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HOUSE BILL NO. 1144

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Courts of Justice
on February 25, 2004)

(Patron Prior to Substitute—Delegate McDonnell)

*A BILL to amend and reenact §18.2-308.2:2 of the Code of Virginia, relating to firearms purchases by residents of another state and by residents of Virginia in another state.***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; firearm safety information to be provided.

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, in addition to the information required by subdivision B 1, the identical information required to be included on the firearms transaction record required by regulations administered by the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury, except that the copies of such forms mailed or delivered to the Department of State Police shall not include any information related to the firearm purchased or transferred.

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 as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, 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 the State Police and is authorized by subdivision B 2 of this section 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, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 79-7; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders may be used as documentation of residence. Additionally, 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 that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the Immigration and Naturalization Service, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the Immigration and Naturalization Service.

Upon receipt of the request for a criminal history record information check, the State Police shall (1) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by

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60 return call without delay. If the criminal history record information check indicates the prospective
61 purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed
62 to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse
63 Services, the State Police shall have until the end of the dealer's next business day to advise the dealer
64 if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by
65 state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has
66 fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or
67 transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case
68 of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be
69 advised immediately of the reason for such delay and be given an estimate of the length of such delay.
70 After such notification, the State Police shall, as soon as possible but in no event later than the end of
71 the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee
72 is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the
73 requirements of subdivision B 1 of this subsection and is told by the State Police that a response will
74 not be available by the end of the dealer's next business day may immediately complete the sale or
75 transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

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

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

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

96 6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include
97 December 25.

98 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, ~~other than~~ *except when*
99 *the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of*
100 *subdivision B 5* to any person who is not a resident of Virginia unless he has first obtained from the
101 Department of State Police a report indicating that a search of all available criminal history record
102 information has not disclosed that the person is prohibited from possessing or transporting a firearm
103 under state or federal law. The dealer shall obtain the required report by mailing or delivering the
104 written consent form required under subsection A to the State Police within 24 hours of its execution. If
105 the dealer has complied with the provisions of this subsection and has not received the required report
106 from the State Police within 10 days from the date the written consent form was mailed to the
107 Department of State Police, he shall not be deemed in violation of this section for thereafter completing
108 the sale or transfer.

109 D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting
110 or receiving a firearm from a dealer *in Virginia* by obtaining a criminal history record information check
111 through the dealer as provided in subsection C.

112 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
113 exercise his right of access to and review and correction of criminal history record information under
114 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
115 30 days of such denial.

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

120 G. For purposes of this section:

121 "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.

H. 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.

I. 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, (iii) antique firearms, *curios or relics*, or (iv) transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. *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.*

J1. 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 required in subsection B or C shall be guilty of a Class 5 felony.

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

185 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
186 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
187 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
188 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
189 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the
190 violation of this subsection involves such a transfer of more than one firearm, the person shall be
191 sentenced to a mandatory minimum term of imprisonment of five years, which shall not be suspended in
192 whole or in part nor shall the person be eligible for parole during that period.

193 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
194 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of
195 a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years,
196 which shall not be suspended in whole or in part nor shall the person be eligible for parole during that
197 period.

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

200 P. The Department of Education, in conjunction with the Department of Game and Inland Fisheries,
201 shall develop a standard informational form and posted notice to be furnished to each licensed firearms
202 dealer in the Commonwealth at no cost to the dealer. The form and notice shall provide basic
203 information of the laws governing the purchase, possession and use of firearms by juveniles and adults.

204 Copies of the form shall be made available by the dealer whenever a firearm is purchased.

205 Every firearms dealer shall conspicuously post the written notice, which shall be at least eight and
206 one-half inches by eleven inches in size and printed in boldface type of a minimum size of 10 points. A
207 licensed firearms dealer shall not be liable for damages for injuries resulting from the discharge of a
208 firearm purchased from the dealer if, at the time of the purchase, the dealer failed to provide the form or
209 failed to post the written notice.

210 Q. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any
211 person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day
212 period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

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

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

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

236 a. A law-enforcement agency;

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

238 c. State and local correctional facilities;

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

240 e. The purchase of antique firearms as herein defined;

241 f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun
242 be replaced immediately. Such person may purchase another handgun, even if the person has previously
243 purchased a handgun within a 30-day period, provided (i) the person provides the firearms dealer with a
244 copy of the official police report or a summary thereof, on forms provided by the Department of State

245 Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the
246 official police report or summary thereof contains the name and address of the handgun owner, the
247 description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date
248 the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as
249 reflected on the official police report or summary thereof occurred within 30 days of the person's
250 attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or
251 summary thereof to the original copy of the Virginia firearms transaction report completed for the
252 transaction and retain it for the period prescribed by the Department of State Police; or

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

255 3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a
256 handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange
257 or replacement within the 30-day period immediately preceding the date of exchange or replacement.