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HOUSE BILL NO. 2029

Offered January 14, 2015

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A BILL to amend and reenact §§ 18.2-308.03, 18.2-308.04, 18.2-308.013, and 18.2-308.2:2 of the Code of Virginia, relating to concealed handgun permits; fees; background check; exemption for permit holders.

Patrons—Wilt, Lingamfelter, Cole, Ingram, Landes and Poindexter

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.03, 18.2-308.04, 18.2-308.013, and 18.2-308.2:2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.03. Fees for concealed handgun permits.

A. The clerk shall charge a fee of ~~\$10~~ \$20 for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. ~~The local law-enforcement agency conducting the background investigation may charge a~~ *There shall be an additional fee not to exceed \$35 \$30 to cover the cost of conducting an any investigation of the applicant's background by the local law-enforcement agency and of obtaining the applicant's criminal history record information by the State Police pursuant to this article. The \$35 fee shall include any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident applicant. The State Police may charge a shall receive \$10 of such additional fee not to exceed \$5 to cover its costs associated with processing the application and for conducting periodic criminal history records check pursuant to § 18.2-308.013, and the local law-enforcement agency may charge an amount not to exceed \$20 of such additional fee.* The total amount assessed for processing an application for a permit shall not exceed \$50, with such fees to be paid in one sum to the person who receives the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is received by the court as a complete application. *In addition, a local law-enforcement agency shall collect any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information for any nonresident applicant, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident applicant.*

B. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the Alcoholic Beverage Control Board or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15 years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi) as a designated boarding team member or boarding officer of the United States Coast Guard, after completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in § 53.1-1 after completing 15 years of service.

§ 18.2-308.04. Processing of the application and issuance of a concealed handgun permit.

A. The clerk of court shall enter on the application the date on which the application and all other information required to be submitted by the applicant is received.

B. Upon receipt of the completed application, the court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange. *In preparing the report from the Central Criminal Records Exchange, the State Police shall initiate a search of the National Instant Criminal Background Check System for purposes of obtaining criminal history record information regarding the applicant.*

C. The court shall issue the permit via United States mail and notify the State Police of the issuance

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59 of the permit within 45 days of receipt of the completed application unless it is determined that the
60 applicant is disqualified. Any order denying issuance of the permit shall be in accordance with
61 § 18.2-308.08. If the applicant is later found by the court to be disqualified after a five-year permit has
62 been issued, the permit shall be revoked.

63 D. A court may authorize the clerk to issue concealed handgun permits, without judicial review, to
64 applicants who have submitted complete applications, for whom the criminal history records check does
65 not indicate a disqualification and, after consulting with either the sheriff or police department of the
66 county or city, about which application there are no outstanding questions or issues. The court clerk
67 shall be immune from suit arising from any acts or omissions relating to the issuance of concealed
68 handgun permits without judicial review pursuant to this section unless the clerk was grossly negligent
69 or engaged in willful misconduct. This section shall not be construed to limit, withdraw, or overturn any
70 defense or immunity already existing in statutory or common law, or to affect any cause of action
71 accruing prior to July 1, 2010.

72 E. The permit to carry a concealed handgun shall specify only the following information: name,
73 address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee;
74 the signature of the judge issuing the permit, of the clerk of court who has been authorized to sign such
75 permits by the issuing judge, or of the clerk of court who has been authorized to issue such permits
76 pursuant to subsection D; the date of issuance; and the expiration date. The permit to carry a concealed
77 handgun shall be no larger than two inches wide by three and one-fourth inches long and shall be of a
78 uniform style prescribed by the Department of State Police.

79 **§ 18.2-308.013. Suspension or revocation of permit; periodic background check.**

80 A. Any person convicted of an offense that would disqualify that person from obtaining a permit
81 under § 18.2-308.09 or who violates subsection C of § 18.2-308.02 shall forfeit his permit for a
82 concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records
83 Exchange of a record of the arrest, conviction, or occurrence of any other event that would disqualify a
84 person from obtaining a concealed handgun permit under § 18.2-308.09, the Central Criminal Records
85 Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction, or
86 other event. Upon receipt of such notice of a conviction, the court shall revoke the permit of a person
87 disqualified pursuant to this subsection, and shall promptly notify the State Police and the person whose
88 permit was revoked of the revocation.

89 B. An individual who has a felony charge pending or a charge pending for an offense listed in
90 subdivision 14 or 15 of § 18.2-308.09, holding a permit for a concealed handgun, may have the permit
91 suspended by the court before which such charge is pending or by the court that issued the permit.

92 C. The court shall revoke the permit of any individual for whom it would be unlawful to purchase,
93 possess, or transport a firearm under § 18.2-308.1:2 or 18.2-308.1:3, and shall promptly notify the State
94 Police and the person whose permit was revoked of the revocation.

95 D. *In addition to the provisions of subsection A, the State Police shall conduct a national criminal*
96 *history records check, including searching the National Instant Criminal Background Check System, on*
97 *all valid concealed handgun permits issued in accordance with this article on a periodic basis, but no*
98 *less than annually, throughout the lifetime of the permit. Upon receipt by the State Police of a record of*
99 *the arrest, conviction, or occurrence of any other event that would be the basis of a revocation under*
100 *subsection A, the State Police shall notify the court having issued the permit of such disqualifying*
101 *arrest, conviction, or other event. Upon receipt of such notice, the court shall revoke the permit of a*
102 *person disqualified pursuant to this subsection and shall promptly notify the State Police and the person*
103 *whose permit was revoked of the revocation.*

104 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**
105 **firearms.**

106 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a
107 form to be provided by the Department of State Police, to have the dealer obtain criminal history record
108 information. Such form shall include only the written consent; the name, birth date, gender, race,
109 citizenship, and social security number and/or any other identification number; the number of firearms
110 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the
111 following questions: (i) has the applicant been convicted of a felony offense or found guilty or
112 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent
113 act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order
114 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,
115 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant
116 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a
117 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been
118 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and
119 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any
120 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, 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 (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) 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 2001-5; 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 assigning the purchaser to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of residence. 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. 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. 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 United States Citizenship and Immigration Services, 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 United States Citizenship and Immigration Services.

Upon receipt of the request for a criminal history record information check, the State Police shall (1) 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, (2) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (3) 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 request, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental 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 1 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 advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from

182 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
183 subdivision 1 and is told by the State Police that a response will not be available by the end of the
184 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
185 violation of this section with respect to such sale or transfer.

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

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

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

206 6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include
207 December 25.

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

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

222 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
223 exercise his right of access to and review and correction of criminal history record information under
224 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
225 30 days of such denial.

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

230 G. For purposes of this section:

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

233 "Antique firearm" means:

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

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

240 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use
241 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this
242 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame
243 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon

that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

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

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

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

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

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

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

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

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

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material 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, or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23; or (iii) antique firearms, curios or relics.

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

J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 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 or on such firearm transaction records as may be required by federal law, 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.

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

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

305 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
306 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
307 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
308 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
309 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
310 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
311 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
312 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

320 Q. *The provisions of this section shall not apply to a person who presents the dealer with (i) a valid*
321 *concealed handgun permit issued pursuant to Article 6.1 (§ 18.2-307.1 et seq.) and (ii) one*
322 *photo-identification form issued by a governmental agency of the Commonwealth or by the United States*
323 *Department of Defense. Nothing in this subsection shall operate to limit the application of federal law*
324 *governing the transfer of a firearm by a dealer.*

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