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## HOUSE BILL NO. 1357

Offered January 25, 1994

*A BILL to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to the criminal history information records check for firearms transfers; handguns sold by nondealers; penalty.*

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Patron—Robinson

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Referred to Committee for Courts of Justice

**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; firearm safety information to be provided.

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, in addition to the information required by subdivision B 1, the identical information required to be included on the firearms transaction record required by regulations administered by the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury, except that the copies of such forms mailed or delivered to the Department of State Police shall not include any information related to the firearm purchased or transferred.

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 as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, 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 and received criminal history record information by a telephone call to the State Police. 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 and other documentation of residence, any of which must 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 (i) lease, (ii) utility or telephone bill, (iii) voter registration card, (iv) bank check, (v) passport, (vi) automobile registration, or (vii) 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 79-7; 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.

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. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the Immigration and Naturalization Service, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the Immigration and Naturalization Service.

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

2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be

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60 advised immediately of the reason for such delay and be given an estimate of the length of such delay.  
61 After such notification, the State Police shall, as soon as possible but in no event later than the end of  
62 the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee  
63 is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the  
64 requirements of subdivision B 1 of this subsection and is told by the State Police that a response will  
65 not be available by the end of the dealer's next business day may immediately complete the sale or  
66 transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

67 3. Except as required by subsection D of § 9-192, the State Police shall not maintain records longer  
68 than thirty days, except for multiple handgun transactions for which records shall be maintained for  
69 twelve months, from any dealer's request for a criminal history record information check pertaining to a  
70 buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under  
71 state or federal law. However, the log on requests made may be maintained for a period of twelve  
72 months, and such log shall consist of the name of the purchaser, the dealer identification number, the  
73 unique approval number and the transaction date.

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

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

87 *B1. Any person wishing to purchase or otherwise receive a handgun from a person who is not a*  
88 *dealer, shall submit to a criminal history records check and otherwise comply with all requirements set*  
89 *forth in this section. The parties to any such sale or transfer of a handgun shall only consummate the*  
90 *transaction at the place of business of a dealer in firearms who shall assist with the transaction in the*  
91 *same manner as if the dealer were the seller and in accordance with the provisions of this section. A*  
92 *violation of this subsection by an individual purchaser or seller shall be punishable as a Class 6 felony.*  
93 *Any dealer who unreasonably refuses to assist with the transaction as required by this subsection, shall*  
94 *be guilty of a Class 1 misdemeanor.*

95 *A dealer shall receive a fee of twenty dollars from the purchaser in any such transaction.*

96 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, other than a rifle or a  
97 shotgun, to any person who is not a resident of Virginia unless he has first obtained from the  
98 Department of State Police a report indicating that a search of all available criminal history record  
99 information has not disclosed that the person is prohibited from possessing or transporting a firearm  
100 under state or federal law. The dealer shall obtain the required report by mailing or delivering the  
101 written consent form required under subsection A to the State Police within twenty-four hours of its  
102 execution. If the dealer has complied with the provisions of this subsection and has not received the  
103 required report from the State Police within ten days from the date the written consent form was mailed  
104 to the Department of State Police, he shall not be deemed in violation of this section for thereafter  
105 completing the sale or transfer.

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

109 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may  
110 exercise his right of access to and review and correction of criminal history record information under  
111 § 9-192 or institute a civil action as provided in § 9-194, provided any such action is initiated within  
112 thirty days of such denial.

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

117 G. For purposes of this section:

118 "Antique firearm" means any firearm, including those with a matchlock, flintlock, percussion cap, or  
119 similar type of ignition system, manufactured in or before 1898 and any replica of such a firearm if  
120 such replica (i) is not designed or redesigned for using rimfire or conventional center-fire fixed  
121 ammunition or (ii) uses rimfire or conventional center-fire fixed ammunition which is no longer

manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels a projectile by action of an explosion and is equipped at the time of the offense with a magazine which will hold more than twenty rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

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

"Firearm" means any handgun, shotgun, or rifle which expels a projectile by action of an explosion.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire a projectile by means of an explosion from one or more barrels when held in one hand.

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

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

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, (iii) antique firearms or (iv) transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. All licensed firearms dealers shall collect a fee of two dollars for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of five dollars shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C shall be guilty of a Class 5 felony.

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

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to an ineligible person, shall be guilty of a Class 5 felony.

N. The Department of Education, in conjunction with the Department of Game and Inland Fisheries, shall develop a standard informational form and posted notice to be furnished to each licensed firearms dealer in the Commonwealth at no cost to the dealer. The form and notice shall provide basic information of the laws governing the purchase, possession and use of firearms by juveniles and adults.

Copies of the form shall be made available by the dealer whenever a firearm is purchased.

Every firearms dealer shall conspicuously post the written notice which shall be at least eight and one-half inches by eleven inches in size and printed in boldface type of a minimum size of ten points. A licensed firearms dealer shall not be liable for damages for injuries resulting from the discharge of a firearm purchased from the dealer if, at the time of the purchase, the dealer failed to provide the form or failed to post the written notice.

O. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any thirty-day period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a thirty-day period may be made upon completion of an enhanced background check, as described herein, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall forthwith issue to the applicant a nontransferable certificate which shall be valid for seven days from the

183 date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the  
184 consummation of such sale and shall be kept on file at the dealer's place of business for inspection as  
185 provided in subsection C of § 54.1-4201 for a period of not less than two years. Upon request of any  
186 local law-enforcement agency, and pursuant to its regulations, the Department of State Police may  
187 certify such local law-enforcement agency to serve as its agent to receive applications and, upon  
188 authorization by the Department of State Police, issue certificates forthwith pursuant to this subsection.  
189 Applications and certificates issued under this subsection shall be maintained as records as provided in  
190 subdivision 3 of subsection B. The Department of State Police shall make available to local  
191 law-enforcement agencies all records concerning certificates issued pursuant to this subsection and all  
192 records provided for in subdivision 3 of subsection B.

193 2. The provisions of this subsection shall not apply to:

194 a. A law-enforcement agency;

195 b. An agency duly authorized to perform law-enforcement duties;

196 c. State and local correctional facilities;

197 d. A private security company licensed to do business within the Commonwealth;

198 e. The purchase of antique firearms as herein defined; or

199 f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun  
200 be replaced immediately. Such person may purchase another handgun, even if the person has previously  
201 purchased a handgun within a thirty-day period, provided (i) the person provides the firearms dealer  
202 with a copy of the official police report or a summary thereof, on forms provided by the Department of  
203 State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the  
204 official police report or summary thereof contains the name and address of the handgun owner, the  
205 description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date  
206 the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as  
207 reflected on the official police report or summary thereof occurred within thirty days of the person's  
208 attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or  
209 summary thereof to the original copy of the Virginia firearms transaction report completed for the  
210 transaction and retain it for the period prescribed by the Department of State Police.

211 3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a  
212 handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange  
213 or replacement within the thirty-day period immediately preceding the date of exchange or replacement.

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