

LD1208120

HOUSE BILL NO. 989

Offered January 25, 1994

A BILL to amend and reenact §§ 18.2-308 and 18.2-308.2:2 of the Code of Virginia, relating to concealed weapons; criminal history records check for firearms purchase.

Patron—Baker (By Request)

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308 and 18.2-308.2:2 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 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

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60 otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

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

62 8. Harbormaster of the City of Hopewell.

63 D. Any person may apply in writing to the clerk of the circuit court of the county or city in which
64 he resides for a two-year permit to carry a specific type of concealed weapon, *or may receive a*
65 *two-year permit under the provisions of § 18.2-308.2:2*. The application shall be made on a form
66 prescribed by the Supreme Court, requiring only that information necessary to determine eligibility for
67 the permit. The court, after consulting the law-enforcement authorities of the county or city and
68 receiving a report from the Central Criminal Records Exchange, shall issue such permit if the applicant
69 is of good character, has demonstrated a need to carry such concealed weapon, which need may include
70 but is not limited to lawful defense and security, is physically and mentally competent to carry such
71 weapon and is not prohibited by law from receiving, possessing, or transporting such weapon. The court
72 may further require proof that the applicant has demonstrated competence with a handgun by one of the
73 following:

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

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

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

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

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

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

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

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

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

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

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

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

119 E. As used in this article:

120 "Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and
121 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.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms; firearm safety information to be provided.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only, in addition to the information required by subdivision B 1, the identical information required to be included on the firearms transaction record required by regulations administered by the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury, except that the copies of such forms mailed or delivered to the Department of State Police shall not include any information related to the firearm purchased or transferred.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested and received criminal history record information by a telephone call to the State Police. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth and other documentation of residence, any of which must show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (i) lease, (ii) utility or telephone bill, (iii) voter registration card, (iv) bank check, (v) passport, (vi) automobile registration, or (vii) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 79-7; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia.

In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the Immigration and Naturalization Service, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the Immigration and Naturalization Service.

Upon receipt of the request for a criminal history record information check, the State Police shall (i) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (ii) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (iii) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision B 1 of this subsection and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9-192, the State Police shall not maintain records longer than thirty days, except for multiple handgun transactions for which records shall be maintained for twelve months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under

183 state or federal law. However, the log on requests made may be maintained for a period of twelve
184 months, and such log shall consist of the name of the purchaser, the dealer identification number, the
185 unique approval number and the transaction date.

186 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
187 deliver the written consent form required by subsection A to the Department of State Police. The State
188 Police shall immediately initiate a search of all available criminal history record information to
189 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
190 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
191 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
192 the jurisdiction where the sale or transfer occurred and the dealer without delay.

193 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
194 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
195 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof
196 of citizenship or status as a person lawfully admitted for permanent residence and one
197 photo-identification form issued by a governmental agency of the person's state of residence and one
198 other form of identification determined to be acceptable by the Department of Criminal Justice Services.

199 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, other than a rifle or a
200 shotgun, to any person who is not a resident of Virginia unless he has first obtained from the
201 Department of State Police a report indicating that a search of all available criminal history record
202 information has not disclosed that the person is prohibited from possessing or transporting a firearm
203 under state or federal law. The dealer shall obtain the required report by mailing or delivering the
204 written consent form required under subsection A to the State Police within twenty-four hours of its
205 execution. If the dealer has complied with the provisions of this subsection and has not received the
206 required report from the State Police within ten days from the date the written consent form was mailed
207 to the Department of State Police, he shall not be deemed in violation of this section for thereafter
208 completing the sale or transfer.

209 D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting
210 or receiving a firearm from a dealer by obtaining a criminal history record information check through
211 the dealer as provided in subsection C.

212 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
213 exercise his right of access to and review and correction of criminal history record information under
214 § 9-192 or institute a civil action as provided in § 9-194, provided any such action is initiated within
215 thirty days of such denial.

216 F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history
217 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
218 disseminate criminal history record information except as authorized in this section shall be guilty of a
219 Class 2 misdemeanor.

220 G. For purposes of this section:

221 "Antique firearm" means any firearm, including those with a matchlock, flintlock, percussion cap, or
222 similar type of ignition system, manufactured in or before 1898 and any replica of such a firearm if
223 such replica (i) is not designed or redesigned for using rimfire or conventional center-fire fixed
224 ammunition or (ii) uses rimfire or conventional center-fire fixed ammunition which is no longer
225 manufactured in the United States and which is not readily available in the ordinary channels of
226 commercial trade.

227 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels a projectile by
228 action of an explosion and is equipped at the time of the offense with a magazine which will hold more
229 than twenty rounds of ammunition or designed by the manufacturer to accommodate a silencer or
230 equipped with a folding stock.

231 "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

232 "Firearm" means any handgun, shotgun, or rifle which expels a projectile by action of an explosion.

233 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to
234 fire a projectile by means of an explosion from one or more barrels when held in one hand.

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

238 H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,
239 confidentiality and security of all records and data provided by the Department of State Police pursuant
240 to this section.

241 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
242 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii)
243 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
244 or any local government, (iii) antique firearms or (iv) transactions in any county, city or town that has a

local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. All licensed firearms dealers shall collect a fee of two dollars for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of five dollars shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to an ineligible person, shall be guilty of a Class 5 felony.

N. The Department of Education, in conjunction with the Department of Game and Inland Fisheries, shall develop a standard informational form and posted notice to be furnished to each licensed firearms dealer in the Commonwealth at no cost to the dealer. The form and notice shall provide basic information of the laws governing the purchase, possession and use of firearms by juveniles and adults.

Copies of the form shall be made available by the dealer whenever a firearm is purchased.

Every firearms dealer shall conspicuously post the written notice which shall be at least eight and one-half inches by eleven inches in size and printed in boldface type of a minimum size of ten points. A licensed firearms dealer shall not be liable for damages for injuries resulting from the discharge of a firearm purchased from the dealer if, at the time of the purchase, the dealer failed to provide the form or failed to post the written notice.

O. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any thirty-day period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a thirty-day period may be made upon completion of an enhanced background check, as described herein, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall forthwith issue to the applicant a nontransferable certificate which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in subsection C of § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and certificates issued under this subsection shall be maintained as records as provided in subdivision 3 of subsection B. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subsection and all records provided for in subdivision 3 of subsection B.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. State and local correctional facilities;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms as herein defined; or
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a thirty-day period, provided (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of

306 State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the
307 official police report or summary thereof contains the name and address of the handgun owner, the
308 description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date
309 the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as
310 reflected on the official police report or summary thereof occurred within thirty days of the person's
311 attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or
312 summary thereof to the original copy of the Virginia firearms transaction report completed for the
313 transaction and retain it for the period prescribed by the Department of State Police.

314 3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a
315 handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange
316 or replacement within the thirty-day period immediately preceding the date of exchange or replacement.

317 *P. Any person who successfully complies with the provisions of subsections A and B, shall, upon*
318 *request, be issued a two-year permit to carry a specific type of concealed weapon. The request shall be*
319 *made on a form prescribed by the Supreme Court.*