COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

April 13, 2007

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Michael Bloomberg
Mayor, City of New York
Municipal Building , One Centre Street
Tenth Floor North
New York, NY 10007

RE: Unauthorized Undercover Firearm Transactions in the Commonwealth of Virginia

Dear Mayor Bloomberg:

I write you regarding Chapter 509 of the 2007 Virginia Acts of Assembly, introduced at my request, addressing "simulated straw purchases" of firearms in the Commonwealth. A copy of the new law is enclosed herein for your reference. The intent of this legislation is to prevent unauthorized activity by non-law enforcement personnel to conduct otherwise illegal firearms purchases. The recent activities by agents of the City of New York in Virginia brought this issue to my attention.

As you know, the U.S. Department of Justice recently wrote to you that such activity is counterproductive to legitimate law enforcement efforts to police illegal firearm trafficking, and has potential legal liabilities. Representatives of your Office have apparently suggested publicly that they may continue such simulated firearm transactions in Virginia perhaps with a view towards further litigation.

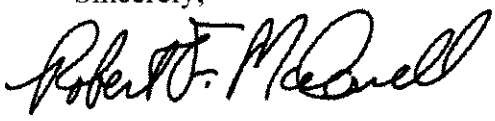
The new legislation passed this year at my insistence and signed by Governor Kaine, makes clear that such non-law enforcement activities related to undercover illegal firearm purchases will be punishable as a felony in Virginia. While I understand that you are attempting to take steps that you believe may enhance the public safety of the citizens of New York City, such laws are Virginia's duty to enforce, and our outstanding state police take that duty seriously. Virginia police and prosecutors now have the tools necessary to stop such unwarranted firearms purchase activity by unauthorized outside agents, and will faithfully enforce the law when violations are discovered.

This new Virginia law strikes the proper balance between ensuring effective law enforcement and protecting the rights of law abiding firearms dealers and those of Virginia citizens under the Second Amendment to the United States Constitution. If in the future you have specific concerns about criminal justice matters in the Commonwealth, please contact me, the Governor, or the proper law-enforcement agency

responsible for investigating and prosecuting such conduct. We will be pleased to address any legitimate public safety concerns that you might raise.

Thanks for your future cooperation.

Sincerely,



Robert F. McDonnell

RFM/pdw

Enclosure

cc: The Honorable Timothy M. Kaine
The Honorable Charles P. Rosenberg
The Honorable John L. Brownlee
The Honorable Harvey Bryant
Col. Steven Flaherty

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to illegal conveyance of firearms; penalty.

[H 2653]

Approved

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 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 would be a felony if committed by an adult and (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.

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 of this subsection 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, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser to a duty post in Virginia shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency shall be deemed to be the permanent duty post of a member of the armed forces. When the photo-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, and such identification form 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, 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 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. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the United States State Department, a certificate of citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration Services, an unexpired U.S. passport, a United States citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other

57 documentation of status as a person lawfully admitted for permanent residence issued by the United
58 States Citizenship and Immigration Services.
59 Upon receipt of the request for a criminal history record information check, the State Police shall (1)
60 review its criminal history record information to determine if the buyer or transferee is prohibited from
61 possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates
62 that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number
63 for that inquiry.
64 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
65 by return call without delay. If the criminal history record information check indicates the prospective
66 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
67 and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance
68 Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the
69 dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a
70 firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer
71 who has fulfilled the requirements of subdivision 1 of this subsection may immediately complete the
72 sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.
73 In case of electronic failure or other circumstances beyond the control of the State Police, the dealer
74 shall be advised immediately of the reason for such delay and be given an estimate of the length of such
75 delay. After such notification, the State Police shall, as soon as possible but in no event later than the
76 end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or
77 transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who
78 fulfills the requirements of subdivision 1 of this subsection and is told by the State Police that a
79 response will not be available by the end of the dealer's next business day may immediately complete
80 the sale or transfer and shall not be deemed in violation of this section with respect to such sale or
81 transfer.
82 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer
83 than 30 days, except for multiple handgun transactions for which records shall be maintained for 12
84 months, from any dealer's request for a criminal history record information check pertaining to a buyer
85 or transferee who is not found to be prohibited from possessing and transporting a firearm under state or
86 federal law. However, the log on requests made may be maintained for a period of 12 months, and such
87 log shall consist of the name of the purchaser, the dealer identification number, the unique approval
88 number and the transaction date.
89 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
90 deliver the written consent form required by subsection A to the Department of State Police. The State
91 Police shall immediately initiate a search of all available criminal history record information to
92 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
93 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
94 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
95 the jurisdiction where the sale or transfer occurred and the dealer without delay.
96 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
97 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
98 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof
99 of citizenship or status as a person lawfully admitted for permanent residence and one
100 photo-identification form issued by a governmental agency of the person's state of residence and one
101 other form of identification determined to be acceptable by the Department of Criminal Justice Services.
102 6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include
103 December 25.
104 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the
105 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
106 subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the
107 Department of State Police a report indicating that a search of all available criminal history record
108 information has not disclosed that the person is prohibited from possessing or transporting a firearm
109 under state or federal law. The dealer shall obtain the required report by mailing or delivering the
110 written consent form required under subsection A to the State Police within 24 hours of its execution. If
111 the dealer has complied with the provisions of this subsection and has not received the required report
112 from the State Police within 10 days from the date the written consent form was mailed to the
113 Department of State Police, he shall not be deemed in violation of this section for thereafter completing
114 the sale or transfer.
115 D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting
116 or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check
117 through the dealer as provided in subsection C.

118 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
119 exercise his right of access to and review and correction of criminal history record information under
120 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
121 30 days of such denial.
122 F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history
123 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
124 disseminate criminal history record information except as authorized in this section shall be guilty of a
125 Class 2 misdemeanor.
126 G. For purposes of this section:
127 *"Actual buyer" means a person who executes the consent form required in subsection B or C, or*
128 *other such firearm transaction records as may be required by federal law.*
129 "Antique firearm" means:
130 1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of
131 ignition system) manufactured in or before 1898;
132 2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not
133 designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire
134 or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that
135 is not readily available in the ordinary channels of commercial trade;
136 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use
137 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this
138 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame
139 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon
140 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any
141 combination thereof; or
142 4. Any curio or relic as defined in this subsection.
143 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple
144 projectiles by action of an explosion of a combustible material and is equipped at the time of the
145 offense with a magazine which will hold more than 20 rounds of ammunition or designed by the
146 manufacturer to accommodate a silencer or equipped with a folding stock.
147 "Curios or relics" means firearms that are of special interest to collectors by reason of some quality
148 other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To
149 be recognized as curios or relics, firearms must fall within one of the following categories:
150 1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or
151 conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is
152 not readily available in the ordinary channels of commercial trade, but not including replicas thereof;
153 2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits
154 firearms to be curios or relics of museum interest; and
155 3. Any other firearms that derive a substantial part of their monetary value from the fact that they
156 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.
157 Proof of qualification of a particular firearm under this category may be established by evidence of
158 present value and evidence that like firearms are not available except as collectors' items, or that the
159 value of like firearms available in ordinary commercial channels is substantially less.
160 "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.
161 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be
162 converted to expel single or multiple projectiles by action of an explosion of a combustible material.
163 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to
164 fire single or multiple projectiles by means of an explosion of a combustible material from one or more
165 barrels when held in one hand.
166 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the
167 privilege of residing permanently in the United States as an immigrant in accordance with the
168 immigration laws, such status not having changed.
169 H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,
170 confidentiality and security of all records and data provided by the Department of State Police pursuant
171 to this section.
172 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
173 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
174 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
175 or any local government; or (iii) antique firearms, curios or relics.
176 J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a
177 resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another
178 state, in which case the laws and regulations of that state and the United States governing the purchase,

179 trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS)
180 check shall be performed prior to such purchase, trade or transfer of firearms.
181 J1. All licensed firearms dealers shall collect a fee of $2 for every transaction for which a criminal
182 history record information check is required pursuant to this section, except that a fee of $5 shall be
183 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
184 Department of State Police by the last day of the month following the sale for deposit in a special fund
185 for use by the State Police to offset the cost of conducting criminal history record information checks
186 under the provisions of this section.
187 K. Any person willfully and intentionally making a materially false statement on the consent form
188 required in subsection B or C or on such firearm transaction records as may be required by federal law,
189 shall be guilty of a Class 5 felony.
190 L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades
191 or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.
192 *L. 1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or*
193 *otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully*
194 *and intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not*
195 *apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the*
196 *performance of his official duties, or other person under his direct supervision.*
197 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
198 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
199 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
200 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
201 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the
202 violation of this subsection involves such a transfer of more than one firearm, the person shall be
203 sentenced to a mandatory minimum term of imprisonment of five years.
204 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
205 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of
206 a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.
207 O. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating
208 whether the driver's license is an original, duplicate or renewed driver's license.
209 P. Except as provided in subdivisions 1, 2 and 3 of this subsection, it shall be unlawful for any
210 person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day
211 period. A violation of this subsection shall be punishable as a Class 1 misdemeanor.
212 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an
213 enhanced background check, as described herein, by special application to the Department of State
214 Police listing the number and type of handguns to be purchased and transferred for lawful business or
215 personal use, in a collector series, for collections, as a bulk purchase from estate sales and for similar
216 purposes. Such applications shall be signed under oath by the applicant on forms provided by the
217 Department of State Police, shall state the purpose for the purchase above the limit, and shall require
218 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales
219 report required by the Bureau of Alcohol, Tobacco and Firearms (ATF). The Superintendent of State
220 Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for
221 the implementation of an application process for purchases of handguns above the limit.
222 Upon being satisfied that these requirements have been met, the Department of State Police shall
223 forthwith issue to the applicant a nontransferable certificate, which shall be valid for seven days from
224 the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to
225 the consummation of such sale and shall be kept on file at the dealer's place of business for inspection
226 as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local
227 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such
228 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
229 Department of State Police, issue certificates forthwith pursuant to this subsection. Applications and
230 certificates issued under this subsection shall be maintained as records as provided in subdivision B 3.
231 The Department of State Police shall make available to local law-enforcement agencies all records
232 concerning certificates issued pursuant to this subsection and all records provided for in subdivision B 3.
233 2. The provisions of this subsection shall not apply to:
234 a. A law-enforcement agency;
235 b. An agency duly authorized to perform law-enforcement duties;
236 c. State and local correctional facilities;
237 d. A private security company licensed to do business within the Commonwealth;
238 e. The purchase of antique firearms as herein defined;
239 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 (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, the 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;

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

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

3. For the purposes of this subsection, "purchase" shall not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange or replacement within the 30-day period immediately preceding the date of exchange or replacement.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.