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SENATE BILL NO. 1378

Offered February 8, 2013

A BILL to amend and reenact §§ 18.2-308.2:1 and 18.2-308.2:2 of the Code of Virginia, relating to the sale or transport for sale of firearms on behalf of or to certain persons; penalty.

Patrons—Garrett and Barker

Introduced at the request of Governor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.2:1 and 18.2-308.2:2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.

Any person who sells, barter, gives or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be guilty of a Class 6 4 felony. However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1, (ii) been pardoned or had his political disabilities removed in accordance with subsection B of § 18.2-308.2 or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United States.

§ 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 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 would be a felony if committed by an adult; (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; and (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, or 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.

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, 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 2001-5; or

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59 other documentation of residence determined to be acceptable by the Department of Criminal Justice
60 Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the
61 photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser
62 to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of
63 residence. For the purposes of this section and establishment of residency for firearm purchase,
64 residency shall be deemed to be the permanent duty post of a member of the armed forces. When the
65 photo-identification presented to a dealer by the prospective purchaser is a driver's license or other
66 photo-identification issued by the Department of Motor Vehicles, and such identification form contains a
67 date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification
68 issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective
69 purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the
70 prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record
71 showing that the original date of issue of the driver's license was more than 30 days prior to the
72 attempted purchase.

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

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

88 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
89 by return call without delay. If the criminal history record information check indicates the prospective
90 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
91 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,
92 the State Police shall have until the end of the dealer's next business day to advise the dealer if its
93 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state
94 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
95 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
96 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
97 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
98 the reason for such delay and be given an estimate of the length of such delay. After such notification,
99 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
100 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
101 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
102 subdivision 1 and is told by the State Police that a response will not be available by the end of the
103 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
104 violation of this section with respect to such sale or transfer.

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

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

119 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
120 persons who are citizens of the United States or persons lawfully admitted for permanent residence but

residents of other states under the terms of subsections A and B upon furnishing the dealer with proof of citizenship or status as a person lawfully admitted for permanent residence and one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

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

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

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

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

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

G. For purposes of this section:

"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

182 value of like firearms available in ordinary commercial channels is substantially less.

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

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

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

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

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

195 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
196 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
197 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
198 or any local government, or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of
199 Title 23; or (iii) antique firearms, curios or relics.

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

205 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal
206 history record information check is required pursuant to this section, except that a fee of \$5 shall be
207 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
208 Department of State Police by the last day of the month following the sale for deposit in a special fund
209 for use by the State Police to offset the cost of conducting criminal history record information checks
210 under the provisions of this section.

211 K. Any person willfully and intentionally making a materially false statement on the consent form
212 required in subsection B or C or on such firearm transaction records as may be required by federal law,
213 shall be guilty of a Class 5 felony.

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

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

221 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
222 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
223 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
224 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
225 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 4 felony *and sentenced*
226 *to a mandatory minimum term of imprisonment of one year.* However, if the violation of this subsection
227 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
228 minimum term of imprisonment of five years.

229 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
230 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of
231 a Class 5 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.
232 *Any person who violates the provisions of this subsection involving the transfer of more than one*
233 *firearm shall be sentenced to a mandatory minimum term of imprisonment of 10 years.*

234 O. *Any mandatory minimum sentence imposed under this section shall be served consecutively with*
235 *any other sentence.*

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

238 P. ~~{Repealed.}~~

239 2. That the provisions of this act may result in a net increase in periods of imprisonment or
240 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is
241 \$46,773 for periods of imprisonment in state adult correctional facilities and cannot be determined
242 for periods of commitment to the custody of the Department of Juvenile Justice.