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HOUSE BILL NO. 377

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 3, 2016)

(Patron Prior to Substitute—Delegate Rush)

*A BILL to amend and reenact §§ 18.2-308.09 and 18.2-308.2 of the Code of Virginia, relating to restoration of firearms rights; report to State Police.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-308.09 and 18.2-308.2 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 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~~ restoration order 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.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws

60 of any state, the District of Columbia, the United States or its territories. For purposes of this
61 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the
62 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
63 adjudication shall be deemed to be "previous convictions."

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

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

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

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

81 **§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons,**
82 **explosives, or concealed weapons by convicted felons; penalties; petition for restoration order;**
83 **when issued.**

84 A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person
85 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in
86 violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or
87 presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person
88 under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of
89 the offense of a delinquent act which would be a felony if committed by an adult, other than those
90 felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the
91 Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof,
92 to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun
93 weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry
94 about his person, hidden from common observation, any weapon described in subsection A of
95 § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as
96 defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony.
97 However, any person who violates this section by knowingly and intentionally possessing or transporting
98 any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be
99 sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this
100 section by knowingly and intentionally possessing or transporting any firearm and who was previously
101 convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum
102 term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for
103 violations of this section shall be served consecutively with any other sentence.

104 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,
105 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member
106 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)
107 any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or
108 whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of
109 Virginia provided the Governor, in the document granting the pardon or removing the person's political
110 disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,
111 transport, possess or receive firearms, or (iv) any person whose right to possess firearms or ammunition
112 has been restored under the law of another state subject to conditions placed upon the reinstatement of
113 the person's right to ship, transport, possess, or receive firearms by such state.

114 C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a
115 firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which
116 he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or
117 city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying
118 offense pursuant to subsection A, for a ~~permit to possess or carry~~ *restoration order that unconditionally*
119 *authorizes possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon;*
120 however, no person who has been convicted of a felony shall be qualified to petition for such a ~~permit~~
121 *an order* unless his civil rights have been restored by the Governor or other appropriate authority. A

copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a ~~permit~~ *a restoration order. Such order shall contain the petitioner's name and date of birth. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange (CCRE), on a form provided by the CCRE, a copy of the order. The Department of State Police shall forthwith enter the petitioner's name and description in the CCRE so that the order's existence will be made known to law-enforcement personnel accessing the computerized criminal history records for investigative purposes.* The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a ~~permit~~ *issued a restoration order pursuant to this subsection.*

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.