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HOUSE BILL NO. 1406

Offered January 11, 2017

Prefiled September 16, 2016

A BILL to amend and reenact §§ 18.2-308.09 and 18.2-308.2 of the Code of Virginia, relating to restoration of right to possess, etc., a firearm.

Patrons—Habeeb, Farrell, O'Bannon, Austin, Bell, Richard P., Campbell, Edmunds, Fariss, Helsel, Jones, Marshall, D.W., Massie, Orrock, Peace, Poindexter, Ware and Webert; Senator: Vogel

Referred to Committee for Courts of Justice

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, 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 an order may be obtained or such individual's right to possess or transport a firearm may be restored 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,

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58 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in
59 violation of § 18.2-282 within the three-year period immediately preceding the application.

60 15. An individual who has been convicted of stalking.

61 16. An individual whose previous convictions or adjudications of delinquency were based on an
62 offense that would have been at the time of conviction a felony if committed by an adult under the laws
63 of any state, the District of Columbia, the United States or its territories. For purposes of this
64 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the
65 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
66 adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall
67 not apply to an individual with previous adjudications of delinquency who has completed a term of
68 service of no less than two years in the Armed Forces of the United States and, if such person has been
69 discharged from the Armed Forces of the United States, received an honorable discharge.

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

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

74 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
75 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
76 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession
77 or 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.

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

87 **§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons,**
88 **explosives or concealed weapons by convicted felons; penalties; petition for order; when issued.**

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

109 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,
110 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member
111 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state; (ii)
112 any law-enforcement officer in the performance of his duties; (iii) any person who has been pardoned
113 or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution
114 of Virginia provided the Governor, in the document granting the pardon or removing the person's
115 political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,
116 transport, possess or receive firearms; (iv) *any person whose civil rights have been restored pursuant to*
117 *Article II, Section 1 of the Constitution of Virginia;* (v) any person whose right to possess firearms or
118 ammunition has been restored under the law of another state subject to conditions placed upon the
119 reinstatement of the person's right to ship, transport, possess, or receive firearms by such state; or (v)

(vi) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a ~~permit~~ *an order* to possess, *transport*, or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a *violent* felony shall be qualified to petition for such a ~~permit~~ *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~~ *an order*. *However, any person who has been convicted of any felony, other than a violent felony, whose civil rights have been restored pursuant to Article II, Section 1 of the Constitution of Virginia is not required to petition for an order to possess, transport, or carry a firearm, ammunition for a firearm, or a stun weapon, and such person's right to possess, transport, or carry a firearm, ammunition for a firearm, or a stun weapon shall be restored automatically upon the restoration of such person's civil rights.* 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~~ *an order* pursuant to this subsection or whose civil rights have been restored pursuant to Article II, Section 1 of the Constitution of Virginia.

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.

2. That this act shall become effective January 1, 2019, contingent upon the passage of amendments to the Constitution of Virginia on the Tuesday after the first Monday in November 2018 amending Article II, Section 1 and Article V, Section 12 of the Constitution of Virginia providing for the automatic restoration of the civil rights of a person who has been convicted of any felony, other than a violent felony.