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SENATE BILL NO. 641

Offered January 8, 1997

Prefiled July 29, 1996

A BILL to amend and reenact § 18.2-308 of the Code of Virginia, relating to concealed weapons; background check.

Patron—Gartlan

Referred to the Committee for Courts of Justice

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, or 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;
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;
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

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SB641

60 carrier of passengers for hire; or (d) commissioners in chancery;

61 5. Noncustodial employees of the Department of Corrections designated to carry weapons by the
62 Director of the Department of Corrections pursuant to § 53.1-29;

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

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

66 8. Harbormaster of the City of Hopewell.

67 D. Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court
68 of the county or city in which he resides for a two-year permit to carry a concealed handgun. The
69 application shall be made under oath before a notary or other person qualified to take oaths, *shall be*
70 *accompanied by a full set of fingerprints* and shall be made on a form prescribed by the Supreme Court,
71 requiring only that information necessary to determine eligibility for the permit. The court, after
72 consulting the law-enforcement authorities of the county or city and receiving a report from the Central
73 Criminal Records Exchange, *including the results of a national criminal history records check*, shall
74 issue the permit within forty-five days of receipt of the completed application unless it appears that the
75 applicant is disqualified; ~~except that any permit issued prior to July 1, 1996, shall be issued within~~
76 ~~ninety days of receipt of the completed application.~~

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

78 1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or
79 § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

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

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

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

89 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
90 § 18.2-308.1:4 from purchasing or transporting a firearm.

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

93 7. An individual who has been convicted of two or more misdemeanors within the three-year period
94 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the
95 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.
96 Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

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

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

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

103 11. An individual who has been discharged from the Armed Forces of the United States under
104 dishonorable conditions.

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

106 13. An individual who it is alleged, in a sworn written statement submitted to the court by the
107 sheriff, chief of police or the attorney for the Commonwealth, that in the opinion of such sheriff, chief
108 of police or the attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to
109 endanger others. The statement of the sheriff, chief of police or the attorney for the Commonwealth
110 shall be based upon personal knowledge or upon the sworn written statement of a competent person
111 having personal knowledge.

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

115 15. An individual who has been convicted of stalking.

116 16. An individual whose previous convictions or adjudications of delinquency were based on an
117 offense which would have been at the time of conviction a felony if committed by an adult under the
118 laws of any state, the District of Columbia, the United States or its territories. For purposes of this
119 disqualifier, only convictions occurring within sixteen years following the later of the date of (i) the
120 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
121 adjudication shall be deemed to be "previous convictions."

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.

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, or of the clerk of court who has been authorized to sign such permits by the issuing judge; 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 a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) 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 convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun to the court. Any person permitted to carry a concealed weapon under this section, who is under the influence of alcohol or illegal drugs while carrying such weapon in a public place, shall be guilty of a Class 1 misdemeanor.

J1. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have such permit suspended by such court before which such charge is pending.

J2. No person shall carry a concealed handgun into any place of business or special event for which a license to sell or serve alcoholic beverages on premises has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; ~~provided~~ however, nothing herein shall prohibit any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such place of business or at such special event if such person has a concealed handgun permit.

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. 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. The local law-enforcement agencies may charge a fee not to exceed thirty-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. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed weapon under the provisions of this section 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, made and intended to fire a projectile by means of an explosion from one or more barrels when held in one hand.

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

N. 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.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add or delete from that provision.