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HOUSE BILL NO. 46

Offered January 10, 2024

Prefiled December 21, 2023

A BILL to amend and reenact §§ 18.2-308.1:4 and 18.2-308.1:8 of the Code of Virginia, relating to firearm transfers to another person from a prohibited person.

Patrons—Bennett-Parker, Helmer, Carr, Price, Shin, Simon and Tran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1:4 and 18.2-308.1:8 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 D 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 issuance of a protective order pursuant to § 16.1-279.1 or 19.2-152.10, the court shall advise such person who is subject to the protective order that a law-enforcement officer may obtain a search warrant to search for any firearms from such person if such law-enforcement officer has reason to believe that such person has not relinquished all firearms in his possession.

Additionally, 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 D 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, provided that such person who is not otherwise prohibited by law from possessing such firearm is 21 years of age or older and does not reside with the person who is subject to the protective order, and (ii) within 48 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 or subsection D 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.

In the event of a surrender, sale, or transfer of a firearm, the person who is subject to the protective order shall provide, on such form, the name and address of the transferee, the federally licensed firearms dealer, or the law-enforcement agency in possession of the firearm. The person who is subject to the protective order shall provide a copy of such form to the transferee at the time of such firearm

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59 *transfer.*

60 The willful failure of any person to certify in writing in accordance with this section that all firearms
61 possessed by such person have been surrendered, sold, or transferred or that such person does not
62 possess any firearms shall constitute contempt of court.

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

67 E. A law-enforcement agency that takes into custody a firearm surrendered to such agency pursuant
68 to subsection C by a person who is subject to a protective order pursuant to § 16.1-279.1 or 19.2-152.10
69 shall prepare a written receipt containing the name of the person who surrendered the firearm and the
70 manufacturer, model, and serial number of the firearm and provide a copy to such person *and to the*
71 *court that issued the order.* Any firearm surrendered to and held by a law-enforcement agency pursuant
72 to subsection C shall be returned by such agency to the person who surrendered the firearm upon the
73 expiration or dissolution of the protective order entered pursuant to § 16.1-279.1 or 19.2-152.10. Such
74 agency shall return the firearm within five days of receiving a written request for the return of the
75 firearm by the person who surrendered the firearm and a copy of the receipt provided to such person by
76 the agency. Prior to returning the firearm to such person, the law-enforcement agency holding the
77 firearm shall confirm that such person is no longer subject to a protective order issued pursuant to
78 § 16.1-279.1 or 19.2-152.10 and is not otherwise prohibited by law from possessing a firearm. A firearm
79 surrendered to a law-enforcement agency pursuant to subsection C may be disposed of in accordance
80 with the provisions of § 15.2-1721 if (i) the person from whom the firearm was seized provides written
81 authorization for such disposal to the agency or (ii) the firearm remains in the possession of the agency
82 more than 120 days after such person is no longer subject to a protective order issued pursuant to
83 § 16.1-279.1 or 19.2-152.10 and such person has not submitted a request in writing for the return of the
84 firearm.

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

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

95 **§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and**
96 **battery of a family or household member; penalty.**

97 A. Any person who knowingly and intentionally purchases, possesses, or transports any firearm
98 following a misdemeanor conviction for an offense that occurred on or after July 1, 2021, for (i) the
99 offense of assault and battery of a family or household member or (ii) an offense substantially similar to
100 clause (i) under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

101 B. For the purposes of this section, "family or household member" means (i) the person's spouse,
102 whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or
103 not he resides in the same home with the person; or (iii) any individual who has a child in common
104 with the person, whether or not the person and that individual have been married or have resided
105 together at any time.

106 C. Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to
107 subsection A shall be prohibited from purchasing, possessing, or transporting a firearm for three years
108 following the date of the conviction at which point the person convicted of such offense shall no longer
109 be prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A. Such
110 person shall have his firearms rights restored, unless such person receives another disqualifying
111 conviction, is subject to a protective order that would restrict his rights to carry a firearm, or is
112 otherwise prohibited by law from purchasing, possessing, or transporting a firearm.

113 D. *At such person's sentencing hearing, the court shall advise any person prohibited from*
114 *purchasing, possessing, or transporting a firearm pursuant to clause (i) of subsection A that a*
115 *law-enforcement officer may obtain a search warrant to search for any firearms from such person if*
116 *such law-enforcement officer has reason to believe that such person has not relinquished all firearms in*
117 *his possession.*

118 *Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i)*
119 *of subsection A shall (i) within 24 hours after such person's sentencing hearing or release from custody*
120 *if such person is taken into custody at the conclusion of the sentencing hearing (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, provided that such person who is not otherwise prohibited by law from possessing such firearm is 21 years of age or older and does not reside with such person who is prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i) of subsection A, and (ii) within 48 hours after such person's sentencing hearing or release from custody if such person is taken into custody at the conclusion of the sentencing hearing, 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 where the conviction order was entered.

In the event of a surrender, sale, or transfer of a firearm, the person who is prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i) of subsection A shall provide, on such form, the name and address of the transferee, the federally licensed firearms dealer, or the law-enforcement agency in possession of the firearm. The person who is prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i) of subsection A shall provide a copy of such form to the transferee at the time of such firearm transfer.

The willful failure of any person 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 shall constitute contempt of court.

E. Any person convicted of an offense under clause (i) of subsection A shall be provided with the address and hours of operation of a designated local law-enforcement agency. A law-enforcement agency that takes into custody a firearm surrendered to such agency pursuant to subsection D by a person who is prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i) of subsection A 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 and to the court that issued the order. Any firearm surrendered to and held by a law-enforcement agency pursuant to subsection D shall be returned by such agency to the person who surrendered the firearm upon the expiration of the prohibition period as provided in subsection C. Such agency shall return the firearm within five days of receiving a written request for the return of the firearm by the person who surrendered the firearm and a copy of the receipt provided to such person by the agency. Prior to returning the firearm to such person, the law-enforcement agency holding the firearm shall confirm that such person is no longer prohibited by law from possessing a firearm. A firearm surrendered to a law-enforcement agency pursuant to subsection D may be disposed of in accordance with the provisions of § 15.2-1721 if (i) the person from whom the firearm was seized provides written authorization for such disposal to the agency or (ii) the firearm remains in the possession of the agency more than 120 days after such person is no longer prohibited from possessing a firearm and such person has not submitted a request in writing for the return of the firearm.

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

G. The law-enforcement agencies of the counties, cities, and towns within each judicial circuit shall designate, in coordination with each other, and provide to the chief judges of all circuit and district courts within the judicial circuit, one or more local law-enforcement agencies to receive and store firearms pursuant to this section. The law-enforcement agencies shall provide the chief judges with a list that includes the addresses and hours of operation for any law-enforcement agencies so designated so that such addresses and hours of operation may be provided to a person who is prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i) of subsection A.