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HOUSE BILL NO. 2195

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to the purchase of firearms.

Patrons—Abbitt, Byron, Hogan and Lingamfelter

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

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

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

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, in addition to the information required by subdivision B 1, the identical information required to be included on the firearms transaction record required by regulations administered by the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury, except that the copies of such forms mailed or delivered to the Department of State Police shall not include any information related to the firearm purchased or transferred. A holder of a valid concealed handgun permit obtained pursuant to § 18.2-308 shall complete the firearms transaction record required by federal regulation, but shall only be required to provide his concealed handgun permit number and written consent for the dealer to obtain criminal history record information on the form provided by the Department of State Police.

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 as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, 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 B 2 of this section 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 shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency shall be deemed to be the permanent duty post of a member of the armed forces. 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

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59 citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration  
60 Services, an unexpired U.S. passport, a United States citizen identification card, a current voter  
61 registration card, a current selective service registration card, or an immigrant visa or other  
62 documentation of status as a person lawfully admitted for permanent residence issued by the United  
63 States Citizenship and Immigration Services.

64 Upon receipt of the request for a criminal history record information check, the State Police shall (1)  
65 review its criminal history record information to determine if the buyer or transferee is prohibited from  
66 possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates  
67 that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number  
68 for that inquiry.

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

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

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

101 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by  
102 persons who are citizens of the United States or persons lawfully admitted for permanent residence but  
103 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof  
104 of citizenship or status as a person lawfully admitted for permanent residence and 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 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 resident of Virginia unless he has first obtained from the  
112 Department of State Police a report indicating that a search of all available criminal history record  
113 information has not disclosed that the person is prohibited from possessing or transporting a firearm  
114 under state or federal law. The dealer shall obtain the required report by mailing or delivering the  
115 written consent form required under subsection A to the State Police within 24 hours of its execution. If  
116 the dealer has complied with the provisions of this subsection and has not received the required report  
117 from the State Police within 10 days from the date the written consent form was mailed to the  
118 Department of State Police, he shall not be deemed in violation of this section for thereafter completing  
119 the sale or transfer.

120 D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting

121 or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check  
122 through the dealer as provided in subsection C.

123 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may  
124 exercise his right of access to and review and correction of criminal history record information under  
125 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within  
126 30 days of such denial.

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

131 G. For purposes of this section:

132 "Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

175 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed  
176 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii)  
177 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth  
178 or any local government, or (iii) antique firearms, curios or relics.

179 J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a  
180 resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another  
181 state, in which case the laws and regulations of that state and the United States governing the purchase,

182 trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS)  
183 check shall be performed prior to such purchase, trade or transfer of firearms.

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

190 K. Any person willfully and intentionally making a materially false statement on the consent form  
191 required in subsection B or C shall be guilty of a Class 5 felony.

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

194 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such  
195 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise  
196 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the  
197 Commonwealth to be resold or otherwise provided to another person who the transferor knows is  
198 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the  
199 violation of this subsection involves such a transfer of more than one firearm, the person shall be  
200 sentenced to a mandatory minimum term of imprisonment of five years.

201 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the  
202 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of  
203 a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

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

206 P. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any  
207 person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day  
208 period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

209 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an  
210 enhanced background check, as described herein, by special application to the Department of State  
211 Police listing the number and type of handguns to be purchased and transferred for lawful business or  
212 personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar  
213 purposes. Such applications shall be signed under oath by the applicant on forms provided by the  
214 Department of State Police, shall state the purpose for the purchase above the limit, and shall require  
215 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales  
216 report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State  
217 Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for  
218 the implementation of an application process for purchases of handguns above the limit.

219 Upon being satisfied that these requirements have been met, the Department of State Police shall  
220 forthwith issue to the applicant a nontransferable certificate, which shall be valid for seven days from  
221 the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to  
222 the consummation of such sale and shall be kept on file at the dealer's place of business for inspection  
223 as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local  
224 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such  
225 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the  
226 Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and  
227 certificates issued under this subsection shall be maintained as records as provided in subdivision 3 of  
228 subsection B. The Department of State Police shall make available to local law-enforcement agencies all  
229 records concerning certificates issued pursuant to this subsection and all records provided for in  
230 subdivision 3 of subsection B.

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

232 a. A law-enforcement agency;

233 b. An agency duly authorized to perform law-enforcement duties;

234 c. State and local correctional facilities;

235 d. A private security company licensed to do business within the Commonwealth;

236 e. The purchase of antique firearms as herein defined;

237 f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun  
238 be replaced immediately. Such person may purchase another handgun, even if the person has previously  
239 purchased a handgun within a 30-day period, provided (i) the person provides the firearms dealer with a  
240 copy of the official police report or a summary thereof, on forms provided by the Department of State  
241 Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the  
242 official police report or summary thereof contains the name and address of the handgun owner, the  
243 description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date

244 the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as  
245 reflected on the official police report or summary thereof occurred within 30 days of the person's  
246 attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or  
247 summary thereof to the original copy of the Virginia firearms transaction report completed for the  
248 transaction and retain it for the period prescribed by the Department of State Police;

249 g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of  
250 the same transaction, provided that no more than one transaction of this nature is completed per day;

251 h. A person who holds a valid Virginia permit to carry a concealed handgun; or

252 i. A person who purchases a handgun in a private sale. For purposes of this subdivision, a private  
253 sale means purchase from a person who makes occasional sales, exchanges or purchases of firearms for  
254 the enhancement of a personal collection of curios or relics as herein defined, or who sells all or part of  
255 such collection of curios and relics.

256 3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a  
257 handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange  
258 or replacement within the 30-day period immediately preceding the date of exchange or replacement.