

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 865
House Committee Substitute Favorable 6/19/95
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Short Title: Comply With Brady Bill.

(Public)

Sponsors:

Referred to:

April 26, 1995

A BILL TO BE ENTITLED
AN ACT TO AMEND THE STATE LAWS REGARDING THE PURCHASE OF A
HANDGUN TO CONFORM TO THE REQUIREMENTS OF THE "BRADY
HANDGUN VIOLENCE PREVENTION ACT".

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-403 reads as rewritten:

"§ 14-403. Permit issued by sheriff; form of permit; expiration of permit.

The sheriffs of any and all counties of this State are hereby authorized and directed to
shall issue to any person, firm, or corporation in any such county a license or permit to
purchase or receive any weapon mentioned in this Article from any person, firm, or
corporation offering to sell or dispose of the same, which said weapon. The license or
permit shall expire five years from the date of issuance. The license or permit shall be in
the following form, to wit: form:

North Carolina,
..... County.

I,, Sheriff of said County, do hereby certify that I have conducted a criminal
background check of the applicant, whose place of residence isin(or)
in....Township, County, North Carolina, and have received no

1 information to indicate that it would be a violation of State or federal law for the
 2 applicant to purchase, transfer, receive, or possess a handgun. The applicant has further
 3 ~~having this day~~ satisfied me as to his, her (or) their good moral ~~character,~~ character.
 4 Therefore, a license or permit is ~~therefore hereby given said~~ issued to.....to purchase one
 5 pistol from any person, firm or corporation authorized to dispose of the same.

6 This license or permit expires five years from its date of issuance.

7 Thisday of, 19

8
 9 Sheriff."

10 Sec. 2. G.S. 14-404 reads as rewritten:

11 **"§ 14-404. Issuance or refusal of permit; appeal from refusal; grounds for refusal;**
 12 **sheriff's fee.**

13 (a) Upon application, the sheriff shall issue ~~such the~~ license or permit to a resident
 14 of that county unless the purpose of the permit is for collecting, in which case a sheriff
 15 can issue a permit to a nonresident when the sheriff has done all of the following:

16 (1) Verified by a criminal history background investigation that it is not a
 17 violation of State or federal law for the applicant to purchase, transfer,
 18 receive, or possess a handgun. The sheriff shall determine the criminal
 19 history of any applicant by accessing computerized criminal history
 20 records as maintained by the State Bureau of Investigation and the
 21 Federal Bureau of Investigation, by conducting a national criminal
 22 history records check, and by conducting a criminal history check
 23 through the Administrative Office of the Courts.

24 (2) ~~shall have fully~~ Fully satisfied himself or herself by affidavits, oral
 25 evidence, or otherwise, as to the good moral character of the ~~applicant~~
 26 ~~therefor, and that such person, firm, or corporation~~ applicant.

27 (3) Fully satisfied himself or herself that the applicant desires the
 28 possession of the weapon mentioned for (i) the protection of the home,
 29 business, person, family or property, (ii) target shooting, (iii) collecting,
 30 or (iv) hunting.

31 (b) If ~~said the sheriff shall is not be so~~ fully satisfied, ~~he the sheriff~~ may, for good
 32 cause shown, decline to issue ~~said the~~ license or permit and shall provide to ~~said the~~
 33 applicant within seven days of ~~such the~~ refusal a written statement of the reason(s) for
 34 ~~such the~~ refusal. An appeal from ~~such the~~ refusal shall lie by way of petition to the chief
 35 judge of the district court for the district in which the application was filed. The
 36 determination by the court, on appeal, shall be upon the facts, the law, and the
 37 reasonableness of the sheriff's refusal, and shall be final.

38 (c) A permit may not be issued to the following persons:

39 (1) ~~(i) one~~ One who is under an indictment or information for or has been
 40 convicted in any state, or in any court of the United States, of a felony
 41 (other than an offense pertaining to antitrust violations, unfair trade
 42 practices, or restraints of trade), ~~except that if a person has been convicted~~
 43 ~~and later pardoned or is not prohibited from purchasing a firearm under the~~

1 ~~Felony Firearms Act (Article 54A of this Chapter), he may obtain a permit;~~
2 ~~trade).~~ However, a person who has been convicted of a felony in a court
3 ~~of any state or in a court of the United States and who is later pardoned~~
4 ~~may obtain a permit, if the purchase or receipt of a pistol or crossbow~~
5 ~~permitted in this Article does not violate a condition of the pardon.~~

6 (2) ~~(ii) one~~ One who is a fugitive from ~~justice;~~ justice.

7 (3) ~~(iii) one~~ One who is an unlawful user of or addicted to marijuana or any
8 depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. section
9 ~~802);~~ 802).

10 (4) ~~(iv) one~~ One who has been adjudicated mentally incompetent ~~on the~~
11 ~~ground of mental illness~~ or has been committed to any mental institution.

12 (5) One who is an alien illegally or unlawfully in the United States.

13 (6) One who has been discharged from the armed forces under dishonorable
14 conditions.

15 (7) One who, having been a citizen of the United States, has renounced his
16 or her citizenship.

17 (8) One who is subject to a court order that:

18 a. Was issued after a hearing of which the person received actual
19 notice, and at which the person had an opportunity to participate;

20 b. Restrains the person from harassing, stalking, or threatening an
21 intimate partner of the person or child of the intimate partner of
22 the person, or engaging in other conduct that would place an
23 intimate partner in reasonable fear of bodily injury to the partner
24 or child; and

25 c. Includes a finding that the person represents a credible threat to
26 the physical safety of the intimate partner or child; or by its terms
27 explicitly prohibits the use, attempted use, or threatened use of
28 physical force against the intimate partner or child that would
29 reasonably be expected to cause bodily injury.

30 (d) ~~Provided, that nothing~~ Nothing in this Article shall apply to officers authorized
31 by law to carry firearms if ~~such~~ the officers identify themselves to the vendor or donor as
32 being officers authorized by law to carry firearms and state that the purpose for the
33 purchase of the firearms is directly related to the law officers' official duties.

34 (e) The sheriff shall charge for ~~his~~ the sheriff's services upon issuing ~~such~~ the
35 license or permit a fee of five dollars (\$5.00).

36 (f) Each applicant for ~~any such~~ a license or permit shall be informed by ~~said~~ the
37 sheriff within 30 days of the date of ~~such~~ the application whether ~~such~~ the license or
38 permit will be granted or denied and, if granted, ~~such~~ the license or permit shall be
39 immediately issued to ~~said~~ the applicant."

40 Sec. 3. G.S. 14-415.1 reads as rewritten:

41 "**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

42 (a) It shall be unlawful for any person who has been convicted of ~~any crime set out~~
43 ~~in subsection (b) of this section~~ a felony to purchase, own, possess, or have in his custody,

1 care, or control any handgun or other firearm with a barrel length of less than 18 inches
2 or an overall length of less than 26 inches, or any weapon of mass death and destruction
3 as defined in G.S. 14-288.8(e), ~~within five years from the date of such conviction, or the~~
4 ~~unconditional discharge from a correctional institution, or termination of a suspended sentence,~~
5 ~~probation, or parole upon such conviction, whichever is later.~~ 14-288.8(c).

6 Every person violating the provisions of this section shall be punished as a Class H
7 felon.

8 Nothing in this subsection would prohibit the right of any person to have possession
9 of a firearm within his own home or on his lawful place of business.

10 (a) After a period of five years from the date of conviction, or the unconditional
11 discharge from a correctional institution, or termination of a suspended sentence,
12 probation, or parole upon conviction, whichever is later, a person subject to the
13 provisions of subsection (a) may petition the superior court in the jurisdiction in which
14 the person resides for a permit to purchase, own, possess, or control a firearm, other than
15 a handgun or a weapon of mass death and destruction, the person's residence. The court
16 may, for good cause shown, grant the petition and issue a permit.

17 (b) Prior convictions which cause disenfranchisement under this section shall only
18 include:

- 19 (1) ~~Felonious violations of Articles 3, 4, 6, 7A, 8, 10, 13, 14, 15, 17, 30, 33,~~
20 ~~36, 36A, 52A, or 53 of Chapter 14 of the General Statutes, or of Article~~
21 ~~5 of Chapter 90 of the General Statutes; Felony convictions in North~~
22 ~~Carolina that occur before, on, or after December 1, 1995; and~~
- 23 (2) ~~Common law robbery and common law maim; and~~
- 24 (3) Violations of criminal laws of other states or of the United States that
25 occur before, on, or after December 1, 1995, and that are substantially
26 similar to the crimes covered in subdivisions (1) and (2) subdivision (1)
27 which are punishable where committed by imprisonment for a term
28 exceeding two years. one year.

29 When a person is charged under this section, records of prior convictions of any offense,
30 whether in the courts of this State, or in the courts of any other state or of the United
31 States, shall be admissible in evidence for the purpose of proving a violation of this
32 section. The term 'conviction' is defined as a final judgment in any case in which felony
33 punishment, or imprisonment for a term exceeding ~~two years, one year,~~ as the case may
34 be, is permissible, without regard to the plea entered or to the sentence imposed. A
35 judgment of a conviction of the defendant or a plea of guilty by the defendant to such an
36 offense certified to a superior court of this State from the custodian of records of any state
37 or federal court ~~under the same name as that by which the defendant is charged shall be prima~~
38 ~~facie evidence that the identity of such person is the same as the defendant so charged and shall~~
39 be prima facie evidence of the facts so certified.

40 (c) The indictment charging the defendant under the terms of this section shall be
41 separate from any indictment charging him with other offenses related to or giving rise to
42 a charge under this section. An indictment which charges the person with violation of
43 this section must set forth the date that the prior offense was committed, the type of

1 offense and the penalty therefor, and the date that the defendant was convicted or plead
2 guilty to such offense, the identity of the court in which the conviction or plea of guilty
3 took place and the verdict and judgment rendered therein."

4 Sec. 4. Article 53 of Chapter 14 of the General Statutes is repealed.

5 Sec. 5. This act becomes effective December 1, 1995, and applies to permits
6 or licenses applied for on or after that date. This act shall expire if the instant criminal
7 history records check system as set out in House Bill 919 (Second Edition), 1995 Regular
8 Session, is enacted and is implemented by the General Assembly.