

17104448D

## SENATE BILL NO. 1049

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 18, 2017)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact §§ 18.2-308.06 and 18.2-308.2:2 of the Code of Virginia, relating to firearms; nonresident concealed handgun permits and criminal history record checks.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-308.06 and 18.2-308.2:2 of the Code of Virginia are amended and reenacted as follows:**

**§ 18.2-308.06. Nonresident concealed handgun permits.**

A. Nonresidents of the Commonwealth 21 years of age or older may apply in writing to the Virginia Department of State Police for a five-year permit to carry a concealed handgun. Every applicant for a nonresident concealed handgun permit shall submit ~~two photographs~~ *a photograph* of a type and kind specified by the Department of State Police for inclusion on the permit and shall submit fingerprints on a card provided by the Department of State Police for the purpose of obtaining the applicant's state or national criminal history record. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting by his local or state law-enforcement agency and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the U.S. Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. The application shall be made under oath before a notary or other person qualified to take oaths on a form provided by the Department of State Police, requiring only that information necessary to determine eligibility for the permit. If the permittee is later found by the Department of State Police to be disqualified, the permit shall be revoked and the person shall return the permit after being so notified by the Department of State Police. The permit requirement and restriction provisions of subsection C of § 18.2-308.02 and § 18.2-308.09 shall apply, mutatis mutandis, to the provisions of this subsection.

B. The applicant shall demonstrate competence with a handgun by one of the following:

1. Completing a hunter education or hunter safety course approved by the Virginia Department of Game and Inland Fisheries or a similar agency of another state;
2. Completing any National Rifle Association firearms safety or training course;
3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services or a similar agency of another state;
4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition approved by the Department of State Police or current military service or proof of an honorable discharge from any branch of the armed services;
6. Obtaining or previously having held a license to carry a firearm in the Commonwealth or a locality thereof, unless such license has been revoked for cause;
7. Completing any firearms training or safety course or class, including an electronic, video, or on-line course, conducted by a state-certified or National Rifle Association-certified firearms instructor;
8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or
9. Completing any other firearms training that the Virginia Department of State Police deems adequate.

A photocopy of a certificate of completion of any such course or class; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall satisfy the requirement for demonstration of competence with a handgun.

C. The Department of State Police may charge a fee not to exceed \$100 to cover the cost of the background check and issuance of the permit. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the nonresident concealed handgun permit program.

D. The permit to carry a concealed handgun shall contain only the following information: name,

60 address, date of birth, gender, height, weight, color of hair, color of eyes, and photograph of the  
61 permittee; the signature of the Superintendent of the Virginia Department of State Police or his designee;  
62 the date of issuance; and the expiration date.

63 E. The Superintendent of the State Police shall promulgate regulations, pursuant to the Administrative  
64 Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for obtaining a  
65 nonresident concealed handgun permit.

66 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**  
67 **firearms.**

68 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a  
69 form to be provided by the Department of State Police, to have the dealer obtain criminal history record  
70 information. Such form shall include only the written consent; the name, birth date, gender, race,  
71 citizenship, and social security number and/or any other identification number; the number of firearms  
72 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the  
73 following questions: (i) has the applicant been convicted of a felony offense or found guilty or  
74 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent  
75 act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order  
76 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,  
77 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant  
78 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a  
79 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction; been  
80 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and  
81 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any  
82 other jurisdiction; ~~or~~; been involuntarily admitted to an inpatient facility or involuntarily ordered to  
83 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3  
84 or any substantially similar law of any other jurisdiction; *or been the subject of a temporary detention*  
85 *order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805*  
86 *and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of*  
87 *any other jurisdiction.*

88 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
89 person who is a resident of Virginia until he has (i) obtained written consent and the other information  
90 on the consent form specified in subsection A, and provided the Department of State Police with the  
91 name, birth date, gender, race, citizenship, and social security and/or any other identification number and  
92 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested  
93 criminal history record information by a telephone call to or other communication authorized by the  
94 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish  
95 personal identification and residence in Virginia for purposes of this section, a dealer must require any  
96 prospective purchaser to present one photo-identification form issued by a governmental agency of the  
97 Commonwealth or by the United States Department of Defense that demonstrates that the prospective  
98 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm  
99 purchase, residency of a member of the armed forces shall include both the state in which the member's  
100 permanent duty post is located and any nearby state in which the member resides and from which he  
101 commutes to the permanent duty post. A member of the armed forces whose photo identification issued  
102 by the Department of Defense does not have a Virginia address may establish his Virginia residency  
103 with such photo identification and either permanent orders assigning the purchaser to a duty post,  
104 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo  
105 identification presented to a dealer by the prospective purchaser is a driver's license or other photo  
106 identification issued by the Department of Motor Vehicles, and such identification form contains a date  
107 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by  
108 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until  
109 30 days after the date of issue of an original or duplicate driver's license unless the prospective  
110 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing  
111 that the original date of issue of the driver's license was more than 30 days prior to the attempted  
112 purchase.

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

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

121 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 *potentially* 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 *event*, 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 *inform the firearms dealer of the date the firearm may be released without an approval number pursuant to federal law*. If not so advised by the end of the dealer's next business day as to whether the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law by the date provided by State Police, 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 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

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

4. On the last day of the week following the sale or transfer of any firearm, *or the denial of the sale or transfer of any firearm*, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from 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" *The date provided by the State Police pursuant to subdivision 2* shall not include *be* 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

183 disseminate criminal history record information except as authorized in this section shall be guilty of a  
184 Class 2 misdemeanor.

185 G. For purposes of this section:

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

188 "Antique firearm" means:

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

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

195 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use  
196 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this  
197 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame  
198 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon  
199 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any  
200 combination thereof; or

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

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

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

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

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

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

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

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

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

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

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

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

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

241 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal  
242 history record information check is required pursuant to this section, except that a fee of \$5 shall be  
243 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the  
244 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 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 4 felony and sentenced to a mandatory minimum term of imprisonment of one year. 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. The prohibitions of this subsection shall not apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

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

P. 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.

Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his inventory to any other person, a dealer may require such other person to consent to have the dealer 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.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**