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HOUSE BILL NO. 964

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 18.2-308.2 of the Code of Virginia, as it is currently effective and as it shall become effective, relating to firearms; restoration of rights of persons convicted of violent felonies.

Patrons—Jenkins, Levine and Samirah

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.2 of the Code of Virginia, as it is currently effective and as it shall become effective, is amended and reenacted as follows:

§ 18.2-308.2. (Effective until January 1, 2021) 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 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 person who has been convicted of an act of violence, as defined in § 19.2-297.1, or a*

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59 *violent felony, as defined in subsection C of § 17.1-805, may not petition for such a permit until one*
60 *year after his civil rights have been restored by the Governor or other appropriate authority; however,*
61 *if such person is convicted of a violent misdemeanor after his civil rights have been restored, then he*
62 *may not petition for such a permit until two years after the date of conviction of the violent*
63 *misdemeanor.* A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth
64 for the jurisdiction where the petition was filed who shall be entitled to respond and represent the
65 interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court
66 may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions
67 of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any
68 person who has been granted a permit pursuant to this subsection.

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

72 C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of
73 an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of
74 § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a
75 quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or
76 cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any
77 firearm described in subdivision 3 of the definition of "antique firearm" in subsection G of
78 § 18.2-308.2:2.

79 D. For the purpose of this section:

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

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

86 "*Violent misdemeanor*" shall include (i) stalking in violation of § 18.2-60.3, (ii) sexual battery in
87 violation of § 18.2-67.4, (iii) assault and battery of a family or household member, (iv) assault and
88 battery in violation of § 18.2-57, (v) brandishing a firearm in violation of § 18.2-282, or (vi) any offense
89 substantially similar to the offenses in clauses (i) through (v) in the laws of any other state or of the
90 United States.

91 **§ 18.2-308.2. (Effective January 1, 2021) Possession or transportation of firearms, firearms**
92 **ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition**
93 **for restoration order; when issued.**

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

114 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,
115 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member
116 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)
117 any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or
118 whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of
119 Virginia provided the Governor, in the document granting the pardon or removing the person's political
120 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 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 restoration order that unconditionally authorizes possessing, transporting, or carrying 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 an order unless his civil rights have been restored by the Governor or other appropriate authority. *A person who has been convicted of an act of violence, as defined in § 19.2-297.1, or a violent felony, as defined in subsection C of § 17.1-805, may not petition for such order until one year after his civil rights have been restored by the Governor or other appropriate authority; however, if such person is convicted of a violent misdemeanor after his civil rights have been restored, then he may not petition for such order until two years after the date of conviction of the violent misdemeanor.* 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 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 to be accompanied by a complete set of the petitioner's fingerprints. 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 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.

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

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.

"Violent misdemeanor" shall include (i) stalking in violation of § 18.2-60.3, (ii) sexual battery in violation of § 18.2-67.4, (iii) assault and battery of a family or household member, (iv) assault and battery in violation of § 18.2-57, (v) brandishing a firearm in violation of § 18.2-282, or (vi) any offense substantially similar to the offenses in clauses (i) through (v) in the laws of any other state or of the United States.