

20100162D

HOUSE BILL NO. 355

Offered January 8, 2020

Prefiled January 1, 2020

A BILL to amend and reenact § 54.1-4201.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.2:5, relating to firearm transfers; criminal history record checks; penalty.

Patron—Kory

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-4201.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.2:5 as follows:

§ 18.2-308.2:5. Criminal history record information check required to transfer firearm; penalty.

A. No person shall sell, rent, trade, or transfer a firearm unless he has obtained verification from a dealer, as defined in § 18.2-308.2:2, that information on the prospective purchaser or transferee has been submitted for a criminal history record information check as set out in § 18.2-308.2:2 and that a determination has been received from the Department of State Police that the prospective purchaser or transferee is not prohibited under state or federal law from possessing a firearm. The Department of State Police shall provide a means by which a transferor may obtain from designated dealers the approval or denial of firearm transfer requests on the basis of criminal history record information checks. The processes established shall conform to the provisions of § 18.2-308.2:2, and the definitions and provisions of § 18.2-308.2:2 regarding criminal history record information checks shall apply to this section mutatis mutandis. The designated dealer shall collect and disseminate the fees prescribed and required in § 18.2-308.2:2. The dealer may charge and retain an additional fee not to exceed \$15 for obtaining criminal history record information checks on behalf of transferors. Any person who willfully and intentionally sells, rents, trades, or transfers a firearm to another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.

B. Notwithstanding the provisions of this section, unless otherwise prohibited by state or federal law and when the transferor has no reason to believe that the transferee is prohibited from possessing a firearm or intends to use the firearm in the commission of a crime, a person may transfer a firearm to another person without submitting information on the prospective transferee for a criminal history record information check pursuant to this section if:

1. The transfer is a bona fide gift made by or to a member of a person's immediate family, as defined in § 6.2-1300, or a personal friend;

2. The transfer occurs by operation of law;

3. The person receiving the firearm is an executor or administrator of an estate or is a trustee of a trust created by a will, and the firearm to be transferred is property of such estate or trust;

4. The transferor is an executor or administrator of an estate or is a trustee of a trust created by a will, and the firearm to be transferred is property of such estate or trust;

5. The transfer is temporary and is necessary to prevent imminent death or great bodily harm;

6. The transfer is temporary and occurs within the continuous presence of the owner of the firearm;

7. The sale or transfer of a firearm is to an authorized representative of the Commonwealth or any subdivision thereof as part of an authorized voluntary gun buyback or give-back program;

8. The transfer is of an antique firearm as defined in § 18.2-308.2:2;

9. The transfer occurs at a shooting range, shooting gallery, or any other area designed for the purpose of target shooting or for use during target practice, a firearms safety or training course or class, a shooting competition, or any similar lawful activity; or

10. The transfer occurs at a firearms show, as defined in § 54.1-4200, and the transferor has received a determination from the Department of State Police that the transferee is not prohibited under state or federal law from possessing a firearm in accordance with § 54.1-4201.2.

§ 54.1-4201.2. Firearm transactions by persons other than dealers; background checks.

A. The Department of State Police shall be available at every firearms show held in the Commonwealth to make determinations in accordance with the procedures set out in § 18.2-308.2:2 of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police.

Unless otherwise required by state or federal law, any party involved in the transaction may decide

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59 whether or not to have such a determination made.

60 The Department of State Police may charge a reasonable fee for the determination.

61 B. The promoter, as defined in § 54.1-4201.1, shall give the Department of State Police notice of the
62 time and location of a firearms show at least 30 days prior to the show. The promoter shall provide the
63 Department of State Police with adequate space, at no charge, to conduct such prohibition
64 determinations. The promoter shall ensure that a notice that such determinations are available is
65 prominently displayed at the show.

66 C. No person who sells or transfers a firearm at a firearms show after receiving a determination from
67 the Department of State Police that the purchaser or transferee is not prohibited by state or federal law
68 from possessing a firearm shall be liable for selling or transferring a firearm to such person.

69 D. The provisions of § 18.2-308.2:2, including definitions, procedures, and prohibitions, shall apply,
70 mutatis mutandis, to the provisions of this section.

71 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
72 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
73 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
74 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
75 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**
76 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**
77 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**