

18104672D

SENATE BILL NO. 412

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 18.2-308.2:2 and 54.1-4201.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.2:5, relating to criminal history record information checks; penalty.

Patrons—Lucas and Wexton

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.2:2 and 54.1-4201.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.2:5 as follows:

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

A. All firearm sales or transfers, in whole or part in the Commonwealth, including a sale or transfer where either the purchaser or seller or transferee or transferor is in the Commonwealth, shall be subject to a criminal history record information check unless specifically exempted by state or federal law. 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, or ever been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805.

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 that demonstrates that the prospective purchaser resides in Virginia. 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. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. 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

INTRODUCED

SB412

59 30 days after the date of issue of an original or duplicate driver's license unless the prospective
60 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
61 that the original date of issue of the driver's license was more than 30 days prior to the attempted
62 purchase.

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

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

71 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
72 by return call without delay. If the criminal history record information check indicates the prospective
73 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
74 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,
75 the State Police shall have until the end of the dealer's next business day to advise the dealer if its
76 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state
77 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
78 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
79 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
80 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
81 the reason for such delay and be given an estimate of the length of such delay. After such notification,
82 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
83 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
84 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
85 subdivision 1 and is told by the State Police that a response will not be available by the end of the
86 dealer's next third business day may immediately complete the sale or transfer and shall not be deemed
87 in violation of this section with respect to such sale or transfer.

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

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

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

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

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

120 To establish personal identification and dual resident eligibility for purposes of this subsection, a

dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) 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; (ii) other current identification allowed as evidence of residency by 27 C.F.R. Part 178.124 and ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

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. D. 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. E. 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. F. 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. 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

182 privilege of residing permanently in the United States as an immigrant in accordance with the
183 immigration laws, such status not having changed.

184 ~~H. G.~~ The Department of Criminal Justice Services shall promulgate regulations to ensure the
185 identity, confidentiality and security of all records and data provided by the Department of State Police
186 pursuant to this section.

187 ~~I. H.~~ The provisions of this section shall not apply to (i) transactions between persons who are
188 licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et
189 seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the
190 Commonwealth or any local government, or any campus police officer appointed under Article 3
191 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

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

197 ~~H. II.~~ All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a
198 criminal history record information check is required pursuant to this section, except that a fee of \$5
199 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted
200 to the Department of State Police by the last day of the month following the sale for deposit in a special
201 fund for use by the State Police to offset the cost of conducting criminal history record information
202 checks under the provisions of this section.

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

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

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

213 ~~M. L.~~ Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
214 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
215 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
216 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
217 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
218 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
219 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
220 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
221 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
222 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
223 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

231 ~~Q. P.~~ Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
232 inventory to any other person, a dealer may require such other person to consent to have the dealer
233 obtain criminal history record information to determine if such other person is prohibited from
234 possessing or transporting a firearm by state or federal law. The Department of State Police shall
235 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to
236 be made by the Department of State Police, and the processes established for making such
237 determinations shall conform to the provisions of this section.

238 **§ 18.2-308.2:5. Criminal history record information check required to transfer firearm; penalty.**

239 *A. No person shall sell, rent, trade, or transfer a firearm unless he has obtained verification from a*
240 *licensed dealer in firearms that information on the prospective purchaser or transferee has been*
241 *submitted for a criminal history record information check as set out in § 18.2-308.2:2 and that a*
242 *determination has been received from the Department of State Police that the prospective purchaser or*
243 *transferee is not prohibited under state or federal law from possessing a firearm. The Department of*

State Police shall provide a means by which transferors may obtain from designated licensed dealers the approval or denial of firearm transfer requests, based on criminal history record information checks. The processes established shall conform to the provisions of § 18.2-308.2:2, and the definitions and provisions of § 18.2-308.2:2 regarding criminal history record information checks shall apply to this section *mutatis mutandis*. The designated dealer shall collect and disseminate the fees prescribed in § 18.2-308.2:2 as required by that section. The dealer may charge and retain an additional fee not to exceed \$15 for obtaining a criminal history record information check on behalf of a transferor. Any person who willfully and intentionally sells, rents, trades, or transfers a firearm to another person without obtaining verification in accordance with this section is guilty of a Class 6 felony.

B. Notwithstanding the provisions of subsection A and unless otherwise prohibited by state or federal law, a person may transfer a firearm to another person if:

1. The transfer is a bona fide gift made by or to a member of the transferor's immediate family as defined in § 6.2-1300;

2. The transfer occurs by operation of law;

3. The transferor is an executor or administrator of an estate or is a trustee of a testamentary trust and the firearm transferred is property of such estate or trust; or

4. The transfer is temporary and (i) occurs within the continuous presence of the owner of the firearm or (ii) is necessary to prevent imminent death or serious bodily injury.

§ 54.1-4201.2. Firearm transactions at a firearms show; background checks.

A. The Department of State Police shall be available at every firearms show held in the Commonwealth to make determinations in accordance with the procedures set out in § 18.2-308.2:2 of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm. 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.

Unless otherwise required by state or federal law, any party involved in the transaction may decide whether or not to have such a determination made.

The Department of State Police may charge a reasonable fee for the determination.

B. The promoter, as defined in § 54.1-4201.1, shall give the Department of State Police notice of the time and location of a firearms show at least 30 days prior to the show. The promoter shall provide the Department of State Police with adequate space, at no charge, to conduct such prohibition determinations. The promoter shall ensure that a notice that such determinations are available is prominently displayed at the show.

C. No person who sells or transfers a firearm at a firearms show after receiving a determination from the Department of State Police that the purchaser or transferee is not prohibited by state or federal law from possessing a firearm shall be liable for selling or transferring a firearm to such person.

D. The provisions of § 18.2-308.2:2, including definitions, procedures, and prohibitions, shall apply, *mutatis mutandis*, 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 836 of the Acts of Assembly of 2017 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.