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HOUSE BILL NO. 2486

Offered January 20, 1997

A BILL to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to criminal history record information check; 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 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 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, *or* (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 corroborating~~ 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) 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

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60 for that inquiry.

61 2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by
62 return call without delay. If the criminal history record information check indicates the prospective
63 purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed
64 to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse
65 Services, the State Police shall have until the end of the dealer's next business day to advise the dealer
66 if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by
67 state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has
68 fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or
69 transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case
70 of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be
71 advised immediately of the reason for such delay and be given an estimate of the length of such delay.
72 *appears to be ineligible to purchase or receive a firearm under state or federal law, the State Police*
73 *shall notify the dealer of the need to delay the purchase or transfer pending further investigation.* After
74 such notification, the State Police shall, as soon as possible but in no event later than the end of the
75 dealer's next business day, inform the requesting dealer if its records indicate *that the buyer purchaser*
76 or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer
77 who fulfills the requirements of subdivision B 1 of this subsection and is *told by fails to receive a*
78 *response from the State Police that a response will not be available by the end of the dealer's next*
79 *business day for ten days after notification of delay* may immediately complete the sale or transfer and
80 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 6. *Any person wishing to purchase or otherwise acquire ownership of a handgun from a person who*
102 *is not a dealer as herein defined shall submit to a criminal history records check and otherwise comply*
103 *with all requirements set forth in this section. Such sale or transfer of a handgun shall be consummated*
104 *only at the local police station or sheriff's office or at the place of business of a dealer in firearms as*
105 *herein defined, who shall assist with the transaction in the same manner as if he were the seller and in*
106 *accordance with the provisions of this section. A violation of this subsection by an individual purchaser*
107 *or seller shall be punishable as a Class 1 misdemeanor. Any dealer who unreasonably refuses to assist*
108 *with the transaction as required by this subsection shall be guilty of a Class 1 misdemeanor.*

109 *The dealer assisting in such a transaction shall receive a fee of twenty dollars from the person*
110 *acquiring the handgun in any such transaction.*

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

121 D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting

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~~ *ten* rounds of ammunition or *is* designed by the manufacturer to accommodate a silencer or *is* 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 *since being accorded*.

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

183 whether the driver's license is an original, duplicate or renewed driver's license.

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

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

189 Every firearms dealer shall conspicuously post the written notice which shall be at least eight and
190 one-half inches by eleven inches in size and printed in boldface type of a minimum size of ten points. A
191 licensed firearms dealer shall not be liable for damages for injuries resulting from the discharge of a
192 firearm purchased from the dealer if, at the time of the purchase, the dealer failed to provide the form or
193 failed to post the written notice. *Failure to provide the aforesaid form or to post the written notice at*
194 *the time of the purchase of a firearm shall be a Class 3 misdemeanor, but shall not, of itself, render the*
195 *dealer liable for damages for injuries resulting from the discharge of the firearm purchased at that time.*

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

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

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

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

222 a. A law-enforcement agency;

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

224 c. State and local correctional facilities;

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

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

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

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