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## HOUSE BILL NO. 61

Offered January 8, 2014

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*A BILL to amend and reenact §§ 18.2-308.2:2 and 46.2-342 of the Code of Virginia, relating to the purchase and sale of rifles, shotguns, and assault rifles; prohibition for nonresidents; penalties.*

Patron—McQuinn

Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-308.2:2 and 46.2-342 of the Code of Virginia are amended and reenacted as follows:**

**§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms; penalties.**

*A. No dealer shall sell, rent, trade, or transfer from his inventory any firearm or assault firearm to any person who is not a resident of the Commonwealth.*

*B. Any person purchasing from a dealer a firearm as herein defined from a dealer 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. C. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm or assault 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 B, 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 Department of State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia the Commonwealth 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 U.S. Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States U.S. 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 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 the Commonwealth. Where the photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser to a duty post in Virginia the Commonwealth, including the Pentagon, shall be the only other required documentation of residence. 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. When the~~*

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59 photo-identification presented to a dealer by the prospective purchaser is a driver's license or other  
60 photo-identification issued by the Department of Motor Vehicles, and such identification form contains a  
61 date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification  
62 issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective  
63 purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the  
64 prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record  
65 showing that the original date of issue of the driver's license was more than 30 days prior to the  
66 attempted purchase.

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

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

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

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

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

115 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by  
116 persons who are citizens of the United States or persons lawfully admitted for permanent residence but  
117 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof  
118 of citizenship or status as a person lawfully admitted for permanent residence and one  
119 photo-identification form issued by a governmental agency of the person's state of residence and one  
120 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 does 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 or assault firearm from a dealer in Virginia the Commonwealth by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any Any resident of the Commonwealth who is an actual buyer or transferee and 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 any other such firearm transaction records record 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 does 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 that 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 that 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 that 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, or 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.

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

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

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

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

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

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

208 K. Any person willfully and intentionally making a materially false statement on the consent form  
209 required in subsection B ~~or~~ C or on such firearm transaction records as may be required by federal law;  
210 ~~shall be~~ *is* guilty of a Class 5 felony.

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

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

218 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such  
219 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise  
220 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the  
221 Commonwealth to be resold or otherwise provided to another person who the transferor knows is  
222 ineligible to purchase or otherwise receive a firearm; ~~shall be~~ *is* guilty of a Class 4 felony and *shall be*  
223 sentenced to a mandatory minimum term of imprisonment of one year. However, if the violation of this  
224 subsection involves such a transfer of more than one firearm, the person shall be sentenced to a  
225 mandatory minimum term of imprisonment of five years. The prohibitions of this subsection shall not  
226 apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof,  
227 pursuant to § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if  
228 such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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~~ *is* guilty  
231 of a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

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

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

236 **§ 46.2-342. What license to contain; organ donor information; Uniform Donor Document.**

237 A. Every license issued under this chapter shall bear:

238 1. For licenses issued or renewed on or after July 1, 2003, a license number ~~which~~ *that* shall be  
239 assigned by the Department to the licensee and shall not be the same as the licensee's social security  
240 number;

241 2. A photograph of the licensee;

242 3. The licensee's full name, year, month, and date of birth;

243 4. The licensee's address, subject to the provisions of subsection B ~~of this section~~;

5. A brief description of the licensee for the purpose of identification;

6. A space for the signature of the licensee; and

7. Any other information deemed necessary by the Commissioner for the administration of this title.

No abbreviated names or nicknames shall be shown on any license.

B. At the option of the licensee, the address shown on the license may be either the post office box, business, or residence address of the licensee, provided such address is located in Virginia. However, regardless of which address is shown on the license, the licensee shall supply the Department with his residence address, which shall be an address in Virginia. This residence address shall be maintained in the Department's records. Whenever the licensee's address shown either on his license or in the Department's records changes, he shall notify the Department of such change as required by § 46.2-324.

C. The Department may contract with the United States Postal Service or an authorized agent to use the National Change of Address System for the purpose of obtaining current address information for a person whose name appears in customer records maintained by the Department. If the Department receives information from the National Change of Address System indicating that a person whose name appears in a Department record has submitted a permanent change of address to the Postal Service, the Department may then update its records with the mailing address obtained from the National Change of Address System.

D. The license shall be made of a material and in a form to be determined by the Commissioner.

E. Licenses issued to persons less than 21 years old shall be immediately and readily distinguishable from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique design elements of the document and descriptors within the photograph area to identify persons who are at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year when the person will become 21 years old.

F. The Department shall establish a method by which an applicant for a driver's license or an identification card may designate his willingness to make an anatomical gift for transplantation, therapy, research, and education as provided in Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and shall cooperate with the Virginia Transplant Council to ensure that such method is designed to encourage organ, tissue, and eye donation with a minimum of effort on the part of the donor and the Department.

G. If an applicant designates his willingness to be a donor pursuant to subsection F, the Department may make a notation of this designation on his license or card and shall make a notation of this designation in his driver record.

H. The donor designation authorized in subsection G shall be sufficient legal authority for the removal, following death, of the subject's organs or tissues without additional authority from the donor, or his family or estate. No family member, guardian, agent named pursuant to an advance directive, or person responsible for the decedent's estate shall refuse to honor the donor designation or, in any way, seek to avoid honoring the donor designation.

I. The donor designation provided pursuant to subsection F may be rescinded by notifying the Department. In addition, the Department shall remove from the driver's license or identification card any donor designation made pursuant to subsection F; if, at the time the applicant renews or replaces the license or identification card, the applicant does not again designate his willingness to be a donor pursuant to subsection F.

J. A minor may make a donor designation pursuant to subsection F without the consent of a parent or legal guardian as authorized by the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.).

K. The Department shall provide a method by which an applicant conducting a Department of Motor Vehicles transaction using electronic means may make a voluntary contribution to the Virginia Donor Registry and Public Awareness Fund (Fund) established pursuant to § 32.1-297.1. The Department shall inform the applicant of the existence of the Fund and also that contributing to the Fund is voluntary.

L. The Department shall collect all moneys contributed pursuant to subsection K and transmit the moneys on a regular basis to the Virginia Transplant Council, which shall credit the contributions to the Fund.

M. When requested by the applicant, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's license that the applicant is (i) an insulin-dependent diabetic; or (ii) hearing or speech impaired.

N. In the absence of gross negligence or willful misconduct, the Department and its employees shall be immune from any civil or criminal liability in connection with the making of or failure to make a notation of donor designation on any license or card or in any person's driver record.

O. Notwithstanding the foregoing provisions of this section, the Department shall continue to use the uniform donor document, as formerly set forth in subsection F, for organ donation designation until such time as a new method is fully implemented, which shall be no later than July 1, 1994. Any such uniform donor document shall, when properly executed, remain valid and shall continue to be subject to

all conditions for execution, delivery, amendment, and revocation as set out in Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

P. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ donor information brochure describing the organ donor program and providing instructions for completion of the uniform donor document information describing the bone marrow donation program and instructions for registration in the National Bone Marrow Registry. The Department shall include a copy of such brochure with every driver's license renewal notice or application mailed to licensed drivers in Virginia.

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

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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; therefore, Chapter 806 of the Acts of Assembly of 2013 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**