

HOUSE BILL NO. 1174

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety

on _____)

(Patron Prior to Substitute--Delegate Sickles)

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

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

27 purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction,
28 been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health
29 treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar
30 law of any other jurisdiction, or been the subject of a temporary detention order pursuant to § 37.2-809
31 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; and (iv) is the applicant subject
32 to an emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or
33 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-
34 308.1:6 or any substantially similar law of any other jurisdiction.

35 B. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm to any other
36 person who is a resident of Virginia until he has (i) obtained written consent and the other information on
37 the consent form specified in subsection A, and provided the Department of State Police with the name,
38 birth date, gender, race, citizenship, and social security and/or any other identification number and the
39 number of firearms by category intended to be sold, rented, traded, or transferred~~and~~; (ii) requested
40 criminal history record information by a telephone call to or other communication authorized by the State
41 Police and is authorized by subdivision 2 to complete the sale or other such transfer; and (iii) if such
42 firearm is an assault firearm, verified that such person is 21 years of age or older. To establish personal
43 identification and residence in Virginia for purposes of this section, a dealer must require any prospective
44 purchaser to present one photo-identification form issued by a governmental agency of the
45 Commonwealth or by the United States Department of Defense or a special identification card without a
46 photograph issued pursuant to § 46.2-345.2 that demonstrates that the prospective purchaser resides in
47 Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency
48 of a member of the armed forces shall include both the state in which the member's permanent duty post
49 is located and any nearby state in which the member resides and from which he commutes to the permanent
50 duty post. A member of the armed forces whose photo identification issued by the Department of Defense
51 does not have a Virginia address may establish his Virginia residency with such photo identification and
52 either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the
53 purchaser's Leave and Earnings Statement. When the identification presented to a dealer by the

54 prospective purchaser is a driver's license or other photo identification issued by the Department of Motor
55 Vehicles or a special identification card without a photograph issued pursuant to § 46.2-345.2, and such
56 identification form or card contains a date of issue, the dealer shall not, except for a renewed driver's
57 license or other photo identification issued by the Department of Motor Vehicles or a renewed special
58 identification card without a photograph issued pursuant to § 46.2-345.2, sell or otherwise transfer a
59 firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's
60 license or special identification card without a photograph unless the prospective purchaser also presents
61 a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue
62 of the driver's license was more than 30 days prior to the attempted purchase.

63 In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to
64 any 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
67 (a) 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
69 that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for
70 that inquiry.

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

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

81 log shall consist of the name of the purchaser, the dealer identification number, the unique approval
82 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
84 or deliver the written consent form required by subsection A to the Department of State Police. The State
85 Police shall immediately initiate a search of all available criminal history record information to determine
86 if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the
87 search discloses information indicating that the buyer or transferee is so prohibited from possessing or
88 transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction
89 where the sale or transfer occurred and the dealer without delay.

90 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
91 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
92 residents of other states under the terms of subsections A and B upon furnishing the dealer with one photo-
93 identification form issued by a governmental agency of the person's state of residence and one other form
94 of identification 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
96 December 25.

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

103 To establish personal identification and dual resident eligibility for purposes of this subsection, a
104 dealer shall require any prospective purchaser to present one photo-identification form issued by a
105 governmental agency of the prospective purchaser's state of legal residence and other documentation of
106 dual residence within the Commonwealth. The other documentation of dual residence in the
107 Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a

108 current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f)
109 automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as
110 evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of
111 residence determined to be acceptable by the Department of Criminal Justice Services and that
112 corroborates that the prospective purchaser currently resides in Virginia.

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

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

121 F. For purposes of this section:

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

124 "Antique firearm" means:

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

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

131 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to
132 use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of
133 this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame
134 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon

135 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any
136 combination thereof; or

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

138 "Assault firearm" means ~~any~~:

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

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

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

160 4. A semi-automatic shotgun that expels single or multiple projectiles by action of an explosion of
161 a combustible material that has one of the following characteristics: (i) a folding, telescoping, or

162 collapsible stock; (ii) a pistol grip that protrudes conspicuously beneath the action of the shotgun; (iii) the
163 ability to accept a detachable magazine; (iv) a fixed magazine capacity in excess of seven rounds; or (v)
164 any characteristic of like kind as enumerated in clauses (i) through (iv); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
239 inventory to any other person, a dealer may require such other person to consent to have the dealer obtain
240 criminal history record information to determine if such other person is prohibited from possessing or
241 transporting a firearm by state or federal law. The Department of State Police shall establish policies and

242 procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the
243 Department of State Police, and the processes established for making such determinations shall conform
244 to the provisions of this section.

245 R. Except as provided in subdivisions 1 and 2, it ~~shall be~~ is unlawful for any person who is not a
246 licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes
247 of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for
248 a handgun purchased from such seller by the same person seeking the exchange or replacement within the
249 30-day period immediately preceding the date of exchange or replacement. A violation of this subsection
250 is punishable as a Class 1 misdemeanor.

251 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of
252 an enhanced background check, as described in this subsection, by special application to the Department
253 of State Police listing the number and type of handguns to be purchased and transferred for lawful business
254 or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar
255 purposes. Such applications shall be signed under oath by the applicant on forms provided by the
256 Department of State Police, shall state the purpose for the purchase above the limit, and shall require
257 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales
258 report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The
259 Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act
260 (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above
261 the limit.

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

269 of State Police, issue certificates immediately pursuant to this subdivision. Applications and certificates
270 issued under this subdivision shall be maintained as records as provided in subdivision B 3. The
271 Department of State Police shall make available to local law-enforcement agencies all records concerning
272 certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

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

274 a. A law-enforcement agency;

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

276 c. A state or local correctional facility;

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

278 e. The purchase of antique firearms;

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

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

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

294 i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private
295 sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms

296 for the enhancement of a personal collection of curios or relics or who sells all or part of such collection
297 of curios and relics; or

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

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

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

306 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
307 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
308 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
309 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**
310 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
311 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
312 **periods of commitment to the custody of the Department of Juvenile Justice.**

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