

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 143
Committee Substitute Favorable 3/2/94

Short Title: Handguns/Permits/Minors.

(Public)

Sponsors:

Referred to: Judiciary III.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE ISSUANCE OF A HANDGUN PERMIT TO A MINOR, TO REQUIRE THE SHERIFF TO VERIFY THAT AN APPLICANT FOR A PERMIT IS NOT A MINOR, TO MAKE IT A FELONY FOR A GUN DEALER TO TRANSFER A HANDGUN WITHOUT A PERMIT, TO MAKE IT A FELONY FOR ANY PERSON TO TRANSFER A HANDGUN TO A MINOR, TO REQUIRE GUN DEALERS TO KEEP RECORDS OF PERMITS OF PERSONS TO WHOM THEY TRANSFER HANDGUNS, AND TO PROVIDE THAT PERMITS SHALL BE ISSUED BY SHERIFFS IN ALL COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Article 52A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 52A.

~~"SALE OF WEAPONS IN CERTAIN COUNTIES. WEAPONS.~~

"§ 14-402. Sale of certain weapons without permit forbidden.

(a) Sale Without Permit Unlawful. – It shall be is unlawful for any person, firm, or corporation in this State a person, by sale, gift, or another means, to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol a handgun or crossbow to a person who does not have a permit for the weapon, and it is unlawful for a person who does not have a permit for the weapon to receive a handgun or a crossbow. unless a license or permit therefor has first been obtained A permit for a handgun or crossbow is issuable by by

1 the purchaser or receiver from the sheriff of the person's county of residence. in which
2 that purchaser or receiver resides.

3 It shall be ~~is~~ unlawful for any person or persons ~~a person~~ to receive from any
4 postmaster, postal clerk, employee in the parcel post department, rural mail carrier,
5 express agent or employee, railroad agent or employee within the State of North
6 Carolina ~~common carrier in this State~~ any ~~pistol~~ handgun or crossbow without having in
7 his or their possession and without exhibiting at the time of the delivery of the same and
8 exhibiting to the person delivering the same ~~weapon~~ the permit from the sheriff as
9 provided in G.S. 14-403. Any person violating the provisions of this section shall be
10 guilty of a Class 2 misdemeanor.

11 (b) Exemptions. – This section does not apply ~~to an~~ to the following:

12 (1) An antique firearm or an historic edged weapon.

13 (2) A law enforcement officer authorized by law to carry a handgun or
14 crossbow, if the officer provides the transferor proof that the officer is
15 a law enforcement officer and states that the purpose of acquiring the
16 handgun or crossbow is directly related to the officer's official duties.

17 (c) The following definitions apply in this section:

18 (1) Antique firearm.— Defined in G.S. 14-409.11.

19 (2) Bolt.— A projectile made to be discharged from a crossbow. The bolt
20 differs from an arrow in that the bolt is heavier and shorter than an
21 arrow.

22 (3) Crossbow.— A mechanical device consisting of, but not limited to,
23 strings, cables, and prods transversely mounted on either a shoulder or
24 hand-held stock. This device [device] is mechanically held at full or
25 partial draw and released by a trigger or similar mechanism which is
26 incorporated into a stock or handle. When operated, the crossbow
27 discharges a projectile known as a bolt.

28 (4) Historic edged weapon.— Defined in G.S. 14-409.12. Recodified as
29 G.S. 14-402.1.

30 (d) Penalties. – A dealer who transfers a handgun to a person who does not have
31 a permit is guilty of a Class I felony. A person who otherwise violates this section is
32 guilty of a Class 2 misdemeanor. A person who transfers a handgun to a minor,
33 regardless whether the minor has a permit, is guilty of a Class I felony as provided in
34 G.S. 14-315(a1). A person who transfers a weapon listed in G.S. 14-315(a) to a minor,
35 regardless whether the minor has a permit, is guilty of a Class 1 misdemeanor as
36 provided in G.S. 14-315(a).

37 "**§ 14-402.1. Definitions.**

38 The following definitions apply in this Article:

39 (1) Antique firearm. – Defined in G.S. 14-409.11.

40 (2) Bolt. – A projectile made to be discharged from a crossbow. The bolt
41 differs from an arrow in that the bolt is heavier and shorter than an
42 arrow.

43 (3) Crossbow. – A mechanical device consisting of, but not limited to,
44 strings, cables, and prods transversely mounted on either a shoulder or

1 hand-held stock. This device is mechanically held at full or partial
 2 draw and released by a trigger or similar mechanism that is
 3 incorporated into a stock or handle. When operated, the crossbow
 4 discharges a projectile known as a bolt.

5 (3a) Dealer. – Any of the following:

6 a. A person required to be licensed as a gun dealer under 18
 7 U.S.C. § 923.

8 b. A person required to be licensed as a gun dealer under G.S.
 9 105-80.

10 c. A person engaged in the business of dealing in handguns or
 11 crossbows. A person is engaged in the business of dealing in
 12 handguns or crossbows for the purpose of this Article if, during
 13 the most recent 12-month period, the person has sold more than
 14 twenty handguns, crossbows, or both.

15 (3b) Handgun. – A firearm that has a short stock and is designed to be fired
 16 by the use of a single hand, or any combination of parts from which
 17 such a firearm can be assembled.

18 (4) Historic edged weapon. – Defined in G.S. 14-409.12.

19 (5) Machine gun. – A weapon that shoots, is designed to shoot, or can be
 20 readily restored to shoot, automatically, more than one shot, without
 21 manual reloading, by a single function of the trigger. The term also
 22 includes the frame or receiver of such a weapon, any combination of
 23 parts designed and intended for use in converting a weapon into a
 24 machine gun, and any combination of parts from which a machine gun
 25 can be assembled if the parts are in the possession or under the control
 26 of a person. The term 'machine gun' is synonymous with the term
 27 'submachine gun.'

28 (6) Minor. – A person under 18 years of age.

29 (7) Person. – An individual, a fiduciary, a firm, an association, a
 30 partnership, a limited liability company, a corporation, a unit of
 31 government, or another group acting as a unit.

32 **"§ 14-403. ~~Permit issued by sheriff; form~~ Form of permit.**

33 ~~The sheriffs of any and all counties of this State are hereby authorized and directed~~
 34 ~~to issue to any person, firm, or corporation in any such county a license or permit to~~
 35 ~~purchase or receive any weapon mentioned in this Article from any person, firm, or~~
 36 ~~corporation offering to sell or dispose of the same, which said license or permit shall be~~
 37 ~~in the following form, to wit: A permit for a handgun or a crossbow shall be in the~~
 38 ~~following form:~~

39 ~~North Carolina,~~
 40 ~~..... County.~~

41 ~~I,, Sheriff of said County, do hereby certify that whose place of residence~~
 42 ~~is in(or) in...Township, County, North Carolina, having this~~
 43 ~~day satisfied me as to his, her (or) their good moral character, a license or permit is~~

1 therefore hereby given saidto purchase one pistol from any person, firm or
2 corporation authorized to dispose of the same.

3 Thisday of, 19

4
5 _____
6 _____ Sheriff.

7
8 North Carolina,
9County,

10 I,, Sheriff of this County, certify that I am satisfied of the good moral
11 character of, who resides in.....Township or County, North
12 Carolina. A permit is issued to to receive one handgun or crossbow from any
13 person authorized to transfer the handgun or crossbow.

14 This.....day of.....19.....

15 _____
16 _____ Sheriff.

17 **"§ 14-404. Issuance or refusal of permit; appeal from refusal; grounds for refusal;
18 sheriff's fee.**

19 Upon application, the sheriff shall issue such license or permit to a resident of that
20 county unless the purpose of the permit is for collecting, in which case a sheriff can
21 issue a permit to a nonresident when the sheriff shall have fully satisfied himself by
22 affidavits, oral evidence, or otherwise, as to the good moral character of the applicant
23 therefor, and that such person, firm, or corporation desires the possession of the weapon
24 mentioned for (i) the protection of the home, business, person, family or property,
25 (ii) target shooting, (iii) collecting, or (iv) hunting. If said sheriff shall not be so fully
26 satisfied, he may, for good cause shown, decline to issue said license or permit and shall
27 provide to said applicant within seven days of such refusal a written statement of the
28 reason(s) for such refusal. An appeal from such refusal shall lie by way of petition to the
29 chief judge of the district court for the district in which the application was filed. The
30 determination by the court, on appeal, shall be upon the facts, the law, and the
31 reasonableness of the sheriff's refusal, and shall be final. A permit may not be issued to
32 the following persons: (i) one who is under an indictment or information for or has been
33 convicted in any state, or in any court of the United States, of a felony (other than an
34 offense pertaining to antitrust violations, unfair trade practices, or restraints of trade),
35 except that if a person has been convicted and later pardoned or is not prohibited from
36 purchasing a firearm under the Felony Firearms Act (Article 54A of this Chapter), he
37 may obtain a permit; (ii) one who is a fugitive from justice; (iii) one who is an unlawful
38 user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as
39 defined in 21 U.S.C. section 802); (iv) one who has been adjudicated incompetent on
40 the ground of mental illness or has been committed to any mental institution. Provided,
41 that nothing in this Article shall apply to officers authorized by law to carry firearms if
42 such officers identify themselves to the vendor or donor as being officers authorized by
43 law to carry firearms and state that the purpose for the purchase of the firearms is
44 directly related to the law officers' official duties. The sheriff shall charge for his

1 services upon issuing such license or permit a fee of five dollars (\$5.00). Each applicant
2 for any such license or permit shall be informed by said sheriff within 30 days of the
3 date of such application whether such license or permit will be granted or denied and, if
4 granted, such license or permit shall be immediately issued to said applicant.

5 **Application for permit; issuance or refusal of permit; appeal from refusal; ground**
6 **for refusal; fees.**

7 (a) Application. – A person shall apply to the sheriff of the county in which the
8 person resides for a handgun or crossbow permit. The application shall be on a form
9 provided by the sheriff's office and shall include any information required by the sheriff
10 to determine whether a permit should be issued to the applicant as provided in this
11 section.

12 (b) Processing of Application. – Upon receipt of an application, the sheriff shall
13 conduct an investigation of the applicant using any reasonable means deemed necessary
14 by the sheriff to determine the applicant's (i) moral character, (ii) federal, State, or local
15 criminal record, if any, (iii) age, and (iv) purpose for wanting to possess a handgun or
16 crossbow and to determine whether the applicant is ineligible for a permit pursuant to
17 subsection (d) of this section.

18 (c) Purposes for Which Permit May Be Issued. – A permit may be issued under
19 this Article only for the following purposes:

- 20 (1) The protection of the applicant's home, business, person, family, or
21 property.
- 22 (2) Target shooting.
- 23 (3) Collecting.
- 24 (4) Hunting.

25 (d) Persons to Whom Permit Shall Not Be Issued. – A permit shall not be issued
26 under this Article to any of the following persons:

- 27 (1) A person who is under an indictment or information for or has been
28 convicted in any state, or in any court of the United States, of a felony,
29 other than an offense pertaining to antitrust violations, unfair trade
30 practices, or restraints of trade, unless the person is not prohibited from
31 purchasing a handgun under the Felony Firearms Act, Article 54A of
32 this Chapter.
- 33 (2) A fugitive from justice.
- 34 (3) A person who is an unlawful user of or addicted to marijuana or any
35 depressant, stimulant, or narcotic drug, as defined in G.S. 90-87.
- 36 (4) A person who has been adjudicated incompetent on the grounds of
37 mental illness or has been committed involuntarily to any mental
38 institution.
- 39 (5) A minor.
- 40 (6) A person prohibited from possessing a handgun pursuant to G.S. 14-
41 415.3 because the person was acquitted of a specified crime by reason
42 of insanity or was determined to lack capacity to proceed.

43 (e) Issuance or Refusal of Permit. – The sheriff shall notify the applicant within
44 30 days after the date of the application whether the permit will be granted or refused.

1 If the sheriff is satisfied that the applicant qualifies for a permit, the sheriff shall notify
2 the applicant as provided by this section and shall issue the permit immediately upon
3 receipt of a permit fee of five dollars (\$5.00). If the sheriff is not satisfied that the
4 applicant qualifies for a permit, the sheriff may, for good cause shown, refuse to issue
5 the permit. The sheriff shall notify the applicant in writing within seven days after the
6 refusal that the application for the permit is refused and shall state the reasons for the
7 refusal.

8 (f) Appeal From Refusal of Permit. – If a person is refused a permit under this
9 section, the person may petition the chief judge of the district court for the district in
10 which the permit application was filed. The determination by the court on appeal shall
11 be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be
12 final.

13 **"§ 14-405. Record of permits kept by sheriff.**

14 ~~The sheriff shall keep a book, to be provided by the board of commissioners of each~~
15 ~~county, in which he shall keep a record of all licenses or permits issued under this article,~~
16 Article. including The records must include the name, date, place of residence, age, and
17 former place of residence, etc., residence of each such person, firm, or corporation to whom
18 or which a license or person to whom a permit is issued.

19 **"§ 14-406. Dealer to keep record of sales.**

20 ~~Every dealer in pistols and other weapons mentioned in this Article shall keep an~~
21 ~~accurate record of all sales thereof, of handguns and crossbows. including The records~~
22 must include the name, place of residence, and date of sale, etc., sale of each person, firm,
23 or corporation to whom or which such sales are person to whom a sale is made, and must
24 include a copy or other record of the permit produced by the person. which This record
25 shall be open to the inspection of any duly constituted State, county or police officer who
26 has territorial jurisdiction.

27 ~~"§ 14 During the period of listing taxes in each year the owner or person in~~
28 ~~possession or having the custody or care of any weapon mentioned in this~~
29 ~~article is required to list the same specifically, as is now required for~~
30 ~~listing personal property for taxes. Any person listing any such weapon~~
31 ~~for taxes shall be required to designate his place of residence, including~~
32 ~~local street address.~~

33 **"§ 14-407.1. Sale of blank cartridge pistols. handguns.**

34 The provisions of G.S. 14-402 and 14-405 to ~~14-407-14-406~~ shall apply to the sale of
35 ~~pistols~~ handguns suitable for firing blank cartridges. The clerks of the superior courts of
36 all the counties of this State are authorized and may in their discretion issue to any person,
37 ~~firm or corporation, in any such person in the county~~ county, a license or a permit to
38 purchase or receive any pistol handgun suitable for firing blank cartridges from any
39 ~~person, firm or corporation offering to sell or dispose of the same, which said person offering~~
40 to transfer the handgun. The permit shall be in substantially the following form:

41 North Carolina

42 County

43 I,, Clerk of the Superior Court of said ~~this~~ county, ~~do hereby~~ certify that
44, whose place of residence is Street in (or) in

1 Township in County, North Carolina, ~~having~~ has this day satisfied me that the
 2 possession of a ~~pistol~~ handgun suitable for firing blank cartridges will be used only for
 3 lawful ~~purposes, a~~ purposes. A permit is therefore given ~~said~~ to purchase said
 4 ~~pistol~~ such a handgun from any person, firm or corporation ~~authorized to dispose of the~~
 5 ~~same,~~ person authorized to dispose of it, this day of, 19

6
 7 Clerk of Superior Court

8 The clerk shall charge a fee of fifty cents (50¢) for his services, ~~upon issuing such~~
 9 ~~permit, a fee of fifty cents (50¢).~~ issuing this permit."

10 "§ 14-408. (Effective January 1, 1995) Violation of § 14-406 ~~or 14*~~ **Any person, firm,**
 11 **or corporation violating any of the provisions of A person who violates G.S.**
 12 **14-406 or 14-407 shall be is guilty of a Class 2 misdemeanor.**

13 "**§ 14-409. Machine guns and other like weapons.** guns.

14 (a) ~~As used in this section, "machine gun" or "submachine gun" means any~~
 15 ~~weapon which shoots, is designed to shoot, or can be readily restored to shoot,~~
 16 ~~automatically more than one shot, without manual reloading, by a single function of the~~
 17 ~~trigger. The term shall also include the frame or receiver of any such weapon, any~~
 18 ~~combination of parts designed and intended for use in converting a weapon into a~~
 19 ~~machine gun, and any combination of parts from which a machine gun can be~~
 20 ~~assembled if such parts are in the possession or under the control of a person.~~

21 (b) ~~It shall be is unlawful for any person, firm or corporation a person to~~
 22 ~~manufacture, sell, give away, dispose of, use or possess machine guns, submachine~~
 23 ~~guns, or other like weapons as defined by subsection (a) of this section: Provided,~~
 24 ~~however, that this subsection shall use, or possess a machine gun. A person who~~
 25 ~~violates this section is guilty of a Class I felony.~~

26 This section does not apply to the following:

- 27 (1) The use of a machine gun by a recognized business establishment that
 28 has received from the sheriff of the county in which the business is
 29 located a permit to possess the machine gun in order to defend the
 30 business. Banks, merchants, and recognized business establishments for use
 31 in their respective places of business, who shall first apply to and receive
 32 from the sheriff of the county in which said business is located, a permit to
 33 possess the said weapons for the purpose of defending the said business;
 34 officers
- 35 (2) Officers and soldiers of the United States Army, when in discharge of
 36 their official duties, duties.
- 37 (3) Officers officers and soldiers of the militia and the State guard when
 38 called into actual service, officers service.
- 39 (4) Officers of the State, or of any county, city city, or town, charged with
 40 the execution of the laws of the State, when acting in the discharge of
 41 their official duties; the duties.
- 42 (5) The manufacture, use use, or possession of such weapons a machine
 43 gun for scientific or experimental purposes when such manufacture, use
 44 the manufacture, use, or possession is lawful under federal laws and

1 law, the weapon is registered with a federal agency, and ~~when a permit~~
2 to manufacture, ~~use~~ use, or possess the weapon ~~is~~ has been issued by
3 the sheriff of the county in which the weapon is located.

- 4 (6) Possession by the owner of a machine gun used in a former war if the
5 owner owned the gun as a relic or souvenir as of April 11, 1933, and
6 has reported the ownership of the gun ~~Provided, further, that any bona~~
7 ~~fide resident of this State who now owns a machine gun used in former wars,~~
8 ~~as a relic or souvenir, may retain and keep same as his or her property~~
9 ~~without violating the provisions of this section upon his reporting said~~
10 ~~ownership to the sheriff of the county in which said person~~ the owner
11 lives.

12 ~~Any person violating any of the provisions of this section shall be guilty of a Class I~~
13 ~~felony."~~

14 Sec. 2. G.S. 14-269.7(c) reads as rewritten:

15 "(c) The following definitions apply in this section:

- 16 (1) Handgun. ~~Any dangerous~~ A ~~firearm including a pistol or revolver that~~
17 has a short stock and is ~~designed to be fired by the use of a single hand-~~
18 hand, or any combination of parts from which such a firearm can be
19 assembled.

- 20 (2) Minor. ~~Any person under the age of 18 years of age."~~

21 Sec. 3. Article 53 of Chapter 14 of the General Statutes is repealed.

22 Sec. 4. G.S. 14-315 reads as rewritten:

23 **"§ 14-315. (Effective January 1, 1995) Selling or giving weapons to minors.**

24 (a) ~~Offense. Sale of Weapons other than Handguns.~~ ~~– If any a person shall sell,~~
25 ~~offer sells, offers for sale, give gives, or in any way dispose disposes of to a minor any~~
26 ~~handgun as defined in G.S. 14-269.7, pistol, pistol cartridge, brass knucks, bowie knife,~~
27 ~~dirk, shurikin, leaded cane cane, or slungshot, he shall be the person is guilty of a Class 1~~
28 ~~misdemeanor and and, in addition, shall forfeit the proceeds of any sale made in~~
29 violation of this section.

30 (a1) Sale of Handguns. ~~– If a person sells, offers for sale, gives, or in any way~~
31 disposes of to a minor any handgun as defined in G.S. 14-269.7, the person is guilty of a
32 Class I felony and, in addition, shall forfeit the proceeds of any sale made in violation of
33 this section.

34 (b) ~~Defense. Defense if Defendant Not Gun Dealer.~~ ~~– It shall be a defense to a~~
35 ~~violation of subsection (a) of this section if the person: person is not a dealer as defined in~~
36 G.S. 14-402.1 and the person:

- 37 (1) Shows that the minor produced a drivers license, a special
38 identification card issued under G.S. 20-37.7, a military identification
39 card, or a passport, showing ~~his~~ the minor's age to be at least the
40 required age for purchase and bearing a physical description of the
41 person named on the card reasonably describing the minor; or
42 (2) Produces evidence of other facts that reasonably indicated at the time
43 of sale that the minor was at least the required age.

1 (c) Defense if Defendant is Gun Dealer. – It shall be a defense to a violation of
2 this section if the person is a dealer as defined in G.S. 14-402.1 and all of the following
3 conditions are met:

4 (1) The dealer shows that the minor produced an apparently valid permit
5 to receive the weapon, if such a permit would be required under G.S.
6 14-402 for transfer of the weapon to an adult.

7 (2) The dealer reasonably believed that the minor was not a minor.

8 (3) The dealer either:

9 a. Shows that the minor produced a drivers license, a special
10 identification card issued under G.S. 20-37.7, a military
11 identification card, or a passport, showing the minor's age to be
12 at least the required age for purchase and bearing a physical
13 description of the person named on the card reasonably
14 describing the minor; or

15 b. Produces evidence of other facts that reasonably indicated at the
16 time of sale that the minor was at least the required age."

17 Sec. 5. This act becomes effective January 1, 1995, and applies to offenses
18 committed on or after that date.