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SENATE BILL NO. 744

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 2, 1995)

(Patron Prior to Substitute—Senator Goode)

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

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.

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.

60 D. Any person may apply in writing to the clerk of the circuit court of the county or city in which
61 he resides for a two-year permit to carry a ~~specific type of concealed weapon~~, *concealed, in the*
62 *Commonwealth, any weapon which may lawfully be carried unconcealed.* The application shall be made
63 under oath *before a notary or other person qualified to take oaths* and shall be made on a form
64 prescribed by the Supreme Court, requiring only that information necessary to determine eligibility for
65 the permit. The court, after consulting the law-enforcement authorities of the county or city and
66 receiving a report from the Central Criminal Records Exchange, shall issue such permit if the applicant
67 is of good character, ~~has demonstrated a need to carry such concealed weapon, which need may include~~
68 ~~but is not limited to lawful defense and security, is physically and mentally competent to carry such~~
69 ~~weapon and is not prohibited by law from receiving, possessing, or transporting such weapon the permit~~
70 ~~unless it appears that the applicant is disqualified. The following persons shall be disqualified from~~
71 ~~obtaining a permit:~~

72 1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or
73 18.2-308.1:3 or the substantially similar law of any other state or of the United States, or who has not
74 waited five years from his discharge or restoration of competency or capacity.

75 2. An individual who is subject to a restraining order, or to a protective order and prohibited by
76 §18.2-308.1:4 from purchasing or transporting a firearm.

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

79 4. An individual who the court finds is addicted to, or is an unlawful user or distributor of,
80 marijuana or any controlled substance.

81 5. An individual who the court finds is a habitual drunkard.

82 6. A resident of another state who does not possess a current license or permit or similar document
83 to carry a firearm issued by that state if a license is provided for by the laws of that state, as published
84 annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of
85 the Treasury under 18 U.S.C. § 921 (a) (19) (relating to definitions).

86 7. An alien who is illegally in the United States.

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

89 9. An individual who is a fugitive from justice.

90 10. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff
91 or the attorney for the Commonwealth, will use a weapon unlawfully to endanger others. The statement
92 of the sheriff or Commonwealth's attorney shall be based upon personal knowledge or upon the sworn
93 written statement of a competent person having personal knowledge.

94 11. An individual who has been convicted of any assault, assault and battery, brandishing of a
95 firearm or stalking within the three-year period immediately preceding the application.

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

98 The court may further require proof that the applicant has demonstrated competence with a handgun
99 and the applicant may demonstrate such competence by one of the following:

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

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

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

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

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

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

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

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

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

The permit shall bear the name, address, date of birth, race, gender, citizenship, 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 period of validity of the permit.

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.

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 be entitled to 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.

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, costs incurred by the person shall be paid by the Commonwealth.*

E. As used in this article:

"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.