



North Carolina Enacts Omnibus Firearms Law, Promotes Uniformity and Standardization of NC's Gun Laws

By: Camden R. Webb & Charles E. "Chuck" James, Jr.

08.07.2015

North Carolina Governor Pat McCrory signed into law "An Act to Amend Various Firearms Laws" yesterday. "Various" is the key here, because the Act is far-reaching, amends over a dozen statutes, and introduces entirely new laws. The Act further lessens the restrictions in North Carolina's gun laws, which began in earnest in the 2011 legislative session, and perhaps most importantly, the Act furthers standardization and uniformity of firearms laws throughout the state. Here are the key provisions of the Act.

Provisions Regarding Concealed Carry

The Act addresses a wide range of issues regarding the concealed carry of handguns, from the authorization of District Attorneys to carry handguns in the courtroom to citizenship requirements for Concealed Handgun Permit (CHP) applications. Many of these provisions are technical, address eligibility based upon prior criminal history, or apply to a limited segment of the population. However, two provisions will apply more broadly and will affect almost all CHP holders.

First, the Act clarifies the procedures a CHP holder must follow in order to secure a handgun in his or her vehicle while on educational property. This is important, because violation of the prohibitions against possessing firearms on educational property could result in a felony conviction. The Act makes clear how a CHP holder can secure his or her handgun in a vehicle and comply with the law.

An even broader change is the lowering of the penalty for non-compliance with N.C. Gen. Stat. § 14-415.11(c)(8), which addresses the right of a property owner to prohibit firearms on private property. Under N.C. Gen. Stat. § 14-415.11(c)(8), a property owner can post a "conspicuous notice or statement" to exclude firearms from the premises and, by doing so, prohibit CHP holders from carrying concealed handguns on the property. Under prior law, a CHP holder who nonetheless carried a concealed handgun on the premises would be guilty of a misdemeanor. The problem was that "conspicuous" was not defined in the statute, so property owners did not know exactly how to post their

property, and CHP holders could unknowingly violate the statutes if the notice or statement was not conspicuous enough. The legislation addressed the problem, from the CHP holders' perspective, by simply lessening the penalty for a violation of N.C. Gen. Stat. § 14-415.11(c)(8). Such a violation is now only an infraction.

Expansion of the Protection of Shooting Ranges

North Carolina already protected shooting ranges from local regulation and private lawsuits, and the Act furthers this policy. Under prior law, a shooting range that was in existence before September 1, 1994 enjoyed special protections, including an exemption from civil or criminal liability for noise pollution and an exemption from State and local noise regulations that were enacted after the range began operations. Ranges that opened after September 1, 1994, however, did not enjoy such protection.

The Act places all ranges on the same footing by exempting them, regardless of when they began operations, from civil or criminal liability for noise or noise pollution, from nuisance actions based upon noise, and from State and local noise restrictions that are enacted after a range began operations. The only condition that ranges must meet to enjoy this protection is compliance with noise control laws that existed at the time the range opened. This is crucial, because ranges will be able to open and operate under laws existing at the time they begin operations, and they can continue operations so long as they continue to comply with those laws. This provides range owners predictability of the law and will prevent ranges from being closed or restricted based upon later enactments of law.

Standardization of Certifications Relating to National Firearms Act (NFA) Items

The Act standardizes the process for a Chief Law Enforcement Officer, also known as a CLEO, to provide the certification required for obtaining a NFA item. Under federal law, when a person applies for authorization to obtain a NFA item, such as a silencer or short-barreled rifle, that person must obtain a certification from the CLEO in his or her locality. This is usually the county Sheriff. However, federal law does not dictate the procedures a CLEO must follow in deciding on certification and does not set any standards that apply when a CLEO decides whether to grant or deny certification. Federal law therefore leaves open the question of how and under what criteria a CLEO should provide a certification, and this could result in a CLEO making a discretionary determination without any check on his or her decision.

To address this issue, the Act standardizes the criteria that a CLEO in North Carolina must apply in determining whether to grant or deny the required certification. Under the Act, a CLEO must provide a certification if a person is not otherwise prohibited from possessing firearms, and the certification must be provided within 15 days of receipt of a request for certification. If the certification is not granted within 15 days, the CLEO must provide the applicant written notification as to the reasons that the certification was not granted. The Act also specifies the procedure for an applicant to appeal a CLEO's denial of a certification and even allows an applicant whose certification was denied improperly the right to recover attorney's fees for the appeal.

This is a boon for sales of NFA items. Now that the only criterion for granting a CLEO's certification is whether a person is qualified to own a firearm, a significant potential barrier to NFA item sales is

CLEO's discretionary decision whether to grant the certification has been removed. This likely will result in increased sales of NFA items in North Carolina.

Standardization of the Pistol Permit Process

North Carolina's pistol permit process was a real flashpoint in the legislative debate that led up to the Act, with gun rights advocates seeking a complete repeal of the permitting process. However, the Act retains North Carolina's requirement that, before any person obtains a pistol—whether from a firearms dealer, in a private sale, or even as a gift—that person must obtain a permit from the Sheriff.

Nonetheless there are some significant modifications to the procedures that apply to this process.

North Carolina adheres to a "may issue" pistol permit regime, which allows a local Sheriff to deny a pistol permit in his or her discretion. Under the applicable statute, the Sheriff must issue the permit only if, among other things, the Sheriff is satisfied that the applicant is of "good moral character." Under prior law, there was no definition of this phrase or statutory criteria beyond the phrase itself, so a Sheriff's discretion was rather broad. However, the Act narrows this discretion by only allowing a Sheriff to consider an applicant's conduct and criminal history for the 5-year period immediately preceding the application.

The Act also standardizes the form that will be used for a person to apply for a pistol permit, and the North Carolina State Bureau of Investigation is charged with developing the form. Further, the Act limits the information that a Sheriff may require for a permit application to the state-issued form, the application fee, an identification card, proof of residency, and a signed release authorizing the Sheriff to obtain mental health records. No other documentation may be required of a pistol permit applicant.

These changes to the pistol permit process likely will have minimal effect. A few Sheriffs' offices have required additional information, and, anecdotally, there have been reports of denials of permits without a good reason, but there is no indication that such practices have been widespread.

Strengthening of State-Level Regulation and Promotion of Uniformity

North Carolina has a tradition of a strong centralized State government, combined with restrictions on the authority of local governments. In the firearms area, N.C. Gen. Stat. § 14-409.40 announces the policy of North Carolina to be state-level regulation (as distinct from local regulation) of firearms, declares that lawful use of firearms is not unreasonably dangerous or a nuisance, and mandates statewide uniformity of firearms regulations. Under this statute, a local government simply cannot regulate firearms, except for the limited purposes such as regulating firearms on local government property or use of firearms by local government employees.

The Act bolsters this state policy by providing a cause of action to a person adversely affected by a local government policy that violates the State's policy of state-wide uniformity of firearms laws. Moreover, the Act allows for the award of attorney fees to the party prevailing in such an action. The Act also amends the CHP law with identical language, allowing a person to sue a local government for improperly restricting concealed carrying of firearms and allowing that person to recover attorney fees for bringing suit.

These new provisions are very important because they reinforce North Carolina's public policy of uniform application of firearms laws in every part of the state, and because the Act provides real teeth to this policy. Local governments will have to be careful not to restrict firearms rights improperly, because doing so can result in liability.

Other Provisions

The Act also addresses a number of other areas, including the following:

- Guns at the State Fair. A constitutional debate, and a lawsuit challenging state law, arose recently when certain gun owners sought the right to carry concealed handguns at the North Carolina State Fair. The Act addresses this issue by granting the Secretary of Agriculture the authority to prohibit firearms at the State Fair, with certain exceptions, including citizens' rights to secure their handguns in their vehicles in the parking areas at the fairgrounds.
- Restoration of Firearms Rights. In a minor change to the statute governing the restoration of firearms rights for non-violent felons, the Act removes an exception to the types of firearms that may be possessed by a person whose firearms rights are restored.
- Short-Barreled Rifles for Hunting. North Carolina already allowed the use of silencers (more accurately, suppressors) while hunting, provided the person was authorized by federal law to possess the silencer. The Act now allows the use of short-barreled rifles for hunting.
- Reporting of Disqualifiers, Speeding Mental Health Record Requests, and Related Provisions. The Act has a number of provisions that are aimed at improving the reporting of factors that will disqualify persons from possessing firearms, so that background checks are more effective. These provisions are technical and are directed to state and local agencies responsible for record-keeping. However, private health care providers should be aware that the Act requires prompt disclosure of mental health records upon a Sheriff's presentation of a person's written authorization to release such records.

The Act is a Win for Firearms Industry Members

One common thread throughout the Act is standardization and uniformity of North Carolina firearms laws. This is a huge benefit to the firearms industry, because clear, standardized, and uniform laws make commerce in firearms easier. For example, some North Carolinians who lived in areas where CLEO certification for obtaining NFA items was not readily provided were disincentivized from purchasing NFA items. Now, such certification can only be denied if a person is otherwise disqualified

from gun ownership, which certainly will promote the lawful sales of NFA items.

Perhaps the biggest beneficiaries of the Act are shooting range operators. Existing ranges only need comply with noise laws that were in effect when the ranges opened, and new range operators can open their ranges, comply with laws that exist at the time, and know that compliance with existing laws means that their business can stay in operation.

Related People

- Charles E. "Chuck" James, Jr. ? 804.420.6529 ? cjames@williamsmullen.com
- Camden R. Webb ? 919.981.4021 ? crwebb@williamsmullen.com

Related Services

- Firearms Industry
- ATF Compliance and Enforcement