

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 18.2-308.09 and 18.2-308.2 of the Code of Virginia, relating to*
3 *restoration of firearms rights; report to State Police.*

4 [H 2548]
5 Approved

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

7 **1. That §§ 18.2-308.09 and 18.2-308.2 of the Code of Virginia are amended and reenacted as**
8 **follows:**

9 **§ 18.2-308.09. Disqualifications for a concealed handgun permit.**

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

11 1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or
12 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

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

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

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

22 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
23 § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

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

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

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

33 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
34 ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other
35 state, the District of Columbia, the United States, or its territories within the three-year period
36 immediately preceding the application, or who is a habitual drunkard as determined pursuant to
37 § 4.1-333.

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

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

41 12. An individual who is a fugitive from justice.

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

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

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

56 16. An individual whose previous convictions or adjudications of delinquency were based on an

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

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

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

105 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,
 106 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member
 107 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)
 108 any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or
 109 whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of
 110 Virginia provided the Governor, in the document granting the pardon or removing the person's political
 111 disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,
 112 transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has
 113 been restored under the law of another state subject to conditions placed upon the reinstatement of the
 114 person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated
 115 delinquent as a juvenile who has completed a term of service of no less than two years in the Armed
 116 Forces of the United States and, if such person has been discharged from the Armed Forces of the
 117 United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or

118 (ii) of subsection A.

119 C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a
120 firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which
121 he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or
122 city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying
123 offense pursuant to subsection A, for a ~~permit to possess or carry~~ *restoration order that unconditionally*
124 *authorizes possessing, transporting, or carrying* a firearm, ammunition for a firearm, or a stun weapon;
125 however, no person who has been convicted of a felony shall be qualified to petition for such a ~~permit~~
126 *an order* unless his civil rights have been restored by the Governor or other appropriate authority. A
127 copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the
128 jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of
129 the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its
130 discretion and for good cause shown, grant such petition and issue a ~~permit~~ *restoration order. Such*
131 *order shall contain the petitioner's name and date of birth. The clerk shall certify and forward forthwith*
132 *to the Central Criminal Records Exchange (CCRE), on a form provided by the CCRE, a copy of the*
133 *order to be accompanied by a complete set of the petitioner's fingerprints. The Department of State*
134 *Police shall forthwith enter the petitioner's name and description in the CCRE so that the order's*
135 *existence will be made known to law-enforcement personnel accessing the computerized criminal history*
136 *records for investigative purposes.* The provisions of this section relating to firearms, ammunition for a
137 firearm, and stun weapons shall not apply to any person who has been ~~granted a permit issued a~~
138 *restoration order* pursuant to this subsection.

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

142 C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of
143 an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of
144 § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a
145 quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or
146 cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any
147 firearm described in subdivision 3 of the definition of "antique firearm" in subsection G of
148 § 18.2-308.2:2.

149 D. For the purpose of this section:

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

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

156 **2. That the provisions of this act shall become effective on January 1, 2021.**