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HOUSE BILL NO. 2399

Offered January 9, 2019

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A BILL to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to transfer of firearms; criminal history record check delay; penalty.

Patron—Lopez

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 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.

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 that demonstrates that the prospective purchaser resides in Virginia. 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. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. 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.

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

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

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

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

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

101 6. For the purposes of this subsection, the phrase "~~dealer's next business day~~" "*within five business*
102 *days*" shall not include December 25.

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

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

117 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
118 exercise his right of access to and review and correction of criminal history record information under
119 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
120 30 days of such denial.

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

125 G. For purposes of this section:

126 "Actual buyer" means a person who executes the consent form required in subsection B or C, or
127 other such firearm transaction records as may be required by federal law.

128 "Antique firearm" means:

129 1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of
130 ignition system) manufactured in or before 1898;

131 2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not
132 designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire
133 or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that
134 is not readily available in the ordinary channels of commercial trade;

135 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use
136 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this
137 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame
138 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon
139 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any
140 combination thereof; or

141 4. Any curio or relic as defined in this subsection.

142 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple
143 projectiles by action of an explosion of a combustible material and is equipped at the time of the
144 offense with a magazine which will hold more than 20 rounds of ammunition or designed by the
145 manufacturer to accommodate a silencer or equipped with a folding stock.

146 "Curios or relics" means firearms that are of special interest to collectors by reason of some quality
147 other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To
148 be recognized as curios or relics, firearms must fall within one of the following categories:

149 1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or
150 conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is
151 not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

152 2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits
153 firearms to be curios or relics of museum interest; and

154 3. Any other firearms that derive a substantial part of their monetary value from the fact that they
155 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.
156 Proof of qualification of a particular firearm under this category may be established by evidence of
157 present value and evidence that like firearms are not available except as collectors' items, or that the
158 value of like firearms available in ordinary commercial channels is substantially less.

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

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

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

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

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

171 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
172 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
173 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
174 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of
175 Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

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

181 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal

182 history record information check is required pursuant to this section, except that a fee of \$5 shall be
183 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
184 Department of State Police by the last day of the month following the sale for deposit in a special fund
185 for use by the State Police to offset the cost of conducting criminal history record information checks
186 under the provisions of this section.

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

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

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

197 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
198 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
199 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
200 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
201 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
202 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
203 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
204 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
205 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
206 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
207 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

208 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
209 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of
210 a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

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

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

215 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
216 inventory to any other person, a dealer may require such other person to consent to have the dealer
217 obtain criminal history record information to determine if such other person is prohibited from
218 possessing or transporting a firearm by state or federal law. The Department of State Police shall
219 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to
220 be made by the Department of State Police, and the processes established for making such
221 determinations shall conform to the provisions of this section.

222 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
223 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
224 **necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and**
225 **\$0 for periods of commitment to the custody of the Department of Juvenile Justice.**