HOUSE BILL 562, Amend Firearm Laws

August 12, 2015

On August 5, 2015 Governor Pat McCrory signed House Bill 562, Amend Firearm Laws, into law. This bill makes a number of changes to North Carolina's firearms laws, to include changes in the way sheriffs evaluate and process pistol purchase permits and concealed handgun permits. Below is a summary of these changes.

## GENERAL FIREARMS PROVISIONS

1. Effective July 1, 2015, a district attorney with a valid concealed handgun permit is permitted to carry a concealed weapon while in a courtroom. This provision allows a district attorney (but not an assistant district attorney) to carry not only a concealed handgun in the courtroom but also other concealed weapons, such as knives in the courtroom.

2. Effective July 1, 2015, any person employed by the Department of Public Safety who has a valid concealed handgun permit, and has been designated in writing by the Secretary of the Department, is able to carry a concealed weapon (including firearms and other weapons) anywhere in North Carolina that sworn law enforcement officers can carry a concealed weapon.

3. Effective July 1, 2015, an administrative law judge who has a valid concealed handgun permit is able to carry a concealed weapon (including firearms and other weapons) anywhere in North Carolina that sworn law enforcement officers can carry a concealed weapon.

4. Effective July 1, 2015, individuals may carry an ordinary pocketknife [as defined in N.C.G.S. § 14-269(d)] in the State Capitol Building or on the grounds of the State Capitol Building.

5. Effective July 1, 2015, a concealed handgun permittee can possess a concealed handgun on his/her person while in a vehicle on school property so long as the person remains in a locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person. The permittee is also able to have a concealed handgun in a closed (but not necessarily locked, i.e. glovebox) container within the vehicle or within a locked container securely affixed to the vehicle. It is lawful for a concealed handgun permittee to remove a handgun from a vehicle on school property if done so in response to a threatening situation in which deadly force is justified.

6. Effective August 5, 2015, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms on the State Fairgrounds during the State Fair. Individuals with valid concealed handgun permits are allowed to secure their handguns in their locked vehicles in the parking lot of the fairgrounds.

   Individuals authorized to carry a firearm under N.C.G.S. § 14-269(b)(1),(2),(3),(4) or (5) are allowed to carry a handgun on State Fairgrounds during the State Fair. Examples of these

categories of individuals are sworn law enforcement officers, military members carrying firearms in the performance of their duties, and judges and district attorneys with valid concealed handgun permits.

The Department of Agriculture, in consultation with the Department of Public Safety and the North Carolina Sheriffs' Association, is required to study the best method to allow persons with concealed handgun permits to carry concealed handguns from the parking lot to the entrance of the State Fairgrounds and how best to secure those handguns near the entrance to the State Fair.

7. A person who owns or operates a recreational shooting range in North Carolina is not able to be prosecuted criminally or sued civilly in any lawsuit related to noise or noise pollution resulting from the use of the shooting range, so long as the range is being operated in compliance with noise control laws in effect at the time the range began operating. These protections apply to any recreational shooting range, irrespective of when it began operating. This provision is effective July 1, 2015 but will not apply to any litigation pending as of that date.

8. Prior to this bill, convicted felons, whose firearms rights had been restored by a district court judge, could possess handguns, shotguns, rifles, weapons of mass death and destruction (for example, suppressors and short barreled rifles or short barreled shotguns), or automatic weapons. With this change in the law, convicted felons, whose firearms rights are restored, cannot possess automatic weapons, but could possess the other weapons listed above. This provision is effective August 5, 2015 and applies to restorations of rights granted before, on, or after that date.

9. Effective July 1, 2015, hunting is now allowed with short barreled rifles (rifles with a barrel length of less than 16 inches or an overall length of less than 26 inches) in addition to hunting with suppressors. All State and federal laws for the possession of these weapons must still be complied with.

10. Effective January 1, 2016, clerks of superior court, within 48 hours of receiving notice of certain court orders, are required to forward firearms disqualifying orders and information to the National Instant Criminal Background Check System (NICS). Additionally, the Administrative Office of the Courts (AOC) is required to send unserved felony warrants, indictments, criminal summons, or orders for arrest to NICS within 48 hours of receiving notice of issuance. Sheriffs are also required, within 48 hours after service by the sheriff (excluding Saturdays, Sundays and holidays) to send domestic violence protective orders to NICS.

11. Effective October 1, 2015, arresting law enforcement agencies are required to fingerprint individuals arrested for certain misdemeanors (such as domestic violence related crimes, impaired driving offenses and controlled substance violations) and to forward those fingerprints to the State Bureau of Investigation for the purpose of having them forwarded to NICS. The complete list of crimes for which an arrestee <u>must</u> be fingerprinted is found in Attachment 1. Law enforcement officers are also required to provide certain information

after an arrest to magistrates. This information includes the arrestee's name, address, drivers license number, date of birth, gender, race, social security number and domestic relationship to any victims.

12. By May 31, 2019, AOC is required to send certain historical records to NICS, such as all involuntary commitment orders, convictions for misdemeanor possession of controlled substances and impaired driving convictions.

13. Effective December 1, 2015, any person adversely affected by a city or county ordinance that unlawfully regulates the possession, transfer, sale, taxation, manufacture, transportation, or concealed carry of firearms would be allowed to bring a lawsuit against the city or county for damages the person suffered as a result of the ordinance. The court would be able to give the winning party to the lawsuit reasonable attorneys' fees and court costs.

14. Effective July 1, 2015, the term "chief law enforcement officer" (CLEO) means any official designated as such by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) who would be eligible to provide any required certification on federal paperwork for the transfer or making of a firearm (for example, the transfer of an automatic weapon or suppressor).

    Therefore, if designated by the BATFE, a chief of police or other official (in addition to a sheriff) can sign any necessary federal paperwork for the transfer of a weapon. The CLEO has to provide the certification within 15 days of the request if the applicant is not otherwise prohibited by State or federal law from receiving or possessing the firearm. Any denial by the CLEO can be appealed to the district court of the district where the request for certification is made.

## CONCEALED HANDGUN PERMIT PROVISIONS

1. The misdemeanor crimes for which a concealed handgun permit must be denied as set out in N.C.G.S. § 14-415.12(b)(8) has changed. Effective July 1, 2015 for all concealed handgun permit applications submitted on or after that date, an applicant for a North Carolina issued concealed handgun permit CAN receive a concealed handgun permit **if** three years has passed since the applicant's conviction for certain misdemeanor crimes.

    If an applicant for a concealed handgun permit has been found guilty of or received a prayer for judgment continued or a suspended sentence for one of the following crimes listed in (a) through (t) below, AND THREE YEARS HAS PASSED PRIOR TO SUBMITTING THE APPLICATION, the applicant CAN (if otherwise qualified) receive a concealed handgun permit.

    (a) N.C.G.S. § 14-33(a), Simple assault;

    (b) N.C.G.S. § 14-226.1, Violation of court orders;

(c) N.C.G.S. § 14-258.1, Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions, or local confinement facilities;

(d) N.C.G.S. § 14-269.2, Carrying weapons on campus or other educational property;

(e) N.C.G.S. § 14-269.3, Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed;

(f) N.C.G.S. § 14-269.4, Carrying weapons on State property and courthouses;

(g) N.C.G.S. § 14-269.6, Possession and/or sale of spring-loaded projectile knives;

(h) N.C.G.S. § 14-277, Impersonation of a law enforcement or other public officer;

(i) N.C.G.S. § 14-277.1, Communicating threats;

(j) N.C.G.S. § 14-277.2, Carrying weapons at parades and other public gatherings;

(k) N.C.G.S. § 14-283, Exploding dynamite cartridges and/or bombs (however violations for fireworks violations under N.C.G.S. § 14-414 are NOT a bar);

(l) N.C.G.S. § 14-288.2, Rioting and inciting to riot;

(m) N.C.G.S. § 14-288.4(a)(1), Fighting or conduct creating the threat of imminent fighting or other violence;

(n) N.C.G.S. § 14-288.6, Looting and trespassing during an emergency;

(o) N.C.G.S. § 14-288.9, Assault on emergency personnel;

(p) Former N.C.G.S. § 14-288.12, Violations of city State of Emergency Ordinances;

(q) Former N.C.G.S. § 14-288.13, Violations of county State of Emergency Ordinances;

(r) Former N.C.G.S. § 14-288.14, Violations of State of Emergency Ordinances;

(s) N.C.G.S. § 14-415.21(b), Violations of the standards for carrying a concealed weapon;

(t) N.C.G.S. § 14-415.26(d), Misrepresentation on certification of qualified retired law enforcement officers.

2. Effective July 1, 2015 for all concealed handgun permit applications submitted on or after that date, an applicant for a North Carolina concealed handgun permit IS permanently

disqualified from receiving a concealed handgun permit if the applicant is or has been found guilty of or received a prayer for judgment continued or suspended sentence for the following misdemeanor crimes:

(a) Misdemeanor crimes that involve violence (other than the misdemeanors listed in paragraph 1.(a) through (t) above);

(b) N.C.G.S. § 14-33(c)(1), Assault inflicting serious injury or using a deadly weapon;

(c) N.C.G.S. § 14-33(c)(2), Assault on a female;

(d) N.C.G.S. § 14-33(c)(3), Assault a child under the age of 12;

(e) N.C.G.S. § 14-33(d), Assault inflicting serious injury or using a deadly weapon on a person in a personal relationship and in the presence of a minor;

(f) N.C.G.S. § 14-277.3A, Stalking;

(g) N.C.G.S. § 14-318.2, Child abuse;

(h) N.C.G.S. § 14-134.3, Domestic criminal trespass;

(i) N.C.G.S. § 50B-4.1, Domestic violence protective order violations;

(j) Former N.C.G.S. § 14-277.3, Stalking;

(k) Any person convicted of a "misdemeanor crime of domestic violence" as defined in federal law at 18 U.S.C. 922(g)(8);

(l) Any crimes involving an assault or a threat to assault a law enforcement officer, probation or parole officer, person employed at a State or local detention facility, firefighter, emergency medical technician, medical responder, or emergency department personnel.

[All of the offenses set out in paragraphs 1 and 2 above are compiled in a disqualifying offense chart found in Attachment 2.]

NOTE: All of the other standards for the issuance or denial of a concealed handgun permit set out in N.C.G.S. § 14-415.12(a) and (b) remain unchanged. Continue to apply all of the previous misdemeanor standards set out in N.C.G.S. § 14-415.12(b)(8) <u>for all concealed handgun permit applications submitted BEFORE July 1, 2015</u>.

3. Effective December 1, 2015, the punishment for a concealed handgun permittee carrying a concealed handgun into an area that has been posted as prohibiting the carrying of concealed handguns is reduced from a Class 1 misdemeanor to an infraction and is punishable by a fine of up to $500.

4. Effective October 1, 2015 for all applications submitted for concealed handgun permit applications on or after that date, sheriffs are not allowed to request employment information, character affidavits, additional background checks, photographs, or other information not specifically set out in the concealed handgun permit statutes. Also, concealed handgun permit applications must be made available by sheriffs to applicants both electronically and in paper form.

5. Effective October 1, 2015 for all concealed handgun permit applications submitted on or after that date, sheriffs are required to submit the request for mental health records of applicants to any entity that may have the records within 10 days of the receipt of the concealed handgun permit application. Additionally, no person, company, or governmental entity can charge <u>any fees</u> to the applicant for mental health background checks and records.

6. Effective August 5, 2015, an individual is eligible to receive a concealed handgun permit if the person is <u>either</u> a citizen of the United States or has been lawfully admitted for permanent residence in the United States.

## PISTOL PURCHASE PERMIT PROVISIONS

1. Effective December 1, 2015 for all pistol purchase permits issued on or after that date, the State Bureau of Investigation (SBI), in consultation with the North Carolina Sheriffs' Association, will create a uniform application for a pistol purchase permit and a uniform pistol purchase permit certificate that must be used by all sheriffs. Pistol purchase permits issued before this date remain valid until their expiration date and any person with such a permit can exchange it for an updated permit from the sheriff with no further application being required. Any permit issued in exchange will expire on the same date as the original permit. The SBI is required to make reasonable efforts to notify federally licensed firearms dealers in North Carolina of the new permit's appearance.

2. Additionally, effective December 1, 2015 for all pistol purchase permits issued on or after that date, for purposes of determining an applicant's good moral character to receive a pistol purchase permit, the sheriff is <u>only</u> able to consider an applicant's conduct and criminal history for the five year period immediately preceding the date of the application. This five-year period only applies to a sheriff's evaluation of an applicant's good moral character. If a crime or condition occurs outside this five-year period, the sheriff may consider it if the crime or condition is independently a disqualifier for a pistol purchase permit (for example, a felony conviction or involuntary commitment).

3. Effective December 1, 2015, if a pistol purchase permit is denied, the denied applicant would be required to appeal the denial to the <u>superior court</u>.

4. Also, effective December 1, 2015, applicants for a pistol purchase permit can <u>only</u> be required to submit the following items:

    a. The permit application;

b. $5.00 for each permit requested;

c. A government-issued identification;

d. Proof of residency; and

e. A signed release that authorizes and requires any entity that has court orders concerning the mental health or capacity of the applicant to be disclosed to the sheriff.

5. The Department of Public Safety, in consultation with the Office of Information Technology Services and the Federal Bureau of Investigation, will study the development of a system to allow a background check to be conducted in the private transfers of firearms. The study must consider methods that would allow a seller or transferor to access NICS, or another similar system that would give information to the seller or transferor regarding the purchaser or transferee's eligibility to purchase a pistol.

ATTACHMENT 1

## NEW FINGERPRINTING REQUIRMENTS PURSUANT TO N.C.G.S. § 15A-502

Effective October 1, 2015 it is the duty of an arresting law enforcement agency to cause a person charged with the commission of <u>any</u> of the following misdemeanors to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation for the purpose of reporting these offenses to the National Instant Criminal Background Check System (NICS):

1. N.C.G.S. § 14-134.3 (Domestic criminal trespass);

2. N.C.G.S. § 15A-1382.1 (Offense that involved domestic violence);

3. N.C.G.S. § 50B-4.1 (Violation of a valid protective order);

4. N.C.G.S. § 20-138.1 (Impaired driving);

5. N.C.G.S. § 20-138.2 (Impaired driving in commercial vehicle);

6. N.C.G.S. § 20-138.2A (Operating a commercial vehicle after consuming alcohol);

7. N.C.G.S. § 20-138.2B (Operating various school, child care, EMS, firefighting, or law enforcement vehicles after consuming alcohol);

8. N.C.G.S. § 90-95(a)(3) (Possession of a controlled substance); or

9. A misdemeanor offense of assault, stalking, or communicating a threat and the person is held under N.C.G.S. § 15A-534.1.

ATTACHMENT 2

**DISQUALIFYING CRIMINAL OFFENSES PURSUANT TO N.C.G.S. § 14-415.12(b)(8)**

1. Effective July 1, 2015 for all concealed handgun permit applications submitted on or after that date, an applicant who has been found guilty of or received a prayer for judgment continued or a suspended sentence for one of the following crimes listed in (a) through (t), AND THREE YEARS HAS PASSED PRIOR TO SUBMITTING THE APPLICATION, can (if otherwise qualified) receive a concealed handgun permit:

   (a) N.C.G.S. § 14-33(a), Simple assault;

   (b) N.C.G.S. § 14-226.1, Violation of court orders;

   (c) N.C.G.S. § 14-258.1, Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions, or local confinement facilities;

   (d) N.C.G.S. § 14-269.2, Carrying weapons on campus or other educational property;

   (e) N.C.G.S. § 14-269.3, Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed;

   (f) N.C.G.S. § 14-269.4, Carrying weapons on State property and courthouses;

   (g) N.C.G.S. § 14-269.6, Possession and/or sale of spring-loaded projectile knives;

   (h) N.C.G.S. § 14-277, Impersonation of a law enforcement or other public officer;

   (i) N.C.G.S. § 14-277.1, Communicating threats;

   (j) N.C.G.S. § 14-277.2, Carrying weapons at parades and other public gatherings;

   (k) N.C.G.S. § 14-283, Exploding dynamite cartridges and/or bombs (however violations for fireworks violations under N.C.G.S. § 14-414 are NOT a bar);

   (l) N.C.G.S. § 14-288.2, Rioting and inciting to riot;

   (m) N.C.G.S. § 14-288.4(a)(1), Fighting or conduct creating the threat of imminent fighting or other violence;

   (n) N.C.G.S. § 14-288.6, Looting and trespassing during an emergency;

   (o) N.C.G.S. § 14-288.9, Assault on emergency personnel;

   (p) Former N.C.G.S. § 14-288.12, Violations of city State of Emergency Ordinances;

(q) Former N.C.G.S. § 14-288.13, Violations of county State of Emergency Ordinances;

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(s) N.C.G.S. § 14-415.21(b), Violations of the standards for carrying a concealed weapon;

(t) N.C.G.S. § 14-415.26(d), Misrepresentation on certification of qualified retired law enforcement officers.

2. Effective July 1, 2015 for all concealed handgun permit applications submitted on or after that date, an applicant IS permanently disqualified from receiving a concealed handgun permit if the applicant is or has been found guilty of or received a prayer for judgment continued or suspended sentence for the following misdemeanor crimes:

(a) Misdemeanor crimes that involve violence (other than the misdemeanors listed in paragraph 1.(a) through (t) above);

(b) N.C.G.S. § 14-33(c)(1), Assault inflicting serious injury or using a deadly weapon;

(c) N.C.G.S. § 14-33(c)(2), Assault on a female;

(d) N.C.G.S. § 14-33(c)(3), Assault a child under the age of 12;

(e) N.C.G.S. § 14-33(d), Assault inflicting serious injury or using a deadly weapon on a person in a personal relationship and in the presence of a minor;

(f) N.C.G.S. § 14-277.3A, Stalking;

(g) N.C.G.S. § 14-318.2, Child abuse;

(h) N.C.G.S. § 14-134.3, Domestic criminal trespass;

(i) N.C.G.S. § 50B-4.1, Domestic violence protective order violations;

(j) Former N.C.G.S. § 14-277.3, Stalking;

(k) Any person convicted of a "misdemeanor crime of domestic violence" as defined in federal law at 18 U.S.C. 922(g)(8);

(l) Any crimes involving an assault or a threat to assault a law enforcement officer, probation or parole officer, person employed at a State or local detention facility, firefighter, emergency medical technician, medical responder, or emergency department personnel.