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SENATE BILL NO. 1023
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Governor
 on March 24, 2017)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact §§ 18.2-308.014 and 18.2-308.2:2 of the Code of Virginia, relating to concealed handgun permit reciprocity; purchase of handguns; limitation of handgun purchases; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.014 and 18.2-308.2:2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.014. Reciprocity.

A. A valid concealed handgun or concealed weapon permit or license issued by another state shall authorize the holder of such permit or license who is at least 21 years of age to carry a concealed handgun in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day if available; (ii) the permit or license holder carries a photo identification issued by a government agency of any state or by the U.S. Department of Defense or U.S. Department of State and displays the permit or license and such identification upon demand by a law-enforcement officer; and (iii) the permit or license holder has not previously had a Virginia concealed handgun permit revoked. The Superintendent of State Police shall enter into agreements for reciprocal recognition with such other states that require an agreement to be in place before such state will recognize a Virginia concealed handgun permit as valid in such state. The Attorney General shall provide the Superintendent with any legal assistance or advice necessary for the Superintendent to perform his duties set forth in this subsection. If the Superintendent determines that another state requires that an agreement for reciprocal recognition be executed by the Attorney General or otherwise formally approved by the Attorney General as a condition of such other state's entering into an agreement for reciprocal recognition, the Attorney General shall (a) execute such agreement or otherwise formally approve such agreement and (b) return to the Superintendent the executed agreement or, in a form deemed acceptable by such other state, documentation of his formal approval of such agreement within 30 days after the Superintendent notifies the Attorney General, in writing, that he is required to execute or otherwise formally approve such agreement.

B. For the purposes of participation in concealed handgun reciprocity agreements with other jurisdictions, the official government-issued law-enforcement identification card issued to an active-duty law-enforcement officer in the Commonwealth who is exempt from obtaining a concealed handgun permit under this article shall be deemed a concealed handgun permit.

C. The Department of State Police shall maintain a list of states that recognize a Virginia concealed handgun permit as valid in the state and shall publish such list on the official Department of State Police website. Nothing in this subsection shall be construed to create a private cause of action.

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

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 the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any 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

60 person who is a resident of Virginia until he has (i) obtained written consent and the other information
61 on the consent form specified in subsection A, and provided the Department of State Police with the
62 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
63 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested
64 criminal history record information by a telephone call to or other communication authorized by the
65 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
66 personal identification and residence in Virginia for purposes of this section, a dealer must require any
67 prospective purchaser to present one photo-identification form issued by a governmental agency of the
68 Commonwealth or by the United States Department of Defense that demonstrates that the prospective
69 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm
70 purchase, residency of a member of the armed forces shall include both the state in which the member's
71 permanent duty post is located and any nearby state in which the member resides and from which he
72 commutes to the permanent duty post. A member of the armed forces whose photo identification issued
73 by the Department of Defense does not have a Virginia address may establish his Virginia residency
74 with such photo identification and either permanent orders assigning the purchaser to a duty post,
75 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo
76 identification presented to a dealer by the prospective purchaser is a driver's license or other photo
77 identification issued by the Department of Motor Vehicles, and such identification form contains a date
78 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by
79 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until
80 30 days after the date of issue of an original or duplicate driver's license unless the prospective
81 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
82 that the original date of issue of the driver's license was more than 30 days prior to the attempted
83 purchase.

84 In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any
85 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent
86 residence.

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

92 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
93 by return call without delay. If the criminal history record information check indicates the prospective
94 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
95 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,
96 the State Police shall have until the end of the dealer's next business day to advise the dealer if its
97 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state
98 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
99 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
100 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
101 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
102 the reason for such delay and be given an estimate of the length of such delay. After such notification,
103 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
104 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
105 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
106 subdivision 1 and is told by the State Police that a response will not be available by the end of the
107 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
108 violation of this section with respect to such sale or transfer.

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

116 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
117 deliver the written consent form required by subsection A to the Department of State Police. The State
118 Police shall immediately initiate a search of all available criminal history record information to
119 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
120 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
121 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in

the jurisdiction where the sale or transfer occurred and the dealer without delay.

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

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

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

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia 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 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 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:

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

"Antique firearm" means:

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

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses 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;

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

183 Proof of qualification of a particular firearm under this category may be established by evidence of
184 present value and evidence that like firearms are not available except as collectors' items, or that the
185 value of like firearms available in ordinary commercial channels is substantially less.

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

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

189 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to
190 fire single or multiple projectiles by means of an explosion of a combustible material from one or more
191 barrels when held in one hand.

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

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

198 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
199 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
200 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
201 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of
202 Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

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

208 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal
209 history record information check is required pursuant to this section, except that a fee of \$5 shall be
210 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
211 Department of State Police by the last day of the month following the sale for deposit in a special fund
212 for use by the State Police to offset the cost of conducting criminal history record information checks
213 under the provisions of this section.

214 K. Any person willfully and intentionally making a materially false statement on the consent form
215 required in subsection B or C or on such firearm transaction records as may be required by federal law,
216 shall be guilty of a Class 5 felony.

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

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

224 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
225 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
226 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
227 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
228 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
229 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
230 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
231 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
232 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
233 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
234 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

242 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
243 inventory to any other person, a dealer may require such other person to consent to have the dealer
244 obtain criminal history record information to determine if such other person is prohibited from

possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.

R. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. A violation of this subsection is punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described in this subsection, 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 federal Bureau of Alcohol, Tobacco, Firearms and Explosives. The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 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 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates immediately pursuant to this subsection. Applications and certificates issued under this subsection shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subsection and all records provided for in subdivision B 3.

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

- a. A law-enforcement agency;*
- b. An agency duly authorized to perform law-enforcement duties;*
- c. A state or local correctional facility;*
- d. A private security company licensed to do business within the Commonwealth;*
- e. The purchase of antique firearms;*
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;*
- g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;*
- h. A person who holds a valid Virginia permit to carry a concealed handgun;*
- i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or*
- j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.*

For the purposes of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange

306 *or replacement within the 30-day period immediately preceding the date of exchange or replacement.*

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