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SENATE BILL NO. 848

Offered January 8, 2025

Prefiled January 2, 2025

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

Patron—Salim

Referred to Committee for Courts of Justice

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.

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, and if such firearm is an assault firearm as defined in this section, such person purchasing such assault firearm shall be 21 years of age or older. 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 a misdemeanor offense listed in § 18.2-308.1:8 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 if committed by an adult would be a felony or a misdemeanor listed in § 18.2-308.1:8; (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; (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, 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 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; and (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:6 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 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; and (iii) if such firearm is an assault firearm, verified that such person is 21 years of age or older. 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 or a special identification card without a photograph issued pursuant to § 46.2-345.2 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 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 or a special identification card without a photograph issued pursuant to § 46.2-345.2, and such identification form or card 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 or a renewed special identification card without a photograph issued pursuant

59 to § 46.2-345.2, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of
60 issue of an original or duplicate driver's license or special identification card without a photograph unless the
61 prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record
62 showing that the original date of issue of the driver's license was more than 30 days prior to the attempted
63 purchase.

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

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

72 2. The State Police shall provide its response to the requesting dealer during the dealer's request or by
73 return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the State
74 Police that a response will not be available by the end of the dealer's fifth business day may immediately
75 complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or
76 transfer.

77 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than
78 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from
79 any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is
80 not found to be prohibited from possessing and transporting a firearm under state or federal law. However,
81 the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name
82 of the purchaser, the dealer identification number, the unique approval number, and the transaction date.

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

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

95 6. For the purposes of this subsection, the phrase "dealer's fifth business day" does not include December
96 25.

97 C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the transaction
98 involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5, to any
99 person who is a dual resident of Virginia and another state pursuant to applicable federal law unless he has
100 first obtained from the Department of State Police a report indicating that a search of all available criminal
101 history record information has not disclosed that the person is prohibited from possessing or transporting a
102 firearm under state or federal law.

103 To establish personal identification and dual resident eligibility for purposes of this subsection, a dealer
104 shall require any prospective purchaser to present one photo-identification form issued by a governmental
105 agency of the prospective purchaser's state of legal residence and other documentation of dual residence
106 within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i)
107 evidence of currently paid personal property tax or real estate tax or a current (a) lease, (b) utility or telephone
108 bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or
109 fishing license; (ii) other current identification allowed as evidence of residency by 27 C.F.R. § 178.124 and
110 ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department
111 of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

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

116 E. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record
117 information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate
118 criminal history record information except as authorized in this section, shall be guilty of a Class 2
119 misdemeanor.

120 F. For purposes of this section:

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

123 "Antique firearm" means:

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

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

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

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

137 "Assault firearm" means any:

138 1. A semi-automatic center-fire rifle or pistol ~~which that~~ expels single or multiple projectiles by action of
139 an explosion of a combustible material ~~and is equipped at the time of the offense with a magazine which will~~
140 ~~hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or~~
141 ~~equipped with a folding stock with a fixed magazine capacity in excess of 10 rounds;~~

142 2. A semi-automatic center-fire rifle that expels single or multiple projectiles by action of an explosion of
143 a combustible material that has the ability to accept a detachable magazine and has one of the following
144 characteristics: (i) a folding, telescoping, or collapsible stock; (ii) a pistol grip that protrudes conspicuously
145 beneath the action of the rifle; (iii) a second handgrip or a protruding grip that can be held by the
146 non-trigger hand; (iv) a grenade launcher; (v) a flare launcher; (vi) a sound suppressor; (vii) a flash
147 suppressor; (viii) a muzzle brake; (ix) a muzzle compensator; (x) a threaded barrel capable of accepting (a) a
148 sound suppressor, (b) a flash suppressor, (c) a muzzle brake, or (d) a muzzle compensator; or (xi) any
149 characteristic of like kind as enumerated in clauses (i) through (x);

150 3. A semi-automatic center-fire pistol that expels single or multiple projectiles by action of an explosion of
151 a combustible material that has the ability to accept a detachable magazine and has one of the following
152 characteristics: (i) a folding, telescoping, or collapsible stock; (ii) a second handgrip or a protruding grip
153 that can be held by the non-trigger hand; (iii) the capacity to accept a magazine that attaches to the pistol
154 outside of the pistol grip; (iv) a shroud that is attached to, or partially or completely encircles, the barrel and
155 that permits the shooter to hold the pistol with the non-trigger hand without being burned; (v) a threaded
156 barrel capable of accepting (a) a sound suppressor, (b) a flash suppressor, (c) a barrel extender, or (d) a
157 forward handgrip; or (vi) any characteristic of like kind as enumerated in clauses (i) through (v);

158 4. A semi-automatic shotgun that expels single or multiple projectiles by action of an explosion of a
159 combustible material that has one of the following characteristics: (i) a folding, telescoping, or collapsible
160 stock; (ii) a pistol grip that protrudes conspicuously beneath the action of the shotgun; (iii) the ability to
161 accept a detachable magazine; (iv) a fixed magazine capacity in excess of seven rounds; or (v) any
162 characteristic of like kind as enumerated in clauses (i) through (iv); or

163 5. A shotgun with a magazine that will hold more than seven rounds of the shortest ammunition for which
164 it is chambered.

165 An "assault firearm" does not include any firearm that is an antique firearm, has been rendered
166 permanently inoperable, or is manually operated by bolt, pump, lever, or slide action.

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

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

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

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

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

181 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to

182 expel single or multiple projectiles by action of an explosion of a combustible material.

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

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

189 G. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,
190 confidentiality, and security of all records and data provided by the Department of State Police pursuant to
191 this section.

192 H. The provisions of this section shall not apply to (i) transactions between persons who are licensed as
193 firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases
194 by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local
195 government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title
196 23.1; or (iii) antique firearms or curios or relics.

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

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

208 K. Any person willfully and intentionally making a materially false statement on the consent form
209 required in subsection B or C or on such firearm transaction records as may be required by federal law ~~shall~~
210 ~~be~~ *is* guilty of a Class 5 felony.

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

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

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

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

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

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

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

242 R. Except as provided in subdivisions 1 and 2, it ~~shall be~~ *is* unlawful for any person who is not a licensed

243 firearms dealer to purchase more than one handgun within any 30-day period. For the purposes of this
 244 subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for a handgun
 245 purchased from such seller by the same person seeking the exchange or replacement within the 30-day period
 246 immediately preceding the date of exchange or replacement. A violation of this subsection is punishable as a
 247 Class 1 misdemeanor.

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

258 Upon being satisfied that these requirements have been met, the Department of State Police shall
 259 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the
 260 date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the
 261 consummation of such sale and shall be kept on file at the dealer's place of business for inspection as
 262 provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement
 263 agency, and pursuant to its regulations, the Department of State Police may certify such local
 264 law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
 265 Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and
 266 certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The
 267 Department of State Police shall make available to local law-enforcement agencies all records concerning
 268 certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

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

- 270 a. A law-enforcement agency;
- 271 b. An agency duly authorized to perform law-enforcement duties;
- 272 c. A state or local correctional facility;
- 273 d. A private security company licensed to do business within the Commonwealth;
- 274 e. The purchase of antique firearms;

275 f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be
 276 replaced immediately. Such person may purchase another handgun, even if the person has previously
 277 purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a
 278 copy of the official police report or a summary thereof, on forms provided by the Department of State Police,
 279 from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police
 280 report or summary thereof contains the name and address of the handgun owner, a description of the
 281 handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was
 282 reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police
 283 report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The
 284 firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the
 285 Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the
 286 Department of State Police;

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

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

290 i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale"
 291 means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the
 292 enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios
 293 and relics; or

294 j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any
 295 employee of a police department or sheriff's office that is part of or administered by the Commonwealth or
 296 any political subdivision thereof and who is responsible for the prevention and detection of crime and the
 297 enforcement of the penal, traffic, or highway laws of the Commonwealth.

298 *S. No person shall purchase an assault firearm from a dealer unless such person is 21 years of age or
 299 older.*

300 *T. No dealer shall sell, rent, trade, or transfer from his inventory an assault firearm to any person unless
 301 such person is 21 years of age or older.*

302 **2. That the provisions of this act may result in a net increase in periods of imprisonment or
 303 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**

304 appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;
305 therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal
306 Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the
307 Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for
308 periods of commitment to the custody of the Department of Juvenile Justice.