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HOUSE BILL NO. 140

Offered January 10, 2018

Prefiled December 19, 2017

A BILL to amend and reenact § 54.1-4201.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.2:5, relating to firearm transfers; criminal history record information checks; penalty.

Patrons—Levine, Carr, Hope, Murphy, Plum, Roem and Simon

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-4201.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.2:5 as follows:

§ 18.2-308.2:5. Criminal history record information check required to transfer firearm; penalty.

A. No person shall sell, rent, trade, or transfer a firearm unless he has obtained verification from a licensed dealer in firearms that information on the prospective purchaser or transferee has been submitted for a criminal history record information check as set out in § 18.2-308.2:2 and that a determination has been received from the Department of State Police that the prospective purchaser or transferee is not prohibited under state or federal law from possessing a firearm. The Department of State Police shall provide a means by which transferors may obtain from designated licensed dealers the approval or denial of firearm transfer requests, based on criminal history record information checks. The processes established shall conform to the provisions of § 18.2-308.2:2, and the definitions and provisions of § 18.2-308.2:2 regarding criminal history record information checks shall apply to this section mutatis mutandis. The designated dealer shall collect and disseminate the fees prescribed in § 18.2-308.2:2 as required by that section. The dealer may charge and retain an additional fee not to exceed \$15 for obtaining criminal history record information checks on behalf of transferors. Any person who willfully and intentionally sells, rents, trades, or transfers a firearm to another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.

B. Notwithstanding the provisions of subsection A and unless otherwise prohibited by state or federal law, a person may transfer a firearm to another person if:

1. The transfer is a bona fide gift made by or to a member of the transferor's immediate family as defined in § 6.2-1300;

2. The transfer occurs by operation of law;

3. The transferor is an executor or administrator of an estate or is a trustee of a testamentary trust and the firearm transferred is property of such estate or trust; or

4. The transfer is temporary and (i) occurs within the continuous presence of the owner of the firearm or (ii) is necessary to prevent imminent death or serious bodily injury.

§ 54.1-4201.2. Firearm transactions by persons other than dealers; background checks.

A. The Department of State Police shall be available at every firearms show held in the Commonwealth to make determinations in accordance with the procedures set out in § 18.2-308.2:2 of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police.

Unless otherwise required by state or federal law, any party involved in the transaction may decide whether or not to have such a determination made.

The Department of State Police may charge a reasonable fee for the determination.

B. The promoter, as defined in § 54.1-4201.1, shall give the Department of State Police notice of the time and location of a firearms show at least 30 days prior to the show. The promoter shall provide the Department of State Police with adequate space, at no charge, to conduct such prohibition determinations. The promoter shall ensure that a notice that such determinations are available is prominently displayed at the show.

C. No person who sells or transfers a firearm at a firearms show after receiving a determination from the Department of State Police that the purchaser or transferee is not prohibited by state or federal law from possessing a firearm shall be liable for selling or transferring a firearm to such person.

D. The provisions of § 18.2-308.2:2, including definitions, procedures, and prohibitions, shall apply, mutatis mutandis, to the provisions of this section.

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

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59 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
60 836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to
61 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the
62 necessary appropriation cannot be determined for periods of commitment to the custody of the
63 Department of Juvenile Justice.