

17100245D

## SENATE BILL NO. 1267

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact §§ 18.2-308, 18.2-308.09, and 18.2-308.016, as it is currently effective and as it shall become effective, of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 18.2-56.3; and to repeal § 18.2-308.012 of the Code of Virginia, relating to carrying loaded firearms in public while intoxicated or under the influence of illegal drugs and consuming alcohol while carrying a loaded firearm; penalties.*

Patron—Ebbin

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-308, 18.2-308.09, and 18.2-308.016, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-56.3 as follows:**

**§ 18.2-56.3. Carrying a loaded firearm while intoxicated or under the influence of illegal drugs and consuming alcohol while carrying a loaded firearm; penalty.**

A. A person who is intoxicated as defined in § 4.1-100 or under the influence of illegal drugs while carrying a loaded firearm on or about his person in a public place is guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "intoxicated as defined in § 4.1-100 or under the influence of illegal drugs" for the purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

B. A person who carries a loaded firearm on or about his person onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 and consumes an alcoholic beverage while on the premises is guilty of a Class 2 misdemeanor.

The provisions of this subsection shall not apply to law-enforcement officers or military personnel in the performance of their official duties.

**§ 18.2-308. Carrying concealed weapons; exceptions; penalty.**

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 by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (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; (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 is 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. 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. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. ~~Except as provided in subsection A of § 18.2-308.012, this~~ This section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, or retired law-enforcement officer pursuant to § 18.2-308.016, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person 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

INTRODUCED

SB1267

59 while being transported;

60 5. Any person carrying such weapons between his place of abode and a place of purchase or repair,  
61 provided the weapons are unloaded and securely wrapped while being transported;

62 6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland  
63 Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from  
64 those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be  
65 construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

66 7. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such  
67 attorney may travel in the Commonwealth;

68 8. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal,  
69 private motor vehicle or vessel and such handgun is secured in a container or compartment in the  
70 vehicle or vessel;

71 9. Any enrolled participant of a firearms training course who is at, or going to or from, a training  
72 location, provided that the weapons are unloaded and securely wrapped while being transported; and

73 10. Any judge or justice of the Commonwealth, wherever such judge or justice may travel in the  
74 Commonwealth.

75 D. This section shall also not apply to any of the following individuals while in the discharge of  
76 their official duties, or while in transit to or from such duties:

77 1. Carriers of the United States mail;

78 2. Officers or guards of any state correctional institution;

79 3. Conservators of the peace, except that a judge or justice of the Commonwealth, an attorney for the  
80 Commonwealth, or an assistant attorney for the Commonwealth may carry a concealed handgun pursuant  
81 to subdivisions C 7 and 10. However, the following conservators of the peace shall not be permitted to  
82 carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii)  
83 registrars; (iii) drivers, operators, or other persons in charge of any motor vehicle carrier of passengers  
84 for hire; or (iv) commissioners in chancery;

85 4. Noncustodial employees of the Department of Corrections designated to carry weapons by the  
86 Director of the Department of Corrections pursuant to § 53.1-29; and

87 5. Harbormaster of the City of Hopewell.

88 **§ 18.2-308.09. Disqualifications for a concealed handgun permit.**

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

90 1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or  
91 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

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

95 3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose  
96 competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his  
97 application for a concealed handgun permit.

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

101 5. An individual who is subject to a restraining order, or to a protective order and prohibited by  
102 § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

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

105 7. An individual who has been convicted of two or more misdemeanors within the five-year period  
106 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the  
107 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.  
108 Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this  
109 disqualification.

110 8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic  
111 cannabinoids, or any controlled substance.

112 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local  
113 ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other  
114 state, the District of Columbia, the United States, or its territories within the three-year period  
115 immediately preceding the application, or who is a habitual drunkard as determined pursuant to  
116 § 4.1-333.

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

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

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

121 13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by  
 122 the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief  
 123 of police, or attorney for the Commonwealth may submit to the court a sworn, written statement  
 124 indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based  
 125 upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is  
 126 likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief  
 127 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such  
 128 individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the  
 129 specific acts, or upon a written statement made under oath before a notary public of a competent person  
 130 having personal knowledge of the specific acts.

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

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

135 16. An individual whose previous convictions or adjudications of delinquency were based on an  
 136 offense that would have been at the time of conviction a felony if committed by an adult under the laws  
 137 of any state, the District of Columbia, the United States or its territories. For purposes of this  
 138 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the  
 139 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or  
 140 adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall  
 141 not apply to an individual with previous adjudications of delinquency who has completed a term of  
 142 service of no less than two years in the Armed Forces of the United States and, if such person has been  
 143 discharged from the Armed Forces of the United States, received an honorable discharge.

144 17. An individual who has a felony charge pending or a charge pending for an offense listed in  
 145 subdivision 14 or 15.

146 18. An individual who has received mental health treatment or substance abuse treatment in a  
 147 residential setting within five years prior to the date of his application for a concealed handgun permit.

148 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period  
 149 immediately preceding the application for the permit, was found guilty of any criminal offense set forth  
 150 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession  
 151 or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any  
 152 state, the District of Columbia, or the United States or its territories.

153 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the  
 154 three-year period immediately preceding the application, upon a charge of any criminal offense set forth  
 155 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or  
 156 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any  
 157 state, the District of Columbia, or the United States or its territories, the trial court found that the facts  
 158 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the  
 159 substantially similar law of any other state, the District of Columbia, or the United States or its  
 160 territories.

161 21. *An individual who has been convicted of a violation of § 18.2-56.3 within the five-year period*  
 162 *immediately preceding the application.*

163 **§ 18.2-308.016. (Effective until July 1, 2018) Retired law-enforcement officers; carrying a**  
 164 **concealed handgun.**

165 A. ~~Except as provided in subsection A of § 18.2-308.012,~~ § Section 18.2-308 shall not apply to:

- 166 1. Any State Police officer retired from the Department of State Police, any officer retired from the
- 167 Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control
- 168 officer retired from a police department or sheriff's office within the Commonwealth, any special agent
- 169 retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Board, any
- 170 employee with internal investigations authority designated by the Department of Corrections pursuant to
- 171 subdivision 11 of § 53.1-10 retired from the Department of Corrections, any conservation police officer
- 172 retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired
- 173 from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police
- 174 officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 retired from a campus
- 175 police department, any retired member of the enforcement division of the Department of Motor Vehicles
- 176 appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia
- 177 Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii)
- 178 following at least 10 years of service with any such law-enforcement agency, commission, board, or any
- 179 combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such
- 180 law-enforcement agency or board due to a service-related injury, provided such officer carries with him
- 181 written proof of consultation with and favorable review of the need to carry a concealed handgun issued

182 by the chief law-enforcement officer of the last such agency from which the officer retired or the agency  
183 that employs the officer or, in the case of special agents, issued by the State Corporation Commission or  
184 the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable  
185 review shall be forwarded by the chief, Commission, or Board to the Department of State Police for  
186 entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not  
187 without cause withhold such written proof if the retired law-enforcement officer otherwise meets the  
188 requirements of this section. An officer set forth in clause (iv) who receives written proof of  
189 consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work  
190 or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be  
191 forwarded to the Department of State Police for entry into the Virginia Criminal Information Network.  
192 However, if such officer retires on disability because of the service-related injury, and would be eligible  
193 under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the  
194 previously issued written proof of consultation.

195 2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement  
196 agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such  
197 law-enforcement agency, commission, or board to accept a position covered by a retirement system that  
198 is authorized under Title 51.1, provided such person carries with him written proof of consultation with  
199 and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement  
200 officer of the agency from which he resigned or, in the case of special agents, issued by the State  
201 Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of  
202 consultation and favorable review shall be forwarded by the chief, Commission, or Board to the  
203 Department of State Police for entry into the Virginia Criminal Information Network. The chief  
204 law-enforcement officer shall not without cause withhold such written proof if the law-enforcement  
205 officer otherwise meets the requirements of this section.

206 3. Any State Police officer who is a member of the organized reserve forces of any of the Armed  
207 Services of the United States or National Guard, while such officer is called to active military duty,  
208 provided such officer carries with him written proof of consultation with and favorable review of the  
209 need to carry a concealed handgun issued by the Superintendent of State Police. The proof of  
210 consultation and favorable review shall be valid as long as the officer is on active military duty and  
211 shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of  
212 consultation and favorable review shall be entered into the Virginia Criminal Information Network. The  
213 Superintendent of State Police shall not without cause withhold such written proof if the officer is in  
214 good standing and is qualified to carry a weapon while on active law-enforcement duty.

215 B. For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a  
216 retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to  
217 this section shall have the opportunity to annually participate, at the retired or resigned law-enforcement  
218 officer's expense, in the same training and testing to carry firearms as is required of active  
219 law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer  
220 meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or  
221 resigned officer certification, valid one year from the date of issuance, indicating that the retired or  
222 resigned officer has met the standards of the agency to carry a firearm.

223 C. A retired or resigned law-enforcement officer who receives proof of consultation and review  
224 pursuant to this section may annually participate and meet the training and qualification standards to  
225 carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or  
226 resigned law-enforcement officer meets the training and qualification standards, the chief  
227 law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the  
228 date of issuance, indicating that the retired or resigned officer has met the standards of the  
229 Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned  
230 officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief,  
231 Commission, or Board to the Department of State Police for entry into the Virginia Criminal  
232 Information Network.

233 D. For all purposes, including for the purpose of applying the reciprocity provisions of  
234 § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this section,  
235 while carrying the proof of consultation and favorable review required, shall be deemed to have been  
236 issued a concealed handgun permit.

237 **§ 18.2-308.016. (Effective July 1, 2018) Retired law-enforcement officers; carrying a concealed**  
238 **handgun.**

239 A. Except as provided in subsection A of § 18.2-308.012, § Section 18.2-308 shall not apply to:

240 1. Any State Police officer retired from the Department of State Police, any officer retired from the  
241 Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control  
242 officer retired from a police department or sheriff's office within the Commonwealth, any special agent  
243 retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority,

244 any employee with internal investigations authority designated by the Department of Corrections  
 245 pursuant to subdivision 11 of § 53.1-10 retired from the Department of Corrections, any conservation  
 246 police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police  
 247 officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any  
 248 campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 retired  
 249 from a campus police department, any retired member of the enforcement division of the Department of  
 250 Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of  
 251 the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related  
 252 disability; (ii) following at least 10 years of service with any such law-enforcement agency, commission,  
 253 board, or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term  
 254 leave from such law-enforcement agency or board due to a service-related injury, provided such officer  
 255 carries with him written proof of consultation with and favorable review of the need to carry a  
 256 concealed handgun issued by the chief law-enforcement officer of the last such agency from which the  
 257 officer retired or the agency that employs the officer or, in the case of special agents, issued by the  
 258 State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the  
 259 proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the  
 260 Department of State Police for entry into the Virginia Criminal Information Network. The chief  
 261 law-enforcement officer shall not without cause withhold such written proof if the retired  
 262 law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause  
 263 (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof  
 264 of consultation upon return to work or upon termination of employment with the law-enforcement  
 265 agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the  
 266 Virginia Criminal Information Network. However, if such officer retires on disability because of the  
 267 service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a  
 268 concealed handgun, he may retain the previously issued written proof of consultation.

269 2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement  
 270 agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such  
 271 law-enforcement agency, commission, or board to accept a position covered by a retirement system that  
 272 is authorized under Title 51.1, provided such person carries with him written proof of consultation with  
 273 and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement  
 274 officer of the agency from which he resigned or, in the case of special agents, issued by the State  
 275 Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of  
 276 consultation and favorable review shall be forwarded by the chief, Commission, or Board to the  
 277 Department of State Police for entry into the Virginia Criminal Information Network. The chief  
 278 law-enforcement officer shall not without cause withhold such written proof if the law-enforcement  
 279 officer otherwise meets the requirements of this section.

280 3. Any State Police officer who is a member of the organized reserve forces of any of the Armed  
 281 Services of the United States or National Guard, while such officer is called to active military duty,  
 282 provided such officer carries with him written proof of consultation with and favorable review of the  
 283 need to carry a concealed handgun issued by the Superintendent of State Police. The proof of  
 284 consultation and favorable review shall be valid as long as the officer is on active military duty and  
 285 shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of  
 286 consultation and favorable review shall be entered into the Virginia Criminal Information Network. The  
 287 Superintendent of State Police shall not without cause withhold such written proof if the officer is in  
 288 good standing and is qualified to carry a weapon while on active law-enforcement duty.

289 B. For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a  
 290 retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to  
 291 this section shall have the opportunity to annually participate, at the retired or resigned law-enforcement  
 292 officer's expense, in the same training and testing to carry firearms as is required of active  
 293 law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer  
 294 meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or  
 295 resigned officer certification, valid one year from the date of issuance, indicating that the retired or  
 296 resigned officer has met the standards of the agency to carry a firearm.

297 C. A retired or resigned law-enforcement officer who receives proof of consultation and review  
 298 pursuant to this section may annually participate and meet the training and qualification standards to  
 299 carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or  
 300 resigned law-enforcement officer meets the training and qualification standards, the chief  
 301 law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the  
 302 date of issuance, indicating that the retired or resigned officer has met the standards of the  
 303 Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned  
 304 officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief,

305 Commission, or Board to the Department of State Police for entry into the Virginia Criminal  
306 Information Network.

307 D. For all purposes, including for the purpose of applying the reciprocity provisions of  
308 § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this section,  
309 while carrying the proof of consultation and favorable review required, shall be deemed to have been  
310 issued a concealed handgun permit.

311 **2. That § 18.2-308.012 of the Code of Virginia is repealed.**