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HOUSE BILL NO. 113

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety
on January 19, 2024)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact § 18.2-308.1:5 of the Code of Virginia, relating to possession, purchase, or transportation of handgun by persons convicted of certain drug offenses and operating a boat or vehicle while intoxicated prohibited; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.1:5 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.1:5. Possession, purchase, or transportation of handgun by persons convicted of certain drug offenses or operating a boat or vehicle while intoxicated prohibited; penalty.

A. Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor offenses under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, subsection B of former § 18.2-248.1:1, or § 18.2-250 shall be ineligible to possess, purchase, or transport a handgun.

B. Any person who within a five-year period has been convicted of two misdemeanor offenses in violation of § 18.2-266, 29.1-738, or 46.2-341.24 shall be ineligible to possess, purchase, or transport a handgun.

However, for any person ineligible to possess, purchase, or transport a handgun pursuant to this section, upon expiration of a period of five years from the date of the second conviction and provided the person has not been convicted of any such offense within that period, the ineligibility shall be removed.

C. A violation of this section is a Class 1 misdemeanor.

D. At sentencing, any person who is ineligible to possess, purchase, or transport a handgun pursuant to this section shall be given the opportunity to voluntarily relinquish any handgun in his possession. The law-enforcement agency that arrested such person for the second offense or subsequent offense as listed in subsection A or B shall take custody of all handguns that are voluntarily relinquished by such person. The law-enforcement agency that takes into custody a handgun pursuant to the order shall prepare a written receipt containing the name of the person who is subject to the order and the manufacturer, model, condition, and serial number of the handgun and shall provide a copy thereof to such person. Nothing in this subsection precludes a law-enforcement officer from later obtaining a search warrant for any handgun if the law-enforcement officer has reason to believe that the person who is prohibited from possessing, purchasing, or transporting a handgun pursuant to this section has not relinquished all handguns in his possession.

Any person who must relinquish his handgun pursuant to this subsection, or such person's legal representative, may transfer the handgun to another individual 21 years of age or older who is not otherwise prohibited by law from possessing such handgun, provided that:

1. The person who voluntarily relinquished the handgun and the transferee appear at the sentencing or a subsequent hearing;

2. At the hearing, the attorney for the Commonwealth advises the court that a law-enforcement agency has determined that the transferee is not prohibited from possessing or transporting a handgun;

3. The transferee does not reside with the person who voluntarily relinquished the handgun; and

4. The court, after considering all relevant factors and any evidence or testimony from the person who voluntarily relinquished the handgun, approves the transfer of the handgun subject to such restrictions as the court deems necessary.

The law-enforcement agency holding the handgun shall deliver the handgun to the transferee within five days of receiving a copy of the court's approval of the transfer.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.