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**HOUSE BILL NO. 2328**

Offered January 23, 2015

A *BILL to amend and reenact §§ 18.2-308.09, 18.2-308.1:4, and 18.2-308.2:3 of the Code of Virginia, relating to protective orders; surrender of firearms; penalty.*

Patron—Simon

Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-308.09, 18.2-308.1:4, and 18.2-308.2:3 of the Code of Virginia are amended and reenacted as follows:**

**§ 18.2-308.09. Disqualifications for a concealed handgun permit.**

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing, *possessing*, or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

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59 16. An individual whose previous convictions or adjudications of delinquency were based on an  
60 offense that would have been at the time of conviction a felony if committed by an adult under the laws  
61 of any state, the District of Columbia, the United States or its territories. For purposes of this  
62 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the  
63 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or  
64 adjudication shall be deemed to be "previous convictions."

65 17. An individual who has a felony charge pending or a charge pending for an offense listed in  
66 subdivision 14 or 15.

67 18. An individual who has received mental health treatment or substance abuse treatment in a  
68 residential setting within five years prior to the date of his application for a concealed handgun permit.

69 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period  
70 immediately preceding the application for the permit, was found guilty of any criminal offense set forth  
71 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession  
72 or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any  
73 state, the District of Columbia, or the United States or its territories.

74 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the  
75 three-year period immediately preceding the application, upon a charge of any criminal offense set forth  
76 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or  
77 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any  
78 state, the District of Columbia, or the United States or its territories, the trial court found that the facts  
79 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the  
80 substantially similar law of any other state, the District of Columbia, or the United States or its  
81 territories.

82 **§ 18.2-308.1:4. Purchase, possession, or transportation of firearm by persons subject to**  
83 **protective orders; penalty.**

84 It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1,  
85 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant  
86 to subsection B of § 20-103; (iii) an order entered pursuant to subsection E of § 18.2-60.3; (iv) a  
87 preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging  
88 abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States  
89 or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute  
90 that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase, *possess*, or  
91 transport any firearm while the order is in effect, *except that a person may possess or transport a*  
92 *firearm solely for the purposes of surrendering such firearm to the court.* Any person with a concealed  
93 handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit  
94 to the court entering the order, for the duration of any protective order referred to herein. *Within 24*  
95 *hours of being served with a protective order, a person shall surrender any firearm possessed by him to*  
96 *the court entering the order for the duration of such order. The court shall prepare a written receipt*  
97 *containing the name of the person surrendering the firearm, the date on which the firearm was*  
98 *surrendered, and the manufacturer, model, and serial number of the firearm. The person surrendering*  
99 *the firearm shall sign the receipt and the court shall provide him with a copy of the receipt. Upon the*  
100 *expiration of the protective order, the person may present the copy of the receipt to the court and the*  
101 *court shall then return the firearm.* A violation of this section is a Class 1 misdemeanor.

102 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**  
103 **firearms; exemptions; penalties.**

104 A. No person, corporation or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921  
105 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary,  
106 paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited  
107 from possessing a firearm under §§ 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, ~~18.2-308.1:4~~, 18.2-308.2,  
108 or ~~§~~18.2-308.2:01 or is an illegal alien, or is prohibited from purchasing or transporting a firearm  
109 pursuant to ~~§ 18.2-308.1:4~~ or § 18.2-308.1:5.

110 B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement  
111 or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit  
112 the applicant's fingerprints and personal descriptive information to the Central Criminal Records  
113 Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining  
114 national criminal history record information regarding the applicant.

115 C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons  
116 employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from  
117 possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000,  
118 the dealer shall submit the employee's fingerprints and personal descriptive information to the Central  
119 Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the  
120 purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2, shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background check in accordance with the provisions of § 18.2-308.2:2.

"Transfer" means any act performed with intent to sell, rent, barter, trade or otherwise transfer ownership or permanent possession of a firearm at the place of business of a dealer.

182 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
183 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0  
184 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment  
185 to the custody of the Department of Juvenile Justice.