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HOUSE BILL NO. 1287

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact § 18.2-308.2:3 of the Code of Virginia, relating to employees of a firearms dealer.

Patron—Murphy

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.2:3 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.2:3. Criminal background check required for employees of a firearms dealer; exemptions; penalties.

A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2 firearm employee, if such employee would be prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B of § 18.2-308.1:4, or § 18.2-308.2 or 18.2-308.2:01 or is an illegal alien, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5.

B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

~~C1.~~ In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000 2020.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

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59 G. Upon receipt of the request for a criminal history record information check, the State Police shall
60 establish a unique number for that firearm ~~seller~~ *employee*. Beginning September 1, 2001 2020, the
61 firearm ~~seller's~~ *employee's* signature, firearm ~~seller's~~ *employee's* number and the dealer's identification
62 number shall be on all firearm transaction forms. The State Police shall void the ~~firearm seller's~~
63 *employee's* number when a disqualifying record is discovered. The State Police may suspend a firearm
64 ~~seller's~~ *employee's* identification number upon the arrest of the firearm ~~seller~~ *employee* for a potentially
65 disqualifying crime.

66 H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at
67 any event required to be registered as a gun show.

68 I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history
69 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
70 disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2,
71 ~~shall be~~ *is* guilty of a Class 2 misdemeanor.

72 J. Any person willfully and intentionally making a materially false statement on the personal
73 descriptive information required in this section ~~shall be~~ *is* guilty of a Class 5 felony. Any person who
74 offers for transfer any firearm in violation of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor.
75 Any dealer who willfully and knowingly employs or permits a person to act as a firearm ~~seller~~ *employee*
76 in violation of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

77 K. There is no civil liability for any ~~seller~~ *firearm employee* for the actions of any purchaser or
78 subsequent transferee of a firearm lawfully transferred pursuant to this section.

79 L. The provisions of this section requiring a ~~seller's~~ *firearm employee's* background check shall not
80 apply to a licensed dealer.

81 M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in
82 ~~subdivision subsection C 4~~ *shall be* *is* guilty of a Class 5 felony.

83 N. For purposes of this section:

84 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
85 § 921 et seq.

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

88 "*Firearm employee*" means any person employed by a person, corporation, or proprietorship licensed
89 as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. in any capacity whether full time or part time,
90 permanent or temporary, or paid or unpaid.

91 "Place of business" means any place or premises where a dealer may lawfully transfer firearms.

92 "Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent
93 of a dealer, who may lawfully transfer firearms and who actually performs the criminal background
94 check in accordance with the provisions of § 18.2-308.2:2.

95 "Transfer" means any act performed with intent to sell, rent, barter, trade, or otherwise transfer
96 ownership or permanent possession of a firearm at the place of business of a dealer.

97 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
98 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
99 **necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and**
100 **cannot be determined for periods of commitment to the custody of the Department of Juvenile**
101 **Justice.**

102 **3. Prior to August 1, 2020, the dealer shall obtain written statements or affirmations from persons**
103 **employed by a firearms dealer before July 1, 2020, who have not previously had a criminal**
104 **background check performed as required by this section, that they are not disqualified from**
105 **possessing a firearm. Within five working days of the employee's next birthday, on or after August**
106 **1, 2020, the dealer shall submit the employee's fingerprints and personal descriptive information to**
107 **the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation**
108 **(FBI) for the purpose of obtaining national criminal history record information regarding the**
109 **request. All previously established unique numbers may remain valid for that firearm employee**
110 **unless such unique number was already voided.**