

HOUSE BILL NO. 2145  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Public Safety  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Delegate Zehr)

*A BILL to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to purchase of firearms; special identification without a photograph.*

**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. 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. 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) a renewed driver's license or other photo identification issued by the Department of Motor Vehicles; ~~or~~ (b) a renewed special identification card without a photograph issued pursuant to § 46.2-345.2; (c) a REAL ID credential issued pursuant to the REAL ID Act of 2005, as amended, and its implementing regulations; or (d) a driver's license and a United States military photo-identification card with documentation, including current military assignment orders or the purchaser's leave and earnings statement, showing that Virginia is the permanent duty station, 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 or special

identification card without a photograph 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.

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

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

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

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

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

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

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

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

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

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

118 misdemeanor.

119 F. For purposes of this section:

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

122 "Antique firearm" means:

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

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

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

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

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

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

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

146 2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms

147 to be curios or relics of museum interest; and

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

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

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

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

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

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

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

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

175 J. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history

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

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

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

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

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

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

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

205 other sentence.

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

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

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

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

231 Upon being satisfied that these requirements have been met, the Department of State Police shall  
232 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the  
233 date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the



consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

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

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. A state or local correctional facility;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;
- g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;
- h. A person who holds a valid Virginia permit to carry a concealed handgun;

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

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