

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

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January 22, 2015

Mark R. Herring, Attorney General of Virginia
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Colonel W. Steven Flaherty, Superintendent
Virginia Department of State Police
P.O. Box 27472
Richmond, VA 23261-7472

Dear Attorney General Herring and Colonel Flaherty:

This will acknowledge receipt of the December 22, 2015, letter from Colonel Flaherty to the Tennessee Department of Safety and Homeland Security (Department), which is attached for reference (December 22 Letter). In that letter the Virginia Department of State Police states that the Virginia Attorney General's office has "determined that any agreement between Tennessee and Virginia regarding Virginia's recognition of Tennessee citizens' concealed handgun carry permits" is revoked. The effective date of revocation is February 1, 2016. This letter will respond to the December 22 Letter. It will explain the reasons for our concern and disappointment with the reasoning, implications, impact, and short notice of taking this action. We also are requesting that Virginia reconsider its decision to unilaterally revoke the longstanding agreement between our states or, alternatively, to delay the effective date of this action until after July 1, 2016, which will provide the Tennessee General Assembly an opportunity to review Virginia's decision.

As you both are aware, Tennessee and Virginia have recognized the rights of the citizens of our respective states to carry concealed handguns pursuant to valid carry permits issued by each state since at least 1997. To our knowledge neither state has had any problems related to the reciprocity agreement during that period. Other than correspondence in 2008 confirming the reciprocity neither state has raised any issue about the arrangement.

Virginia Deputy Attorney General Linda L. Bryant then sent a June 5, 2015, letter to Tennessee Deputy Attorney General Jennifer Smith inquiring about various aspects of Tennessee's

permit law. The Department responded in writing to this letter on August 17, 2015, and no further communication occurred until the December 22 Letter revoking the agreement.

As you know Virginia's action has provoked a number of comments, questions and concerns from members of our General Assembly and their constituents. The additional time we are requesting delaying Virginia's revocation of our agreement will afford the General Assembly an opportunity to thoughtfully address this issue.

Here are some of our primary concerns with your action: First, aside from those citizens who regularly travel to and through Virginia from Tennessee for business or pleasure, our states share a unique geographical border which divides the city of Bristol along the main road of State Street. The nearly 45,000 residents of that split city will be most directly affected by Virginia's decision. This dilemma creates unique concerns for Tennessee residents who enter Virginia from their homes to places of employment on a regular basis.

For example, we are aware of an East Tennessee resident who works in Virginia as a pharmacist. That professional is required to transport pharmaceuticals to locations in both states. In order to address the individual's personal safety and protect the drugs being transported the individual obtained a Tennessee handgun carry permit, which has been valid in both states. Based on Virginia's revocation of the reciprocity agreement and the short notice, it may be difficult for this individual and others similarly situated to obtain a Virginia non-resident permit before February 1. This individual is endeavoring to keep lawful drugs from becoming a problem for law enforcement agencies in both states. Virginia's recognition of the Tennessee handgun permit to this point has helped to alleviate a potential law enforcement problem and given an assurance of personal safety no doubt shared by others like this pharmacist. It appears from your unconditioned revocation of reciprocity that a Tennessee resident holding a valid Tennessee permit for a concealed handgun could not even travel across Virginia to visit our nation's Capital without acquiring a nonresident permit from Virginia. Would this be true for Tennessee's Congressional representatives?

Second, the revocation implies that Tennessee's permit law is insufficient to protect Virginia residents. This is not well founded. The lack of past issues is evidence of this. In addition Tennessee has sound policy reasons for the three provisions (Voluntary Mental Health Commitments, Juvenile Adjudications, and Multiple Misdemeanors) which Virginia has cited for not continuing reciprocity.

Tennessee law does not disqualify those who have *voluntarily* sought mental health treatment, whether outpatient or residential. Instead, Tennessee's law is written to encourage people to seek mental health treatment.¹ This policy decision protects the people of Tennessee, and other states, by encouraging voluntary evaluations without fear of repercussion in the form of the loss of the constitutional right to carry a handgun. Tennessee's provision also complies with 18 U.S.C. § 922(g)(4) (*see also* 27 C.F.R. § 478.11 meaning of term "committed to a mental institution") for possession of firearms.

¹ As noted, Tenn. Code Ann. § 39-17-1351(c)(12) prohibits persons who have been judicially committed to a mental institution from obtaining a handgun carry permit.

Under Tennessee law, juvenile adjudications are not a criminal conviction.² Tennessee has determined that the confidentiality of juvenile crimes and the rehabilitative purposes of the juvenile justice system are sacrosanct, except in extreme cases. This policy allows for the rehabilitation of young offenders, rather than having them begin their adult lives with a mark on their records and their constitutional rights abridged. If such persons re-offend as adults, then they are subject to the full repercussions of their actions, including the loss of firearms and permits.

Tennessee's decision to disqualify based upon certain misdemeanor convictions while not imposing a mandatory disqualification for more than one such conviction is a balance between punishing those who have committed certain crimes that do not impact firearm purchases or possession with those who have shown a pattern of irresponsibility while dangerously operating a motor vehicle.³

Tennessee's laws are aimed at balancing the constitutional rights of persons while ensuring only qualified persons obtain permits. This approach appears to be as balanced and restrictive as Virginia's requirements and, in some instances, even more restrictive. For example, Tennessee has a centralized process, issuing permits only through the Department. In Virginia circuit court clerks in the respective counties issue permits. Tennessee requires all applicants to undergo a fingerprint based criminal history check. Virginia's statutes do not require a fingerprint based background check for resident permit applicants. The only requirement appears to be that the court "shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange." Va. Code Ann. § 18.2-308.04.

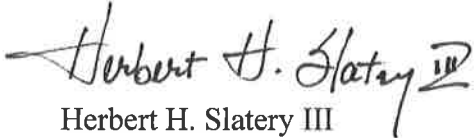
Accordingly, we would appreciate your reconsideration of the revocation itself, and failing that, an extension of the effective date. The repercussions of revoking reciprocity on a regional or national basis are extensive. A possible scenario would be legislative responses in kind, forcing Virginia residents to obtain out of state permits, even to travel through another state, as your December 22 Letter contemplated.

² Tenn. Code Ann. § 37-1-134(e) specifies that no child shall be prosecuted for a crime committed prior to his eighteenth birthday unless he has been transferred to adult court pursuant to Tenn. Code Ann. § 37-1-134. In addition, Tenn. Code Ann. § 37-1-133(c) states that "[a] child found to be delinquent shall be exempt from the operation of laws applicable to infamous crimes, and such child shall not be rendered infamous by the judgment of the juvenile court in which such child is tried." A child who has been transferred to an adult court would be rendered infamous and unable to obtain a permit, or even a firearm.

³ Tennessee disqualifies any person convicted of a misdemeanor crime of domestic violence or the crime of stalking. Tenn. Code Ann. § 39-17-1351(c). In addition, persons convicted of Class A misdemeanors, the highest class of misdemeanor in Tennessee, are prohibited from obtaining or possessing their permit during the time they are under the jurisdiction of the court. Any time a handgun permit holder is convicted of a Class A misdemeanor, such permit holder will be suspended while he or she are under the jurisdiction of the court. Additionally, persons convicted of DUI, which is a Class A misdemeanor, are prohibited from receiving a permit if they have had two DUI convictions within ten years and one of those convictions is within the previous five years. This appears to be the same as Virginia's law on misdemeanors.

Surely there is a more plausible alternative to unilateral revocation. Thank you for your further consideration.

Sincerely,



Herbert H. Slatery III
Attorney General & Reporter



Bill Gibbons
Commissioner of Safety & Homeland Security



Colonel W. S. (Steve) Flaherty
Superintendent

(804) 674-2000

COMMONWEALTH of VIRGINIA
DEPARTMENT OF STATE POLICE

Lt. Col. Robert B. Northern
Deputy Superintendent

P. O. BOX 27472, RICHMOND, VA 23261-7472

December 22, 2015

Tennessee Department of Safety &
Homeland Security
Attn: Lizabeth Hale
312 Rosa L. Parks Avenue, 25th Floor
Nashville, Tennessee 37243

Dear Ms. Hale:

On September 18, 2015, the Department of State Police in consultation with the Office of the Attorney General of Virginia completed a review of all the reciprocal agreements regarding the Commonwealth of Virginia's reciprocity and mutual recognition of concealed handgun permits. The review was conducted to ensure the prerequisites for recognition, as set forth in § 18.2-308.014 of the Code of Virginia, were appropriately applied. I have attached a copy of those requirements for your review.

As a result of that review, I must regrettably inform you that the Attorney General's Office has determined any agreement between Tennessee and the Commonwealth of Virginia regarding Virginia's recognition of your citizen's concealed handgun permits is hereby revoked effective February 1, 2016. Any of your citizens desiring to carry a concealed handgun in Virginia may apply for a non-resident permit pursuant to § 18.2-308.06. More information regarding non-resident concealed handgun permits can be found at <http://www.vsp.state.va.us/Firearms NonresidentConcealed.shtm>

If this change will affect Virginia concealed handgun permit owners traveling through your jurisdiction, please let me know at your earliest convenience.

I thank you for your cooperation in informing your citizens of this change.

Sincerely,


W. Steven Flaherty,
Superintendent

WSF/TJL/cm

Enclosure

cc: Office of the Attorney General, Virginia

Code of Virginia

Title 18.2, Chapter 6.1

§ 18.2-308.014. Reciprocity.

A. A valid concealed handgun or concealed weapon permit or license issued by another state shall authorize the holder of such permit or license who is at least 21 years of age to carry a concealed handgun in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day, and (ii) except for the age of the permit or license holder and the type of weapon authorized to be carried, the requirements and qualifications of that state's law are adequate to prevent possession of a permit or license by persons who would be denied a permit in the Commonwealth under this article. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General determine whether states meet the requirements and qualifications of this subsection, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement officers for investigative purposes. The Superintendent of the State Police, in consultation with the Attorney General, may also enter into agreements for reciprocal recognition with any state qualifying for recognition under this subsection.

B. A valid concealed handgun permit issued by Maryland shall be valid in the Commonwealth, provided (i) the holder of the permit is licensed in Maryland to perform duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the holder of the permit is 21 years of age or older.

C. For the purposes of participation in concealed handgun reciprocity agreements with other jurisdictions, the official government-issued law-enforcement identification card issued to an active-duty law-enforcement officer in the Commonwealth who is exempt from obtaining a concealed handgun permit under this article shall be deemed a concealed handgun permit.

2013, c. 746.