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SENATE BILL NO. 744

Offered January 8, 2025

Prefiled November 13, 2024

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.

Patron—Favola

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 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.

D. The person who is subject to a protective order pursuant to § 16.1-279.1 or 19.2-152.10 shall be

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59 provided with the address and hours of operation of a designated local law-enforcement agency and the
60 certification forms when such person is served with a protective order in accordance with subsection C of §
61 16.1-279.1 or subsection D of § 19.2-152.10.

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

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

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

89 **§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and battery**
90 **of a family or household member; penalty.**

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

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

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

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

110 Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to clause (i) of
111 subsection A shall (i) within 24 hours after such person's sentencing hearing or release from custody if such
112 person is taken into custody at the conclusion of the sentencing hearing (a) surrender any firearm possessed
113 by such person to a designated local law-enforcement agency, (b) sell or transfer any firearm possessed by
114 such person to a dealer as defined in § 18.2-308.2:2, or (c) sell or transfer any firearm possessed by such
115 person to any person who is not otherwise prohibited by law from possessing such firearm, provided that
116 such person who is not otherwise prohibited by law from possessing such firearm is 21 years of age or older
117 and does not reside with such person who is prohibited from purchasing, possessing, or transporting a
118 firearm pursuant to clause (i) of subsection A, and (ii) within 48 hours after such person's sentencing hearing
119 or release from custody if such person is taken into custody at the conclusion of the sentencing hearing,

120 certify in writing, on a form provided by the Office of the Executive Secretary of the Supreme Court, that such
 121 person does not possess any firearms or that all firearms possessed by such person have been surrendered,
 122 sold, or transferred and file such certification with the clerk of the court where the conviction order was
 123 entered.

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

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

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

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

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