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SENATE BILL NO. 891

Offered January 8, 2025

Prefiled January 3, 2025

A BILL to amend and reenact §§ 18.2-308.2:2 and 18.2-308.2:5 of the Code of Virginia, relating to purchase of firearms; waiting period; penalty.

Patrons—Salim and Hashmi; Delegates: Henson, Martinez and Seibold

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.2:2 and 18.2-308.2:5 of the Code of Virginia are 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. 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) he has 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) he has 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) at least five days have elapsed from the time the prospective purchaser completed the consent form specified in subsection A. 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 to § 46.2-345.2, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after

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59 the date of issue of an original or duplicate driver's license or special identification card without a photograph
60 unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's
61 record showing that the original date of issue of the driver's license was more than 30 days prior to the
62 attempted 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 that
69 the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for that
70 inquiry.

71 2. The State Police shall provide its response to the requesting dealer during the dealer's request or by
72 return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the State
73 Police that a response will not be available by the end of the dealer's fifth business day may ~~immediately~~
74 complete the sale or transfer *after at least five days have elapsed from the time the prospective purchaser*
75 *completed the consent form specified in subsection A* and shall not be deemed in violation of this section with
76 respect to such sale or 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 semi-automatic center-fire rifle or pistol which expels single or multiple
138 projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with
139 a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to
140 accommodate a silencer or equipped with a folding stock.

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

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

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

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

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

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

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

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

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

166 H. The provisions of this section shall not apply to (i) transactions between persons who are licensed as
167 firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases
168 by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local
169 government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title
170 23.1; or (iii) antique firearms or curios or relics.

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

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

182 K. Any person willfully and intentionally making a materially false statement on the consent form

183 required in subsection B or C or on such firearm transaction records as may be required by federal law shall
184 be guilty of a Class 5 felony.

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

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

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

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

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

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

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

216 R. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a licensed
217 firearms dealer to purchase more than one handgun within any 30-day period. For the purposes of this
218 subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for a handgun
219 purchased from such seller by the same person seeking the exchange or replacement within the 30-day period
220 immediately preceding the date of exchange or replacement. A violation of this subsection is punishable as a
221 Class 1 misdemeanor.

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

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

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

244 a. A law-enforcement agency;

- 245 b. An agency duly authorized to perform law-enforcement duties;
 246 c. A state or local correctional facility;
 247 d. A private security company licensed to do business within the Commonwealth;
 248 e. The purchase of antique firearms;
 249 f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be
 250 replaced immediately. Such person may purchase another handgun, even if the person has previously
 251 purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a
 252 copy of the official police report or a summary thereof, on forms provided by the Department of State Police,
 253 from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police
 254 report or summary thereof contains the name and address of the handgun owner, a description of the
 255 handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was
 256 reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police
 257 report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The
 258 firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the
 259 Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the
 260 Department of State Police;
 261 g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the
 262 same transaction, provided that no more than one transaction of this nature is completed per day;
 263 h. A person who holds a valid Virginia permit to carry a concealed handgun;
 264 i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale"
 265 means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the
 266 enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios
 267 and relics; or
 268 j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any
 269 employee of a police department or sheriff's office that is part of or administered by the Commonwealth or
 270 any political subdivision thereof and who is responsible for the prevention and detection of crime and the
 271 enforcement of the penal, traffic, or highway laws of the Commonwealth.
- 272 **§ 18.2-308.2:5. Criminal history record information check required to sell firearm; penalty.**
 273 A. No person shall sell a firearm for money, goods, services or anything else of value unless (i) he has
 274 obtained verification from a licensed dealer in firearms that information on the prospective purchaser has
 275 been submitted for a criminal history record information check as set out in § 18.2-308.2:2 and that a
 276 determination has been received from the Department of State Police that the prospective purchaser is not
 277 prohibited under state or federal law from possessing a firearm or such sale is specifically exempted by state
 278 or federal law *and (ii) at least five days have elapsed from the time the prospective purchaser completed the*
 279 *written consent form provided by the Department of State Police to have a designated licensed dealer obtain*
 280 *criminal history record information.* The Department of State Police shall provide a means by which sellers
 281 may obtain from designated licensed dealers the approval or denial of firearm transfer requests, based on
 282 criminal history record information checks. The processes established shall conform to the provisions of §
 283 18.2-308.2:2, and the definitions and provisions of § 18.2-308.2:2 regarding criminal history record
 284 information checks shall apply to this section mutatis mutandis. The designated dealer shall collect and
 285 disseminate the fees prescribed in § 18.2-308.2:2 as required by that section. The dealer may charge and
 286 retain an additional fee not to exceed \$15 for obtaining a criminal history record information check on behalf
 287 of a seller.
 288 B. Notwithstanding the provisions of subsection A and unless otherwise prohibited by state or federal law,
 289 a person may sell a firearm to another person if:
 290 1. The sale of a firearm is to an authorized representative of the Commonwealth or any subdivision
 291 thereof as part of an authorized voluntary gun buy-back or give-back program;
 292 2. The sale occurs at a firearms show, as defined in § 54.1-4200, and the seller has received a
 293 determination from the Department of State Police that the purchaser is not prohibited under state or federal
 294 law from possessing a firearm in accordance with § 54.1-4201.2; or
 295 3. The sale of a firearm is conducted pursuant to § 59.1-148.3, with the exception of a sale conducted
 296 pursuant to subsection C of § 59.1-148.3.
 297 C. Any person who willfully and intentionally sells a firearm to another person without obtaining
 298 verification *or before at least five days have elapsed since the time the prospective purchaser completed the*
 299 *written consent form provided by the Department of State Police to have a designated licensed dealer obtain*
 300 *criminal history record information* in accordance with this section is guilty of a Class 1 misdemeanor.
 301 D. Any person who willfully and intentionally purchases a firearm from another person without obtaining
 302 verification *or before at least five days have elapsed since the time the prospective purchaser completed the*
 303 *written consent form provided by the Department of State Police to have a designated licensed dealer obtain*
 304 *criminal history record information* in accordance with this section is guilty of a Class 1 misdemeanor.
 305 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**

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