Forensic Science relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the Division of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it.

§ 19.2-187.01. Certificate of analysis as evidence of chain of custody of material described therein.

A report of analysis duly attested by the person performing such analysis or examination in any laboratory operated by (i) the Division of Consolidated Laboratory Services, the Division of Forensic Science or any of its regional laboratories, or by any laboratory authorized by either Division to conduct such analysis or examination, (ii) the Federal Bureau of Investigation, (iii) the federal Bureau of Alcohol, Tobacco and Firearms, (iv) the Naval *Criminal* Investigative Service, (v) the federal Drug Enforcement Administration, or (vi) the Postal Inspection Service shall be prima facie evidence in a criminal or civil proceeding as to the custody of the material described therein from the time such material is received by an authorized agent of such laboratory until such material is released subsequent to such analysis or examination. Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received the material for the laboratory on the request for laboratory examination form shall be deemed prima facie evidence that the person receiving the material was an authorized agent and that such receipt constitutes proper receipt by the laboratory for purposes of this section.