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HOUSE BILL NO. 204

Offered January 12, 2022

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A BILL to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to sale and transfer of firearms; criminal history record information check delay.

Patron—Wachsmann

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-308.2:2 of the Code of Virginia is amended and reenacted as follows:****§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.**

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or a misdemeanor offense listed in § 18.2-308.1:8 or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that if committed by an adult would be a felony or a misdemeanor listed in § 18.2-308.1:8; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated, or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, or been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; and (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:6 or any substantially similar law of any other jurisdiction.

B. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded, or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense that demonstrates that the prospective purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo identification presented to a dealer by the prospective purchaser is a driver's license or other photo identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing

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59 that the original date of issue of the driver's license was more than 30 days prior to the attempted
60 purchase.

61 In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any
62 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent
63 residence.

64 Upon receipt of the request for a criminal history record information check, the State Police shall (a)
65 review its criminal history record information to determine if the buyer or transferee is prohibited from
66 possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates
67 that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number
68 for that inquiry.

69 2. The State Police shall provide its response to the requesting dealer during the dealer's request or
70 by return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the
71 State Police that a response will not be available by the end of the dealer's ~~fifth~~ third business day may
72 immediately complete the sale or transfer and shall not be deemed in violation of this section with
73 respect to such sale or transfer.

74 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer
75 than 30 days, except for multiple handgun transactions for which records shall be maintained for 12
76 months, from any dealer's request for a criminal history record information check pertaining to a buyer
77 or transferee who is not found to be prohibited from possessing and transporting a firearm under state or
78 federal law. However, the log on requests made may be maintained for a period of 12 months, and such
79 log shall consist of the name of the purchaser, the dealer identification number, the unique approval
80 number, and the transaction date.

81 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
82 deliver the written consent form required by subsection A to the Department of State Police. The State
83 Police shall immediately initiate a search of all available criminal history record information to
84 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
85 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
86 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
87 the jurisdiction where the sale or transfer occurred and the dealer without delay.

88 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
89 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
90 residents of other states under the terms of subsections A and B upon furnishing the dealer with one
91 photo-identification form issued by a governmental agency of the person's state of residence and one
92 other form of identification determined to be acceptable by the Department of Criminal Justice Services.

93 6. For the purposes of this subsection, the phrase "dealer's ~~fifth~~ third business day" does not include
94 December 25.

95 C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the
96 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
97 subdivision B 5, to any person who is a dual resident of Virginia and another state pursuant to
98 applicable federal law unless he has first obtained from the Department of State Police a report
99 indicating that a search of all available criminal history record information has not disclosed that the
100 person is prohibited from possessing or transporting a firearm under state or federal law.

101 To establish personal identification and dual resident eligibility for purposes of this subsection, a
102 dealer shall require any prospective purchaser to present one photo-identification form issued by a
103 governmental agency of the prospective purchaser's state of legal residence and other documentation of
104 dual residence within the Commonwealth. The other documentation of dual residence in the
105 Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a
106 current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f)
107 automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as
108 evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of
109 residence determined to be acceptable by the Department of Criminal Justice Services and that
110 corroborates that the prospective purchaser currently resides in Virginia.

111 D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
112 exercise his right of access to and review and correction of criminal history record information under
113 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
114 30 days of such denial.

115 E. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history
116 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
117 disseminate criminal history record information except as authorized in this section, shall be guilty of a
118 Class 2 misdemeanor.

119 F. For purposes of this section:

120 "Actual buyer" means a person who executes the consent form required in subsection B or C, or

other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

G. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided by the Department of State Police pursuant to this section.

H. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; or (iii) antique firearms or curios or relics.

I. The provisions of this section shall not apply to restrict purchase, trade, or transfer of firearms by a resident of Virginia when the resident of Virginia makes such purchase, trade, or transfer in another state, in which case the laws and regulations of that state and the United States governing the purchase, trade, or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade, or transfer of firearms.

J. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form

182 required in subsection B or C or on such firearm transaction records as may be required by federal law
183 shall be guilty of a Class 5 felony.

184 L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents,
185 trades, or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

186 L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or
187 otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and
188 intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not
189 apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the
190 performance of his official duties, or other person under his direct supervision.

191 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
192 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
193 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
194 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
195 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
196 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
197 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
198 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
199 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
200 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
201 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

202 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
203 Commonwealth who solicits, employs, or assists any person in violating subsection M shall be guilty of
204 a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

205 O. Any mandatory minimum sentence imposed under this section shall be served consecutively with
206 any other sentence.

207 P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating
208 whether the driver's license is an original, duplicate, or renewed driver's license.

209 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
210 inventory to any other person, a dealer may require such other person to consent to have the dealer
211 obtain criminal history record information to determine if such other person is prohibited from
212 possessing or transporting a firearm by state or federal law. The Department of State Police shall
213 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to
214 be made by the Department of State Police, and the processes established for making such
215 determinations shall conform to the provisions of this section.

216 R. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a
217 licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes
218 of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for
219 a handgun purchased from such seller by the same person seeking the exchange or replacement within
220 the 30-day period immediately preceding the date of exchange or replacement. A violation of this
221 subsection is punishable as a Class 1 misdemeanor.

222 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an
223 enhanced background check, as described in this subsection, by special application to the Department of
224 State Police listing the number and type of handguns to be purchased and transferred for lawful business
225 or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar
226 purposes. Such applications shall be signed under oath by the applicant on forms provided by the
227 Department of State Police, shall state the purpose for the purchase above the limit, and shall require
228 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales
229 report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The
230 Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act
231 (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above
232 the limit.

233 Upon being satisfied that these requirements have been met, the Department of State Police shall
234 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from
235 the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to
236 the consummation of such sale and shall be kept on file at the dealer's place of business for inspection
237 as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local
238 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such
239 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
240 Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and
241 certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3.
242 The Department of State Police shall make available to local law-enforcement agencies all records
243 concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B

3.

2. The provisions of this subsection shall not apply to:

a. A law-enforcement agency;

b. An agency duly authorized to perform law-enforcement duties;

c. A state or local correctional facility;

d. A private security company licensed to do business within the Commonwealth;

e. The purchase of antique firearms;

f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;

g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;

h. A person who holds a valid Virginia permit to carry a concealed handgun;

i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or

j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.