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HOUSE BILL NO. 1004

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety
on January 24, 2020)

(Patrons Prior to Substitute—Delegates Mullin and Murphy [HB 856])

*A BILL to amend and reenact §§ 18.2-308.1:4 and 18.2-308.2:1 of the Code of Virginia, relating to protective orders; possession of firearms; surrender or transfer of firearms; penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-308.1:4 and 18.2-308.2:1 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalties.**

A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this subsection is a Class 1 misdemeanor.

B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § 16.1-279.1 or 19.2-152.10 or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 or 19.2-152.10 to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 or subsection C of § 19.2-152.10 such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of surrendering any such firearm to a law-enforcement agency in accordance with subsection C or selling or transferring any such firearm to a dealer as defined in § 18.2-308.2:2 or to any person who is not otherwise prohibited by law from possessing such firearm in accordance with subsection C. A violation of this subsection is a Class 6 felony.

C. Upon entry of a protective order pursuant to § 16.1-279.1 or 19.2-152.10, the court shall order the person who is subject to the protective order to (i) within 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 or subsection C of § 19.2-152.10 (a) surrender any firearm possessed by such person to a designated local law-enforcement agency, (b) sell or transfer any firearm possessed by such person to a dealer as defined in § 18.2-308.2:2, or (c) sell or transfer any firearm possessed by such person to any person who is not otherwise prohibited by law from possessing such firearm and (ii) within 48 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 or subsection C of § 19.2-152.10, certify in writing, on a form provided by the Office of the Executive Secretary of the Supreme Court, that such person does not possess any firearms or that all firearms possessed by such person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order. Any person who fails to certify in writing in accordance with this section that all firearms possessed by such person have been surrendered, sold, or transferred or that such person does not possess any firearms is guilty of a Class 1 misdemeanor.

D. The person who is subject to a protective order pursuant to § 16.1-279.1 or 19.2-152.10 shall be provided with the address and hours of operation of a designated local law-enforcement agency and the certification forms when such person is served with a protective order in accordance with subsection C of § 16.1-279.1 or subsection C of § 19.2-152.10.

E. A law-enforcement agency that takes into custody a firearm surrendered to such agency pursuant to subsection C by a person who is subject to a protective order pursuant to § 16.1-279.1 or 19.2-152.10 shall prepare a written receipt containing the name of the person who surrendered the firearm and the manufacturer, model, and serial number of the firearm and provide a copy to such person. Any firearm surrendered to and held by a law-enforcement agency pursuant to subsection C shall be returned by such agency to the person who surrendered the firearm upon the expiration or

60 dissolution of the protective order entered pursuant to § 16.1-279.1 or 19.2-152.10. Such agency shall
61 return the firearm within five days of receiving a written request for the return of the firearm by the
62 person who surrendered the firearm and a copy of the receipt provided to such person by the agency.
63 Prior to returning the firearm to such person, the law-enforcement agency holding the firearm shall
64 confirm that such person is no longer subject to a protective order issued pursuant to § 16.1-279.1 or
65 19.2-152.10 and is not otherwise prohibited by law from possessing a firearm. A firearm surrendered to
66 a law-enforcement agency pursuant to subsection C may be disposed of in accordance with the
67 provisions of § 15.2-1721 if (i) the person from whom the firearm was seized provides written
68 authorization for such disposal to the agency or (ii) the firearm remains in the possession of the agency
69 more than 120 days after such person is no longer subject to a protective order issued pursuant to
70 § 16.1-279.1 or 19.2-152.10 and such person has not submitted a request in writing for the return of the
71 firearm.

72 F. Any law-enforcement agency or law-enforcement officer that takes into custody, stores, possesses,
73 or transports a firearm pursuant to this section shall be immune from civil or criminal liability for any
74 damage to or deterioration, loss, or theft of such firearm.

75 G. The law-enforcement agencies of the counties, cities, and towns within each judicial circuit shall
76 designate, in coordination with each other, and provide to the chief judges of all circuit and district
77 courts within the judicial circuit, one or more local law-enforcement agencies to receive and store
78 firearms pursuant to this section. The law-enforcement agencies shall provide the chief judges with a list
79 that includes the addresses and hours of operation for any law-enforcement agencies so designated that
80 such addresses and hours of operation may be provided to a person served with a protective order in
81 accordance with subsection C of § 16.1-279.1 or subsection C of § 19.2-152.10.

82 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

83 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with
84 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited
85 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3,
86 subsection B of § 18.2-308.1:4, § 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be
87 guilty of a Class 4 felony. However, this prohibition shall not be applicable when the person convicted
88 of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit
89 pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of
90 § 18.2-308.1:1, or § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had his political disabilities
91 removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport,
92 possess or receive firearms pursuant to the laws of the United States.

93 **2. That any petition for a protective order promulgated by the Executive Secretary of the Supreme**
94 **Court of Virginia shall include a provision where the petitioner may indicate whether the**
95 **petitioner knows or has reason to know that the respondent owns or otherwise possesses any**
96 **firearms.**

97 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
98 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
99 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
100 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
101 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**
102 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**
103 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**