



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 951 **Engrossed Substitute with Amendments** *(Patron Prior to Substitute – Landes)*

Date Submitted: 02/06/02

LD #: 02-4870820

Topic: Criminal background check required for employees of a gun dealer

Proposed Change:

Amends §18.2-308.2:3 to provide an exemption from the reporting requirements necessary to conduct a criminal background check for employees of a gun dealer and to make it a Class 5 felony to willfully and intentionally make a false statement on an affidavit used for such an exemption. In lieu of submitting fingerprints pursuant to this section, any gun dealer holding a valid Federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit, on a form provided by the ATF, must contain the valid FFL number, the name of each person requesting an exemption, together with each person's identifying information including the social security number, and a statement to the effect that each person requesting an exemption has been subjected to a fingerprint identification check and approved by the ATF.

Current Practice:

Currently, no person may be employed as a seller for the transfer of firearms under §18.2-308.2:2 if he is prohibited from possessing a firearm under §§18.2-308.1:1 through 18.2-308.1:7, 18.2-308.2, or 18.2-308.2:01, or if he is an illegal alien. Before a new applicant can begin employment, the dealer must obtain a written statement from the applicant that he is not disqualified from possessing a firearm and must submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange (CCRE) to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information. For persons employed before July 1, 2000, the dealer must submit the employee's fingerprints and personal information within five working days of the employee's next birthday after August 1, 2000.

Any person who willfully requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully disseminates criminal history record information, except as authorized by this section and §18.2-308.2:2, is guilty of a Class 2 misdemeanor. Any person willfully making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1

misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section is guilty of a Class 1 misdemeanor.

Based on CY1999-2000 Pre/Post-Sentence Investigation (PSI) data, no offenders were convicted for felony violations of §18.2-308.2:3 as the primary, or most serious, offense. Additionally, no misdemeanor convictions for violations of §18.2-308.2:3 were found in FY2001 data from the Local Inmate Data System (LIDS) database.

Convictions under §18.2-308.2:3 are not covered by the sentencing guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

The impact of the proposed legislation on state (prison) or local-responsible (jail) bed space cannot be determined. A new offense, making a willful and intentional false statement in the affidavit for exemption from reporting requirements, would be a Class 5 felony under this proposal. However, a similar and related offense, the willful making of a false statement on the personal descriptive information required in this section, is already a Class 5 felony under §18.2-308.2:3. No convictions for violation of §18.2-308.2:3 were observed in recent PSI and LIDS data. Furthermore, available databases do not provide information on the possible effect of the proposed exemption. No adjustment to the guidelines would be necessary under the proposal.

Pursuant to §30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.