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SENATE BILL NO. 434

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 17, 2018)

(Patron Prior to Substitute—Senator Wexton)

A BILL to amend and reenact § 18.2-308.2 of the Code of Virginia, relating to restoration of firearms rights; convicted felons.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.2 of the Code of Virginia is amended and reenacted as follows:

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

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

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) 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, 15 years from the date of last conviction or release from confinement, whichever is later, for any offense under the laws of the Commonwealth or any other state, the District of Columbia, or the United States or any territory thereof, 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 to possess or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such a permit 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. For any person who has filed a petition in accordance with this subsection, if the court finds by clear and convincing evidence that the petitioner is not a risk to public safety and poses no present

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60 or future danger to himself or others and the granting of the petition would not be contrary to the
61 public interest, the court may, in its discretion and for good cause shown, grant such petition and issue
62 a permit. In making such a finding, the court shall consider factors including, but not be limited to, the
63 following: (i) recent acts or threats of violence toward oneself or others; (ii) the issuance of a protective
64 order pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 18.2-60.3, 19.2-152.8,
65 19.2-152.9, or 19.2-152.10 or subsection B of § 20-103, or the issuance of a protective order by a
66 tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or
67 the District of Columbia pursuant to a statute that is substantially similar to those listed in this clause,
68 to which the petitioner is subject; (iii) any violation of a protective order issued pursuant to § 16.1-253,
69 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 18.2-60.3, 19.2-152.8, 19.2-152.9, or 19.2-152.10 or
70 subsection B of § 20-103, or the issuance of a protective order by a tribunal of another state, the United
71 States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to
72 a statute that is substantially similar to those listed in this clause, to which the petitioner is subject; (iv)
73 a history of use, attempted use, or threatened use of physical force by the petitioner against another
74 person; (v) any recent unlawful use of or addiction to a controlled substance; and (vi) any recent
75 alcohol abuse or alcohol addiction. The provisions of this section relating to firearms, ammunition for a
76 firearm, and stun weapons shall not apply to any person who has been granted a permit pursuant to this
77 subsection.

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

81 C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of
82 an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of
83 § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a
84 quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or
85 cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any
86 firearm described in subdivision 3 of the definition of "antique firearm" in subsection G of
87 § 18.2-308.2:2.

88 D. For the purpose of this section:

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

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