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HOUSE BILL NO. 1051

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 18.2-308.1:4 of the Code of Virginia, relating to protective orders; possession of firearms.

Patron—Scott, P.A. (By Request)

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.1:4 of the Code of Virginia is 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 or carry on his person 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. However, 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 while such person is in his place of residence, provided that he 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 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 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. 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 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 D 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

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

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

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