

LD4246665

HOUSE BILL NO. 2438

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Goode
on February 22, 1995)

(Patron Prior to Substitute—Delegate Miller)

A BILL to amend and reenact § 18.2-308 of the Code of Virginia, relating to personal protection; permits; penalty; study.

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, 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, *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; ~~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; *and*
8. Any State Police officer retired from the Department of State Police following at least fifteen years of service, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed weapon issued by the Superintendent of State Police.

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

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

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

8. Harbormaster of the City of Hopewell.

D. Any person *twenty-one years of age or older* may apply in writing to the clerk of the circuit court of the county or city in which he resides for a two-year permit to carry a ~~specific type of concealed weapon handgun~~. The application shall be *made under oath before a notary or other person qualified to take oaths* and shall be made on a form prescribed by the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court, after consulting the law-enforcement authorities of the county or city and receiving a report from the Central Criminal Records Exchange, shall issue such permit if the applicant is of good character, has demonstrated a need to carry such concealed weapon, which need may include but is not limited to lawful defense and security, is physically and mentally competent to carry such weapon and is not prohibited by law from receiving, possessing, or transporting such weapon the permit within forty-five days of receipt of the completed application unless it appears that the applicant is disqualified.

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

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

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-181 less than five years before the date of his application for a concealed handgun permit.

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

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

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

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

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

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

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

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

11. An individual who is a fugitive from justice.

12. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff or the attorney for the Commonwealth, that in the opinion of such sheriff or attorney for the Commonwealth is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff or Commonwealth's attorney shall be based upon personal knowledge or upon the sworn written statement of a competent person having personal knowledge.

13. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-279, § 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.

14. An individual who has been convicted of stalking.

15. An individual whose previous convictions or adjudications of delinquency were based on an offense which 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 sixteen 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."

16. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 13 or 14.

17. An individual who has received mental health treatment within five years prior to the date of his application for a concealed handgun permit.

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

G. The court may further require proof that the applicant has demonstrated competence with a

handgun and the applicant may demonstrate such competence by one of the following:

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

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

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

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

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

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

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

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

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

H. The permit to carry a concealed handgun shall specify the name, address, date of birth, gender, social security number, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and proper identification upon demand by a law-enforcement officer.

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

J. Any person violating any provisions of subsection E of this section, upon conviction, shall forfeit to the court his permit for a concealed handgun.

*K. No fee shall be charged for the issuance of such permit to a person who has retired from service as a magistrate in the Commonwealth or as a law-enforcement officer with the Department of State Police, or with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth of Virginia, after completing twenty years' service or after reaching age fifty-five nor to any person who has retired after completing twenty years' service or after reaching age fifty-five from service as a law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration or Naval Criminal Investigative Service. ~~Any fee charged by the court associated with~~ *The clerk shall charge a fee of ten dollars for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies, shall. The local law-enforcement agencies may charge a fee not to exceed twenty-five dollars to cover the cost of conducting an investigation pursuant to this section. The State Police may charge a fee not to exceed five dollars to cover their costs associated with processing the application.* The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city.*

L. Any person denied a permit to carry a concealed weapon under the provisions of this subsection may, within thirty days of the final decision, present a petition for review to the Court of Appeals or any judge thereof. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of § 17-116.07 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed,

183 *made and intended to fire a projectile by means of an explosion from one or more barrels when held in*
184 *one hand.*

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

188 *N. As used in this article:*

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

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

193 **2. That the Secretary of Public Safety, with technical assistance from the Virginia State Crime**
194 **Commission, is hereby requested to study the feasibility and desirability of establishing minimum**
195 **training standards for safety, proficiency and legal responsibility of carrying and using a concealed**
196 **handgun and of having the Department of State Police issue concealed handguns permits and of**
197 **having photographs required on all permits.**