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HOUSE BILL NO. 968

Offered January 22, 1996

A BILL to amend and reenact §§ 18.2-308.2:2 and 54.1-4200 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 52-8.4:2, 54.1-4200.1, 54.1-4200.2, and 54.1-4200.3, relating to registration of dealers in firearms; penalty.

Patron—Robinson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.2:2 and 54.1-4200 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 52-8.4:2, 54.1-4200.1, 54.1-4200.2, and 54.1-4200.3 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 or by the United States Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States 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 (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. Where the photo-identification was issued by the Department of Defense, permanent orders may be used as documentation of residence. Additionally, 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 thirty 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 thirty 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. 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)

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

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

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

95 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
96 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
97 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof
98 of citizenship or status as a person lawfully admitted for permanent residence and 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 *B1. Any person wishing to purchase or otherwise receive a handgun from a person who is not a*
102 *dealer, shall submit to a criminal history records check and otherwise comply with all requirements set*
103 *forth in this section. The parties to any such sale or transfer of a handgun shall only consummate the*
104 *transaction at the place of business of a dealer in firearms who shall assist with the transaction in the*
105 *same manner as if the dealer were the seller and in accordance with the provisions of this section. A*
106 *violation of this subsection by an individual purchaser or seller shall be punishable as a Class 6 felony.*
107 *Any dealer who unreasonably refuses to assist with the transaction as required by this subsection, shall*
108 *be guilty of a Class 1 misdemeanor.*

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

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

120 D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting
121 or receiving a firearm from a dealer by obtaining a criminal history record information check through

the dealer as provided in subsection C.

E. If any buyer or transferee 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 § 9-192 or institute a civil action as provided in § 9-194, provided any such action is initiated within thirty 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:

"Antique firearm" means any firearm, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a firearm if such replica (i) is not designed or redesigned for using rimfire or conventional center-fire fixed 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 he knows or has reason to believe 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 another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years, which shall not be suspended in whole or in part nor shall the person be eligible for parole during that period.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years, which shall not be suspended in whole or in part nor shall the person be eligible for parole during that period.

O. 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.

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

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

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

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

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

206 Upon being satisfied that these requirements have been met, the Department of State Police shall
207 forthwith issue to the applicant a nontransferable certificate which shall be valid for seven days from the
208 date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the
209 consummation of such sale and shall be kept on file at the dealer's place of business for inspection as
210 provided in § 54.1-4201 for a period of not less than two years. Upon request of any local
211 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such
212 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
213 Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and
214 certificates issued under this subsection shall be maintained as records as provided in subdivision 3 of
215 subsection B. The Department of State Police shall make available to local law-enforcement agencies all
216 records concerning certificates issued pursuant to this subsection and all records provided for in
217 subdivision 3 of subsection B.

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

219 a. A law-enforcement agency;

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

221 c. State and local correctional facilities;

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

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

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

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

239 § 52-8.4:2. *Regulations of dealers in firearms.*

240 The Superintendent of State Police shall promulgate regulations for the registration of dealers in
241 firearms in accordance with §§ 54.1-4200.1 and 54.1-4200.2. The regulations shall set forth the form
242 and content of the registration application and all other information necessary to carry out the
243 provisions of §§ 54.1-4200.1 and 54.1-4200.2.

244 § 54.1-4200. Definitions.

For the purpose of this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police.

"Dealer in firearms" means (i) any person, firm, partnership, or corporation engaged in the business of selling, trading or transferring firearms, *firearms parts, or firearms ammunition*, at wholesale or retail; (ii) any person, firm, partnership, or corporation engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or (iii) any person, firm, partnership, or corporation that is a pawnbroker.

"Engaged in business" means as applied to a dealer in firearms 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, *unless such person sells, trades, or transfers, or attempts to sell, trade, or transfer more than five firearms per calendar year.*

"Firearms show" means any gathering or exhibition, open to the public, not occurring on the permanent premises of a dealer in firearms, conducted principally for the purposes of exchanging, selling or trading firearms as defined in § 18.2-308.2:2.

§ 54.1-4200.1. *Registration required.*

No dealer in firearms shall engage in the business of purchasing, selling or reselling any firearms until such dealer is registered with the Department of State Police in accordance with this chapter, notwithstanding any license issued by the Bureau of Alcohol, Tobacco, and Firearms.

§ 54.1-4200.2. *Application for registration; fees.*

A. *The application for registration of a dealer in firearms shall be filed as prescribed by the agency's regulations.*

B. *Such dealer shall immediately report any material changes in the information contained in an application for registration.*

C. *Each application shall be accompanied by a fee of \$500. All fees shall be remitted by the agency to the Treasurer of the Commonwealth and shall be placed to the credit of a special fund of the Department of State Police, which is hereby established, and shall be expended solely for compliance with this chapter.*

§ 54.1-4200.3. *Revocation of registration.*

A registration may be revoked after notice and hearing in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) upon a written finding of fact that a dealer in firearms has:

1. *Subsequent to the filing of the application for registration, been convicted in any court for a crime involving fraud, deception, false pretenses, misrepresentation or dishonest dealing in firearm transactions;*

2. *Failed to perform faithfully any stipulation or agreement made with the agency as an inducement to grant any registration;*

3. *Made intentional misrepresentations or concealed material facts in an application for registration;*

4. *Had his license from the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury suspended or revoked;*

5. *Failed to carry liability insurance; or*

6. *Failed to operate a "store front" enterprise and maintain normal business hours.*

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$125,000.