

LD3320356

HOUSE BILL NO. 1174

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Chapter 7 of Title 18.2 an article numbered 7.1, consisting of sections numbered 18.2-311.2 through 18.2-311.4, relating to the Felon Identification and Police Safety Act; penalties.

Patron—Miller

Referred to Committee on Militia and Police

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 7 of Title 18.2 an article numbered 7.1, consisting of sections numbered 18.2-311.2 through 18.2-311.4 as follows:

Article 7.1.

Felon Identification and Police Safety Act.

§ 18.2-311.2. Definitions.

For the purposes of this Act:

"Engaged in business" means, as applied to a firearms dealer, a person, firm, partnership, or corporation that devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through repetitive purchase or resale of firearms, but such term shall not involve a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

"Firearms dealer" means:

- 1. Any person, firm, partnership, or corporation engaged in the business of selling firearms at retail;
- or
- 2. Any person, firm, partnership, or corporation engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or
- 3. Any person, firm, partnership, or corporation that is a pawnbroker.

"Handgun" means any firearm which has a short stock and is designed to be held and fired by the use of a single hand.

"License" means a license or permit to operate a motor vehicle on the roads and highways of this Commonwealth, and any further identification document issued by the Department solely for purposes of identification.

§ 18.2-311.3. Department of Motor Vehicles to conduct criminal history record check; State Police to create list of felons and mental incompetents; appeals and relief.

A. Prior to the issuance, reissuance, or reinstatement of any driver's license issued by the Department of Motor Vehicles (hereinafter referred to as "Department"), it shall be the duty of the Department to conduct a criminal history record check of the applicant and to determine, from records furnished to the Department pursuant to subsections B and C, whether the applicant has previously been convicted of a felony, or adjudicated mentally incompetent without restoration to mental capacity by court order. If it is determined that the applicant has been convicted of any felony under the laws of this state, the United States, or any other state of the United States or has previously been adjudicated mentally incompetent without restoration to capacity by court order, the license issued by the Department shall have on its magnetic reader strip indication of such conviction or adjudication. Such indication shall only be determined through the use of the special magnetic code reader, and shall not appear different to the unaided eye from that of a nonprohibited person. The magnetic code reader shall be a device which is "read only" and which does not have storage or communication capabilities. The magnetic code reader shall provide a red or a green light signal. The red light will indicate that the potential handgun buyer is a prohibited purchaser pursuant to this subsection; the green light will indicate that the buyer is not a prohibited person pursuant to this subsection. The Department shall provide a magnetic code reader to ensure the license reads correctly.

B. The Department of State Police shall create a computerized list of felons pursuant to Title I, Sec. 103(a) of the Brady Handgun Violence Prevention Act with information provided in accordance with such Act. The Department of State Police shall achieve, by July 1, 1997, at least eighty percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last five years and shall continue to maintain such a system.

C. The Department of State Police shall create a computerized list of persons who have been adjudicated mentally incompetent and have not been restored to capacity by court order. This list of

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60 names shall be made available for the Department to contact for information.

61 D. If records established under this section identify a person as a prohibited person pursuant to
62 subsection A, the person, if he believes the identification to be erroneous, may request the Department
63 of State Police to supply him with the reasons therefore. Within five days after receipt of such request,
64 the Department of State Police shall comply with the request. Such person may submit to the
65 Department of State Police information which may correct, clarify, or supplement the records with
66 respect to such person. Within five days after receipt of such information, the Department of State
67 Police shall consider the information, investigate the matter further, and correct all erroneous records
68 relating to the person and notify any agency that was the source of the erroneous records of such
69 errors.

70 E. Any person erroneously identified as a prohibited person, whose records have not been corrected,
71 pursuant to subsection A, may bring an action in any court of original jurisdiction against the
72 Commonwealth or any political subdivision thereof which is the source of the erroneous information, for
73 damages (including consequential damages), injunctive relief, and such other relief as the court deems
74 appropriate. If the person prevails in the action, the court shall allow the person a reasonable attorney's
75 fee as part of the costs.

76 F. In performing his duties, a law-enforcement officer may utilize a magnetic code reader described
77 in subsection A to determine the status of a driver for his own safety. No law-enforcement agency
78 shall be required to purchase or utilize the designated magnetic code reader.

79 § 18.2-311.4. When handgun sales prohibited; alteration of license unlawful; penalties.

80 A. It shall be unlawful for any federally licensed firearms dealer to knowingly and intentionally:

81 1. Sell a handgun to any person not licensed under § 923 of Title 18, United States Code, unless the
82 firearms dealer has used a magnetic code reader described in § 18.2-311.3 to read the magnetic strip
83 affixed to a license issued to the person by the Department; or

84 2. Refuse to notify local law-enforcement authorities, within eighteen hours, of any person attempting
85 to purchase a handgun who is identified as a prohibited person through the use of such a device.

86 B. Any firearms dealer who violates subdivision A1 shall be guilty of a Class 2 misdemeanor. Any
87 firearms dealer who violates subdivision A2 shall be subject to a civil penalty of not more than \$500.

88 C. Subsections A and B shall not take effect until the Department is in full compliance with the
89 aforementioned background check and magnetic strip and reader system. Persons in possession of a
90 license issued prior to the full compliance of the Department are exempt from this subsection until such
91 time that such licenses, or identification cards, reach their expiration dates.

92 D. A "license" which is issued by the Department and which does not identify a person as a
93 prohibited purchaser shall be considered a "permit" pursuant to Title I, Sec. 102(a)(1)(C) of the Brady
94 Handgun Violence Prevention Act.

95 E. It shall be unlawful for any prohibited person pursuant to subsection A1 to knowingly and
96 intentionally alter, change, modify, or counterfeit a driver's license issued pursuant to this chapter, or of
97 another state. Any such prohibited person violating the provisions of this subsection shall be guilty of a
98 felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more
99 than ten years or by a fine not to exceed \$25,000, or both.

100 F. Upon becoming a prohibited person pursuant to subsection A1, a person's license shall be void
101 and shall be seized by the trial court. A new license shall, if desired by the prohibited person, be issued
102 by the Department with the new prohibition encoded on the magnetic strip upon such license.

103 G. All prohibited persons, pursuant to subsection A of § 18.2-311.3, shall pay additional court costs
104 upon being adjudicated as prohibited persons and shall pay additional fees to the Department when
105 obtaining a license, sufficient to cover the expenses of the criminal records checks conducted pursuant
106 to subsection A of § 18.2-311.3.

107 H. Notwithstanding the provisions of any other law, this Act shall be the sole system of identifying
108 persons prohibited from purchasing a handgun on and after July 1, 1995.

109 **2. That the provisions of this act shall become effective on July 1, 1995.**

110 **3. That the provisions of this act may result in a net increase in periods of imprisonment in state**
111 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
112 **is \$0.00**