

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 167

Short Title: Felon ID and Police Safety Act.

(Public)

Sponsors: Representatives Wood; Lemmond and Nichols.

Referred to: Judiciary I.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT RELATING TO DRIVERS LICENSES, SO AS TO REQUIRE THE ISSUANCE OF DRIVERS LICENSES, COMMERCIAL DRIVERS LICENSES, PERMITS, AND IDENTIFICATION CARDS WITH MAGNETIC READER STRIPS; TO PROVIDE FOR CRIMINAL RECORDS CHECKS; TO CREATE A COMPUTERIZED LIST OF FELONS AND PERSONS ADJUDICATED MENTALLY INCOMPETENT; TO PROVIDE FOR CONFIDENTIALITY OF THE CRIMINAL INFORMATION; TO PROVIDE A MEANS FOR CORRECTING ERRONEOUS INFORMATION; TO PROVIDE FOR THE SAFETY OF POLICE OFFICERS; TO PROVIDE FOR DUTIES OF LICENSED FIREARMS DEALERS; TO PROHIBIT CERTAIN ACTIONS BY PROHIBITED PERSONS; TO PROVIDE FOR SEIZING A LICENSE UPON ONE'S BECOMING A PROHIBITED PERSON; TO PROVIDE FOR FUNDING OF RECORDS CHECKS; AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. This act may be cited as the "Felon Identification and Police Safety Act".

Sec. 2. The General Assembly finds the following:

(1) State laws requiring a waiting period before the purchase of a firearm have endangered the lives of law-abiding Americans by preventing them from protecting themselves, as demonstrated by the following examples:

a. In 1991, Bonnie Elmasri of Wisconsin tried to get a handgun to protect herself from her estranged husband, but he returned

1 home and killed her and her two children before the 48-hour
2 waiting period required by State law had expired.

3 b. In 1990, Catherine Latta of North Carolina tried to buy a
4 firearm but was told by police that it would take her two to four
5 weeks to get the necessary permit. After telling the clerk she
6 "would be dead by then", she illegally bought a handgun on the
7 street. Five hours later she was attacked again by the man who
8 had already robbed, assaulted, and raped her. She used her
9 handgun to protect herself by shooting and killing him. Had
10 she not had a handgun, the outcome would have been much
11 different.

12 c. Residents of Los Angeles were forced to wait 15 days during
13 the 1992 riots before they could legally buy a firearm for
14 protection, in spite of the fact that police were admitting that
15 they could not protect the people.

16 (2) A point-of-sale instant background check can easily lead to a gun
17 owner registration system. Commenting on the Virginia State instant
18 check system, the Congressional Office of Technology Assessment
19 said "The Virginia transaction log does not include the names of
20 firearm purchasers, but the potential exists regardless of legal
21 prohibitions."

22 (3) Laws requiring a waiting period before the purchase of a firearm have
23 not prevented crime rates in various states that have enacted such laws
24 from increasing far above the national average increase in crime rates.

25 (4) Police cannot protect, and are not legally responsible for protecting,
26 individual citizens, as evidenced by the following:

27 a. The courts have consistently ruled that the police do not have an
28 obligation to protect individuals, only the public in general. In
29 *Warren v. District of Columbia Metropolitan Police Department*
30 (D.C. App. 444 A. 2d 1 (1981)), the court stated "courts have
31 without exception concluded that when a municipality or other
32 governmental entity undertakes to furnish police services, it
33 assumes a duty only to the public at large and not to individual
34 members of the Community."

35 b. Former Florida Attorney General Jim Smith told Florida
36 legislators that police responded to only 200,000 of 700,000
37 calls for help to Dade County authorities.

38 c. The Department of Justice found that in 1989, there were
39 168,881 crimes of violence which were not responded to by
40 police within one hour.

41 d. Currently, there are about 150,000 police officers on duty to
42 protect a population of more than 250,000,000 Americans.

43 Sec. 3. (a) Prior to the issuance, reissuance, or reinstatement of any license
44 issued by the Division of Motor Vehicles (hereafter referred to as "Division"), it shall

1 be the duty of the Division to conduct a criminal records furnished to the Division
2 pursuant to subsections (b) and (c) of this section, whether the applicant has previously
3 been convicted of a felony or adjudicated mentally incompetent, without having waited
4 five years from the date of their restoration to capacity by court order. If it is
5 determined that the applicant has been convicted of any felony under the laws of this
6 State, the United States, or any other state of the United States or has previously been
7 adjudicated mentally incompetent, without having waited five years from the date of
8 their restoration to capacity by court order, the license issued by the Division shall have
9 on its magnetic reader strip indication of such conviction or adjudication. Said
10 indication shall only be determined through the use of the special magnetic code reader,
11 and will not appear different to the unaided eye from that of a nonprohibited person.
12 Said magnetic code reader shall be a device which is read only and which does not have
13 storage or communication capabilities. The magnetic code reader shall provide a red or
14 a green light signal. The red light will indicate the buyer is a prohibited purchaser
15 pursuant to this subsection; the green light will indicate the buyer is not a prohibited
16 person pursuant to this subsection. The Division shall provide a magnetic code reader
17 to ensure the license reads correctly.

18 (b) The State Bureau of Investigation shall create a computerized list of felons
19 pursuant to Title I, Sec. 103(a) of the Brady Handgun Violence Prevention Act which
20 the Division may contact for information. The State Bureau of Investigation shall
21 achieve, by July 1, 1996, at least 80 percent (80%) currency of case dispositions in
22 computerized criminal history files for all cases in which there has been an entry of
23 activity within the last five years and continue to maintain such a system.

24 (c) The State Bureau Of Investigation shall create a computerized list of persons
25 who have been adjudicated mentally incompetent and have not waited five years from
26 the date of their restoration to capacity by court order. This list of names shall be made
27 available for the Division to contact for information.

28 (d) If records established under this section identify a person as a prohibited
29 person pursuant to subsection (a) of this section, such person, if he believes such
30 identification to be erroneous, may request the State Bureau of Investigation to supply
31 such person with the reasons therefore. Within five days after receipt of such a request,
32 the State Bureau of Investigation shall comply with the request. Such person may
33 submit to the State Bureau of Investigation information which may correct, clarify, or
34 supplement the records with respect to such person. Within five days after receipt of
35 such information, the State Bureau of Investigation shall consider such information,
36 investigate the matter further, and correct all erroneous records relating to such person
37 and notify any agency that was the source of such erroneous records of such errors.

38 (e) Any person erroneously identified as a prohibited person, whose records
39 have not been corrected, pursuant to subsection (a) of this section, may bring an action
40 in superior court against the State of North Carolina or any political subdivision thereof
41 which is the source of the erroneous information, for damages (including consequential
42 damages), injunctive relief, and such other relief as the court deems appropriate. If the
43 person prevails in the action, the court shall allow the person a reasonable attorney's fee
44 as part of the costs.

1 (f) In performing his or her duties at a traffic stop, a police officer may
2 utilize a magnetic code reader described in subsection (a) of this section, to determine
3 the status of a driver for his or her own safety. No police agency shall be required to
4 purchase or utilize the designated magnetic code reader.

5 Sec. 4. (a) It shall be unlawful for any federally licensed firearms dealer to
6 knowingly and intentionally:

7 (1) Sell a handgun to any person not licensed under section 923 of Title
8 18, United States Code, unless the firearms dealer has used a magnetic
9 code reader described in Section 3(a) of this act to read the magnetic
10 strip affixed to a license issued to the person by the Division; or

11 (2) Refuse to notify local law enforcement authorities, within 18 hours, of
12 any person attempting to purchase a handgun who is identified as a
13 prohibited person through the use of such a device.

14 (b) Any firearms dealer who violates subsection (a) of this section shall be
15 imprisoned not more than one year, fined not more than one thousand dollars (\$1,000)
16 or both.

17 (c) Subsection (a) and (b) of this section shall not take effect until the Division is
18 in full compliance with the aforementioned background check and magnetic strip and
19 reader system. Persons in possession of a license issued prior to the full compliance of
20 the Division are exempt from this subsection until such time that said licenses and ID
21 cards reach their expiration date.

22 (d) A "license" which is issued by the Division and which does not identify a
23 person as a prohibited purchaser shall be considered a "permit" pursuant to Title I, Sec.
24 102(a)(1)(C) of the Brady Handgun Violence Prevention Act. The Division shall
25 reissue such licenses no later than every five years.

26 (e) It shall be unlawful for any prohibited person pursuant to Section 3(a) of
27 this act to knowingly and intentionally alter, change, modify, or counterfeit a North
28 Carolina license issued pursuant to this act. Any such prohibited person violating the
29 provisions of this subsection shall be guilty of a Class E felony.

30 (f) Upon becoming a prohibited person pursuant to Section 3(a) of this act, a
31 person's license shall be void and shall be seized by the trial court. A new license shall,
32 if desired by the prohibited person, be issued by the Division with the new prohibition
33 encoded on the magnetic strip.

34 (g) All prohibited persons, pursuant to Section 3(a) of this act, shall pay
35 additional court costs upon being adjudicated as prohibited persons and shall pay
36 additional fees to the Division when obtaining a license, sufficient to cover the expenses
37 of the criminal records checks conducted pursuant to Section 3(a) of this act.

38 (h) All laws and parts of laws in conflict with this act are repealed. On July
39 1, 1996, the system of identifying prohibited persons before the purchase of a handgun
40 as described in this act shall be the only system used in this State for identifying
41 prohibited persons before the purchase of a firearm.

42 Sec. 5. As used in this act:

43 (1) "Firearms dealer" means:

- 1 a. Any person, firm, partnership, or corporation engaged in the
2 business of selling firearms at retail; or
3 b. Any person, firm, partnership, or corporation engaged in the
4 business of making or fitting special barrels, stocks, or trigger
5 mechanisms to firearms; or
6 c. Any person, firm, partnership, or corporation that is a
7 pawnbroker.
- 8 (2) " Engaged in business" means as applied to a firearms dealer a person,
9 firm, partnership, or corporation that devotes time, attention, and labor
10 to dealing in firearms as a regular course of trade or business with the
11 principal objective of livelihood and profit through repetitive purchase
12 or resale of firearms, but such term shall not involve a person who
13 makes occasional sales, exchanges, or purchases of firearms for the
14 enhancement of a personal collection or for a hobby, or who sells all or
15 part of his personal collection of firearms.
- 16 (3) " Handgun" means any firearm which has a short stock and is designed
17 to be held and fired by the use of a single hand.
- 18 (4) " License" means a license or permit to operate a motor vehicle on the
19 roads and highways of the State, and any identification document
20 issued by the Division solely for purposes of identification.
- 21 Sec. 6. This act is effective upon ratification.