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HOUSE BILL NO. 1058

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 18.2-246.13, 18.2-246.14, 18.2-283.1, 18.2-287.4, 18.2-308, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, 18.2-374.1:1, 19.2-386.1 through 19.2-386.5, and 59.1-148.4 of the Code of Virginia, to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 22.2, consisting of sections numbered 19.2-386.15 through 19.2-386.31, and to repeal §§ 18.2-46.9, 18.2-110, 18.2-152.16, 18.2-190.7, 18.2-246.4, 18.2-249, 18.2-253, 18.2-253.1, 18.2-253.2, 18.2-265.4, 18.2-310, 18.2-336, and 18.2-374.2 of the Code of Virginia, relating to transfer of forfeiture statutes to the criminal procedure code.

Patrons—McDonnell, Albo, Armstrong, Griffith, Hurt, Kilgore and Moran; Senators: Howell, Norment and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-246.13, 18.2-246.14, 18.2-283.1, 18.2-287.4, 18.2-308, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, 18.2-374.1:1, 19.2-386.1 through 19.2-386.5, and 59.1-148.4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 22.2, consisting of sections numbered 19.2-386.15 through 19.2-386.31, as follows:

§ 18.2-246.13. Penalties.

A. Except as specifically provided in § 18.2-246.14, a first violation of any provision of this article shall be punishable by a civil penalty of no more than \$1,000. A second or subsequent violation of any provision of this article shall be punishable by a civil penalty of no more than \$10,000.

B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of § 18.2-246.8 shall be subject to a civil penalty of no more than \$5,000 for each such offense.

C. Any person failing to collect or remit to the Board or the Department of Taxation any tax required in connection with a delivery sale shall be assessed, in addition to any other applicable penalty, a civil penalty of no more than five times the retail value of the cigarettes involved.

D. Any civil penalty collected under this article shall be paid to the general fund.

E. ~~Any cigarettes sold or attempted to be sold in a delivery sale in violation of this article shall be forfeited to the Commonwealth and destroyed. All fixtures, equipment, materials and personal property used in substantial connection with a delivery sale or attempted delivery sale in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.~~

§ 18.2-246.14. Counterfeit cigarettes.

A. ~~It shall be unlawful to sell or possess counterfeit cigarettes. Such cigarettes shall be subject to seizure, forfeiture and destruction by the Board or any law enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with sale or possession of counterfeit cigarettes in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.~~

B. Any person who knowingly violates subsection A with a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than \$1,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes, be punished by a civil penalty of no more than \$5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

C. Any person who knowingly violates subsection A with a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than \$2,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes, be punished by a civil penalty of no more than \$50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

For purposes of this section, counterfeit cigarettes shall include but not be limited to cigarettes that (i) have false manufacturing labels, (ii) are not manufactured by the manufacturer indicated on the container, or (iii) have affixed to the container a false tax stamp.

§ 18.2-283.1. Carrying weapon into courthouse.

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58 It shall be unlawful for any person to possess in or transport into any courthouse in this
59 Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of
60 any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a
61 dangerous weapon and (iii) any other dangerous weapon, including explosives, tasers, stun weapons and
62 those weapons specified in subsection A of § 18.2-308. Any such weapon shall be subject to seizure by
63 a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor; ~~and upon~~
64 ~~the person's conviction, the weapon seized shall be forfeited to the Commonwealth and disposed of as~~
65 ~~provided in subsection A of § 18.2-308.~~

66 The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or
67 official, game warden, conservator of the peace, magistrate, court officer, or judge while in the conduct
68 of such person's official duties.

69 § 18.2-287.4. Carrying loaded firearms in public areas prohibited; penalty.

70 It shall be unlawful for any person to carry a loaded firearm on or about his person on any public
71 street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever
72 nature that is open to the public (i) in any city with a population of 160,000 or more or (ii) in any
73 county having an urban county executive form of government or any county or city surrounded thereby
74 or adjacent thereto or in any county having a county manager form of government. The provisions of
75 this section shall not apply to law-enforcement officers, licensed security guards, military personnel in
76 the performance of their lawful duties, or any person having a valid permit to carry such firearm or to
77 any person actually engaged in lawful hunting or lawful recreational shooting activities at an established
78 shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of
79 a Class 1 misdemeanor.

80 For purposes of this section, "firearm" means any (i) semi-automatic center-fire rifle or pistol that
81 expels single or multiple projectiles by action of an explosion of a combustible material and is equipped
82 at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or
83 designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii)
84 shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which
85 it is chambered.

86 Any firearm carried in violation of this section may be forfeited to the Commonwealth pursuant to
87 the provisions of § 18.2-310.

88 The exemptions set forth in § 18.2-308 shall apply, *mutatis mutandis*, to the provisions of this
89 section.

90 § 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

91 A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver,
92 or other weapon designed or intended to propel a missile of any kind by action of an explosion of any
93 combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring
94 stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts
95 connected in such a manner as to allow them to swing freely, which may be known as a nun chahka,
96 nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at
97 least two points or pointed blades which is designed to be thrown or propelled and which may be
98 known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this
99 subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a
100 conviction under this section subsequent to any conviction under any substantially similar ordinance of
101 any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such
102 violation shall be punishable as a Class 5 felony. Any weapon used in the commission of a violation of
103 this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and
104 such as may be needed for police officers, conservators of the peace, and the Division of Forensic
105 Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the
106 remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon
107 shall be deemed to be hidden from common observation when it is observable but is of such deceptive
108 appearance as to disguise the weapon's true nature.

109 B. This section shall not apply to any person while in his own place of abode or the curtilage
110 thereof.

111 Except as provided in subsection J1, this section shall not apply to:

- 112 1. Any person while in his own place of business;
- 113 2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular
114 game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;
- 115 3. Any regularly enrolled member of a target shooting organization who is at, or going to or from,
116 an established shooting range, provided that the weapons are unloaded and securely wrapped while being
117 transported;
- 118 4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or
119 from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped

while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and

8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least fifteen years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

C. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. [Repealed.]

4. Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof: (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (d) commissioners in chancery;

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29;

6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

8. Harbormaster of the City of Hopewell.

D. Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides, or if he is a member of the United States armed forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. Notwithstanding § 15.2-915, a county or city may enact an ordinance that requires any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record. The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if required by local ordinance in the county or city where the applicant resides and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. Where feasible and practical, the local law-enforcement agency may transfer information electronically to the State Police instead of inked fingerprint cards. Upon completion of the criminal history records check, the State Police shall return the fingerprint cards to the submitting local agency or, in the case of scanned fingerprints, destroy the electronic record. The local agency shall then promptly notify the person that he has twenty-one days from the date of the notice to request return of the fingerprint cards, if any. All fingerprint cards not claimed by the applicant within twenty-one days of notification by the local agency shall be destroyed. All optically scanned fingerprints shall be destroyed upon completion of the criminal history records check without requiring that the applicant be notified. Fingerprints taken for the purposes described in

181 this section shall not be copied, held or used for any other purposes. The court shall issue the permit
182 within forty-five days of receipt of the completed application unless it is determined that the applicant is
183 disqualified. An application is deemed complete when all information required to be furnished by the
184 applicant is delivered to and received by the clerk of court before or concomitant with the conduct of a
185 state or national criminal history records check. If the applicant is later found by the court to be
186 disqualified, the permit shall be revoked.

187 E. The following persons shall be deemed disqualified from obtaining a permit:

188 1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or
189 § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

190 2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was
191 discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before
192 the date of his application for a concealed handgun permit.

193 3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose
194 competency or capacity was restored pursuant to former § 37.1-134.1 or § 37.1-134.16 less than five
195 years before the date of his application for a concealed handgun permit.

196 4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released
197 from commitment less than five years before the date of this application for a concealed handgun
198 permit.

199 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
200 § 18.2-308.1:4 from purchasing or transporting a firearm.

201 6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except
202 that a permit may be obtained in accordance with subsection C of that section.

203 7. An individual who has been convicted of two or more misdemeanors within the five-year period
204 immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the
205 judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1.
206 Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

207 8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any
208 controlled substance.

209 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
210 ordinance or of public drunkenness within the three-year period immediately preceding the application,
211 or who is a habitual drunkard as determined pursuant to § 4.1-333.

212 10. An alien other than an alien lawfully admitted for permanent residence in the United States.

213 11. An individual who has been discharged from the Armed Forces of the United States under
214 dishonorable conditions.

215 12. An individual who is a fugitive from justice.

216 13. An individual who it is alleged, in a sworn written statement submitted to the court by the
217 sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police
218 or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger
219 others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based
220 upon personal knowledge or upon the sworn written statement of a competent person having personal
221 knowledge.

222 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
223 discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in
224 violation of § 18.2-282 within the three-year period immediately preceding the application.

225 15. An individual who has been convicted of stalking.

226 16. An individual whose previous convictions or adjudications of delinquency were based on an
227 offense which would have been at the time of conviction a felony if committed by an adult under the
228 laws of any state, the District of Columbia, the United States or its territories. For purposes of this
229 disqualifier, only convictions occurring within sixteen years following the later of the date of (i) the
230 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
231 adjudication shall be deemed to be "previous convictions."

232 17. An individual who has a felony charge pending or a charge pending for an offense listed in
233 subdivision 14 or 15.

234 18. An individual who has received mental health treatment or substance abuse treatment in a
235 residential setting within five years prior to the date of his application for a concealed handgun permit.

236 19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period
237 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
238 in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession
239 or distribution of marijuana or any controlled substance, under the laws of any state, the District of
240 Columbia, or the United States or its territories.

241 20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the
242 three-year period immediately preceding the application, upon a charge of any criminal offense set forth

in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or distribution of marijuana or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

F. The making of a materially false statement in an application under this section shall constitute perjury, punishable as provided in § 18.2-434.

G. The court may further require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following, but no applicant shall be required to submit to any additional demonstration of competence:

1. Completing any hunter education or hunter safety course approved by the Department of Game and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;

6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in subsection D, a new five-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within twenty-one days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or occurrence of any other event which would disqualify a person from obtaining a concealed handgun permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction or other event.

J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1,

304 maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public
305 intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon
306 such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify
307 the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply
308 for a concealed handgun permit for a period of five years.

309 J2. An individual who has a felony charge pending or a charge pending for an offense listed in
310 subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by
311 the court before which such charge is pending or by the court which issued the permit.

312 J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined
313 in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has
314 been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia;
315 however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed
316 handgun on the premises of such restaurant or club or any owner or event sponsor or his employees
317 from carrying a concealed handgun while on duty at such restaurant or club if such person has a
318 concealed handgun permit.

319 J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under
320 § 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit
321 suspended by the court which issued the permit during the period of incompetency, incapacity or
322 disability.

323 K. No fee shall be charged for the issuance of such permit to a person who has retired from service
324 (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State
325 Police or with a sheriff or police department, bureau or force of any political subdivision of the
326 Commonwealth, after completing fifteen years of service or after reaching age fifty-five; (iii) as a
327 law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol,
328 Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, Immigration and
329 Naturalization Service, Customs Service, Department of State Diplomatic Security Service or Naval
330 Criminal Investigative Service, after completing fifteen years of service or after reaching age fifty-five;
331 (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the
332 District of Columbia or any of the territories of the United States, after completing fifteen years of
333 service; or (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii)
334 through (iv), after completing fifteen years of service. The clerk shall charge a fee of ten dollars for the
335 processing of an application or issuing of a permit, including his costs associated with the consultation
336 with law-enforcement agencies. The local law-enforcement agency conducting the background
337 investigation may charge a fee not to exceed thirty-five dollars to cover the cost of conducting an
338 investigation pursuant to this section. The thirty-five-dollar fee shall include any amount assessed by the
339 Federal Bureau of Investigation for providing criminal history record information, and the local
340 law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the
341 State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to
342 exceed five dollars to cover their costs associated with processing the application. The total amount
343 assessed for processing an application for a permit shall not exceed fifty dollars, with such fees to be
344 paid in one sum to the person who accepts the application. Payment may be made by any method
345 accepted by that court for payment of other fees or penalties. No payment shall be required until the
346 application is accepted by the court as a complete application. The order issuing such permit shall be
347 provided to the State Police and the law-enforcement agencies of the county or city. The State Police
348 shall enter the permittee's name and description in the Virginia Criminal Information Network so that
349 the permit's existence and current status will be made known to law-enforcement personnel accessing the
350 Network for investigative purposes.

351 L. Any person denied a permit to carry a concealed handgun under the provisions of this section
352 may present a petition for review to the Court of Appeals. The petition for review shall be filed within
353 sixty days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or
354 if an ore tenus hearing is requested, within sixty days of the entry of the final order of the circuit court
355 following the hearing. The petition shall be accompanied by a copy of the original papers filed in the
356 circuit court, including a copy of the order of the circuit court denying the permit. Subject to the
357 provisions of § 17.1-410 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding
358 any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs
359 incurred by the person shall be paid by the Commonwealth.

360 M. For purposes of this section:

361 "Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed,
362 made and intended to fire a projectile by means of an explosion of a combustible material from one or
363 more barrels when held in one hand.

364 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the
365 privilege of residing permanently in the United States as an immigrant in accordance with the

immigration laws, such status not having changed.

N. As used in this article:

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. A valid concealed handgun permit or license issued by another state shall be valid in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible twenty-four hours a day, (ii) the requirements and qualifications of that state's law are adequate to prevent possession of a permit by persons who would be denied a permit in the Commonwealth under this section. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General determine whether states meet the requirements and qualifications of this section, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement officers for investigative purposes.

Q. A valid concealed handgun permit issued by the State of Maryland shall be valid in the Commonwealth provided, (i) the holder of the permit is licensed in the State of Maryland to perform duties substantially similar to those performed by Virginia branch pilots licensed pursuant to Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 and is performing such duties while in the Commonwealth, and (ii) the holder of the permit is 21 years of age or older.

R. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add to or delete from that provision.

§ 18.2-308.1:2. Purchase, possession or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated; penalty.

~~A. It shall be unlawful for any person who has been adjudicated (i) legally incompetent pursuant to former § 37.1-128.02 or former § 37.1-134, (ii) mentally incapacitated pursuant to former § 37.1-128.1 or former § 37.1-132 or (iii) incapacitated pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1 and whose competency or capacity has not been restored pursuant to former § 37.1-134.1 or § 37.1-134.16, to purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.~~

~~B. Any firearm possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily committed; penalty.

A. It shall be unlawful for any person involuntarily committed pursuant to § 37.1-67.3 to purchase, possess or transport a firearm during the period of such person's commitment. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

~~B. Any firearm possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

C. Any person prohibited from purchasing, possessing or transporting firearms under this subsection may, at any time following his release from commitment, petition the circuit court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its discretion and for good cause shown, grant the petition. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

A. It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or § 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of § 18.2-60.3; or (iv) an order issued by a tribunal of another state, the United States or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), or (iii) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this subsection is a Class 1 misdemeanor.

~~B. Any firearm purchased or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of 29 who was found guilty as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or stun weapon or taser as defined by § 18.2-308.1 or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon or taser as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of two years. The minimum, mandatory terms of imprisonment prescribed for violations of this section shall not be suspended in whole or in part and shall be served consecutively with any other sentence. Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, stun weapon or taser under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm, stun weapon or taser; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 18.2-308.2:01. Possession or transportation of certain firearms by aliens.

It shall be unlawful for any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence to knowingly and intentionally possess or transport any assault firearm or to knowingly and intentionally carry about his person, hidden from common observation, an assault firearm. A violation of this section shall be punishable as a Class 6 felony. Any firearm possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

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

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.

Any person who sells, barter, gives or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited from possessing or transporting a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.2 or § 18.2-308.7 shall be guilty of a Class 6 felony. However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to § 18.2-308.2 C or § 18.2-308.1:1 B, (ii) been pardoned or had his political disabilities removed in accordance with § 18.2-308.2 B or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United States. Any firearm sold, bartered, given or furnished or possessed or controlled with intent to do so in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with

knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder is not eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of two years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder is not eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

~~D. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.~~

§ 18.2-308.5. Manufacture, import, sale, transfer or possession of plastic firearm prohibited.

It shall be unlawful for any person to manufacture, import, sell, transfer or possess any plastic firearm. As used in this section "plastic firearm" means any firearm, including machine guns and sawed-off shotguns as defined in this chapter, containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame or receiver of which, when subjected to inspection by X-ray machines commonly used at airports, does not generate an image that accurately depicts its shape. A violation of this section shall be punishable as a Class 5 felony.

~~Any firearm manufactured, imported, sold, transferred or possessed in violation of this section shall be forfeited to the Commonwealth and disposed of in accordance with § 18.2-310.~~

§ 18.2-308.7. Possession or transportation of certain firearms by persons under the age of 18; penalty.

It shall be unlawful for any person under 18 years of age to knowingly and intentionally possess or transport a handgun or assault firearm anywhere in the Commonwealth. For the purposes of this section, "handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand and "assault firearm" means any (i) semi-automatic centerfire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered. A violation of this section shall be a Class 1 misdemeanor. ~~Any handgun possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.~~

This section shall not apply to:

1. Any person (i) while in his home or on his property; (ii) while in the home or on the property of his parent, grandparent, or legal guardian; or (iii) while on the property of another who has provided prior permission, and with the prior permission of his parent or legal guardian if the person has the landowner's written permission on his person while on such property;

2. Any person who, while accompanied by an adult, is at, or going to and from, a lawful shooting range or firearms educational class, provided that the weapons are unloaded while being transported;

3. Any person actually engaged in lawful hunting or going to and from a hunting area or preserve, provided that the weapons are unloaded while being transported; and

4. Any person while carrying out his duties in the armed forces of the United States or the National Guard of this Commonwealth or any other state.

§ 18.2-374.1:1. Possession of child pornography; penalty.

A. Any person who knowingly possesses any sexually explicit visual material utilizing or having as a subject a person less than 18 years of age shall be guilty of a Class 6 felony. However, no prosecution for possession of material prohibited by this section shall lie where the prohibited material comes into the possession of the person charged from a law-enforcement officer or law-enforcement agency.

B. The provisions of this section shall not apply to any such material which is possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by

550 a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research,
551 librarian, clergyman, attorney, judge, or other person having a proper interest in the material.

552 C. All sexually explicit visual material which utilizes or has as a subject a person less than 18 years
553 of age shall be subject to lawful seizure and forfeiture pursuant to § ~~18.2-374.2~~ 19.2-386.31.

554 D. Any person convicted of a second or subsequent offense under this section shall be guilty of a
555 Class 5 felony.

556 § 19.2-386.1. Commencing an action of forfeiture.

557 An action against any property subject to seizure under the provisions of § ~~18.2-46.9~~ 19.2-386.15 or
558 § ~~18.2-249~~ 19.2-386.22 shall be commenced by the filing of an information in the clerk's office of the
559 circuit court. Any information shall be filed in the name of the Commonwealth by the attorney for the
560 Commonwealth or may be filed by the Attorney General if so requested by the attorney for the
561 Commonwealth. Venue for an action of forfeiture shall lie in the county or city where (i) the property is
562 located, (ii) the property is seized, or (iii) an owner of the property could be prosecuted for the illegal
563 conduct alleged to give rise to the forfeiture. Such information shall (i) name as parties defendant all
564 owners and lienholders then known or of record and the trustees named in any deed of trust securing
565 such lienholder, (ii) specifically describe the property, (iii) set forth in general terms the grounds for
566 forfeiture of the named property, (iv) pray that the same be condemned and sold or otherwise be
567 disposed of according to law, and (v) ask that all persons concerned or interested be notified to appear
568 and show cause why such property should not be forfeited. In all cases, an information shall be filed
569 within three years of the date of actual discovery by the Commonwealth of the last act giving rise to the
570 forfeiture or the action for forfeiture will be barred.

571 § 19.2-386.2. Seizure of named property.

572 A. When any property subject to seizure under § ~~18.2-46.9~~ 19.2-386.15 or § ~~18.2-249~~ 19.2-386.22
573 has not been seized at the time an information naming that property is filed, the clerk of the circuit
574 court, upon motion of the attorney for the Commonwealth wherein the information is filed, shall issue a
575 warrant to the sheriff or other state or local law-enforcement officer authorized to serve criminal process
576 in the jurisdiction where the property is located, describing the property named in the complaint and
577 authorizing its immediate seizure.

578 B. In all cases of seizure of real property, a notice of lis pendens shall be filed with the clerk of the
579 circuit court of the county or city wherein the property is located and shall be indexed in the land
580 records in the name or names of those persons whose interests appear to be affected thereby.

581 § 19.2-386.3. Notice of seizure for forfeiture and notice of motion for judgment.

582 A. If an information has not been filed, then upon seizure of any property under § ~~18.2-46.9~~
583 19.2-386.15 or § ~~18.2-249~~ 19.2-386.22, the agency seizing the property shall forthwith notify in writing
584 the attorney for the Commonwealth in the county or city in which the seizure occurred, who shall,
585 within twenty-one days of receipt of such notice, file a notice of seizure for forfeiture with the clerk of
586 the circuit court. Such notice of seizure for forfeiture shall specifically describe the property seized, set
587 forth in general terms the grounds for seizure, identify the date on which the seizure occurred, and
588 identify all owners and lien holders then known or of record. The clerk shall forthwith mail by
589 first-class mail notice of seizure for forfeiture to the last known address of all identified owners and lien
590 holders. When property has been seized under § ~~18.2-46.9~~ 19.2-386.15 or § ~~18.2-249~~ 19.2-386.22 prior
591 to filing an information, then an information against that property shall be filed within ninety days of
592 the date of seizure or the property shall be released to the owner or lien holder.

593 B. Except as to corporations, all parties defendant shall be served, in accordance with § 8.01-296,
594 with a copy of the information and a notice to appear prior to any motion for default judgment on the
595 information. The notice shall contain a statement warning the party defendant that his interest in the
596 property shall be subject to forfeiture to the Commonwealth unless within thirty days after service on
597 him of the notice, or before the date set forth in the order of publication with respect to the notice, an
598 answer under oath is filed in the proceeding setting forth (i) the nature of the defendant's claim, (ii) the
599 exact right, title or character of the ownership or interest in the property and the evidence thereof, and
600 (iii) the reason, cause, exemption or defense he may have against the forfeiture of his interest in the
601 property, including but not limited to the exemptions set forth in § 19.2-386.8. Service upon corporations
602 shall be made in accordance with § 8.01-299 or subdivision 1 or 2 of § 8.01-301; however, if such
603 service cannot be thus made, it shall be made by publication in accordance with § 8.01-317.

604 § 19.2-386.4. Records and handling of seized property.

605 Any agency seizing property under §§ ~~18.2-46.9~~ 19.2-386.15, ~~18.2-249~~ 19.2-386.22 or § 19.2-386.2,
606 pending forfeiture and final disposition, may do any of the following:

607 1. Place the property under constructive seizure by posting notice of seizure for forfeiture on the
608 property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;

609 2. Remove the property to a storage area for safekeeping or, if the property is a negotiable
610 instrument or money, deposit it in an interest-bearing account;

611 3. Remove the property to a place designated by the circuit court in the county or city wherein the

property was seized; or

4. Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within or without the jurisdiction of the circuit court in the county or city wherein the property was seized or in which the complaint was filed.

A report regarding the type of property subject to forfeiture and its handling pursuant to this section and § 19.2-386.5, and the final disposition of the property shall be filed by the seizing agency with the Department of Criminal Justice Services in accordance with regulations promulgated by the Board.

§ 19.2-386.5. Release of seized property.

At any time prior to the filing of an information, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to § ~~18.2-46.9~~ 19.2-386.15 or § ~~18.2-249~~ 19.2-386.22 may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in § 19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to § 19.2-386.8.

CHAPTER 22.2.

MISCELLANEOUS FORFEITURE PROVISIONS.

§ 19.2-386.15. *Seizure of property used in connection with or derived from terrorism.*

A. The following property shall be subject to lawful seizure by any law-enforcement officer charged with enforcing the provisions of Article 2.2 of Chapter 4 of Title 18.2: all moneys or other property, real or personal, together with any interest or profits derived from the investment of such money and used in substantial connection with an act of terrorism as defined in § 18.2-46.4.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

§ 19.2-386.16. *Forfeiture of motor vehicles used in commission of certain crimes.*

Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of §§ 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or § 18.2-357 or of a similar ordinance of any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is \$200 or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

Forfeiture of such vehicle shall be enforced as is provided in §§ 4.1-339 through 4.1-348 as to vehicles used for the transportation of illegally acquired alcoholic beverages, and the provisions of §§ 4.1-339 through 4.1-348 shall apply, *mutatis mutandis*, to proceedings for the enforcement of such forfeiture except that venue for the forfeiture proceeding shall be in the county or city in which the offense occurred.

The agency seizing the motor vehicle or other conveyance shall, for such period of time as the court prescribes, be permitted the use and operation of the motor vehicle or other conveyance, after court forfeiture, for the investigation of crimes against the Commonwealth by the agency seizing the motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have insurance on each vehicle used or operated for liability and property damage.

§ 19.2-386.17. *Forfeitures for computer crimes in violation of Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2.*

All moneys and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violations of Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2, and all computer equipment, all computer software, and all personal property used in connection with any violation of this article known by the owner thereof to have been used in violation of this article, shall be subject to lawful seizure by a law-enforcement officer and forfeiture by the Commonwealth in accordance with the procedures set forth in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied *mutatis mutandis*.

§ 19.2-386.18. *Forfeiture of unlawful electronic communication devices.*

Any unlawful electronic communication device possessed, manufactured or sold in violation of §§ 18.2-190.2, 18.2-190.3 or § 18.2-190.4 may be seized and forfeited to the Commonwealth, and turned over to the circuit court in the city or county in which it was seized and such property shall be disposed of as provided by law.

§ 19.2-386.19. *Seizure of property used in connection with money laundering.*

The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of this article: (i) all money, equipment, motor vehicles, and all other personal and real property of any kind or character used in substantial connection with the laundering of proceeds of

some form of activity punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States, and (ii) all money or other property, real or personal, traceable to the proceeds of some form of activity punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States, together with any interest or profits derived from the investment of such proceeds or other property. Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation under this article is a term of imprisonment of not less than five years. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, and the procedures specified therein shall apply, *mutatis mutandis*, to all forfeitures under Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.

§ 19.2-386.20. Forfeiture of cigarettes sold or attempted to be sold in an unlawful delivery sale.

Any cigarettes sold or attempted to be sold in a delivery sale in violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 shall be forfeited to the Commonwealth and destroyed. All fixtures, equipment, materials and personal property used in substantial connection with a delivery sale or attempted delivery sale in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied *mutatis mutandis*.

§ 19.2-386.21. Forfeiture of counterfeit cigarettes.

Counterfeit cigarettes possessed in violation of § 18.2-246.14 shall be subject to seizure, forfeiture and destruction by the Board or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied *mutatis mutandis*.

§ 19.2-386.22. Seizure of property used in connection with or derived from illegal drug transactions.

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of this article: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a) (2), (a) (3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

§ 19.2-386.23. Disposal of seized controlled substances, marijuana and paraphernalia.

A. All controlled substances, imitation controlled substances, marijuana or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by the Division of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the Division for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be *prima facie* evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the

Commonwealth, the chief law-enforcement officer of the agency may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under this chapter shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 18.2-253.1.

§ 19.2-386.24. Destruction of seized controlled substances or marijuana prior to trial.

Where seizures of controlled substances or marijuana are made in excess of 10 pounds in connection with any prosecution or investigation under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, the appropriate law-enforcement agency may retain 10 pounds of the substance randomly selected from the seized substance for representative purposes as evidence and destroy the remainder of the seized substance.

Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first-class mail to the last known address of the person required to be notified. In addition to the substance retained for representative purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.

§ 19.2-386.25. Judge may order law-enforcement agency to maintain custody of controlled substances.

Upon request of the clerk of any court, a judge of the court may order a law-enforcement agency to take into its custody or to maintain custody of substantial quantities of any controlled substances, imitation controlled substances, chemicals, marijuana or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2. The court in its order may make provision for ensuring integrity of these items until further order of the court.

§ 19.2-386.26. Seizure and forfeiture of drug paraphernalia.

All drug paraphernalia as defined in Article 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 shall be forfeited to the Commonwealth and may be seized and disposed of in the same manner as provided in § 19.2-386.23, subject to the rights of an innocent lienor, to be recognized as under § 4.1-343.

§ 19.2-386.27. Forfeiture of firearms carried in violation of § 18.2-308.

Any weapon used in the commission of a violation of § 18.2-308 shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 19.2-386.29.

§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in violation of law.

Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any weapon concealed, possessed, transported or carried in violation of §§ 18.2-283.1, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, or § 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

§ 19.2-386.29. Forfeiture of certain weapons used in commission of criminal offense.

All pistols, shotguns, rifles, dirks, bowie knives, switchblade knives, ballistic knives, razors, slingshots, brass or metal knucks, blackjacks, stun weapons and tasers, and other weapons used by any person in the commission of a criminal offense, shall, upon conviction of such person, be forfeited to the Commonwealth by order of the court trying the case. The court shall dispose of such weapons as it deems proper by entry of an order of record. Such disposition may include the destruction of the weapons or, subject to any registration requirements of federal law, sale of the firearms to a licensed dealer in such firearms in accordance with the provisions of Chapter 22 (§ 19.2-369 et seq.) of this title regarding sale of property forfeited to the Commonwealth.

The proceeds of any sale of such weapon shall be paid in accordance with the provisions of Article VIII, Section 8 of the Constitution of Virginia. In addition, the court may authorize the seizing law-enforcement agency to use the weapon for a period of time as specified in the order. When the seizing agency ceases to so use the weapon, it shall be disposed of as otherwise provided in this section.

However, upon petition to the court and notice to the attorney for the Commonwealth, the court,

796 upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all
797 relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving
798 rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon. The owner
799 shall acknowledge in a sworn affidavit to be filed with the record in the case or cases that he has
800 retaken possession of the weapon involved.

801 § 19.2-386.30. Forfeiture of money, gambling devices, etc., seized from illegal gambling enterprise;
802 innocent owners or lienors.

803 All money, gambling devices, office equipment and other personal property used in connection with
804 an illegal gambling enterprise or activity, and all money, stakes and things of value received or
805 proposed to be received by a winner in any illegal gambling transaction, which are lawfully seized by
806 any law-enforcement officer or which shall lawfully come into his custody, shall be forfeited to the
807 Commonwealth by order of the court in which a conviction under Article 1 (§ 18.2-325 et seq.) of
808 Chapter 8 of Title 18.2 is obtained. Such court shall order all money so forfeited to be paid over to the
809 Commonwealth, and by order shall make such disposition of other property so forfeited as the court
810 deems proper, including award of such property to any state agency or charitable organization for
811 lawful purposes, or in case of the sale thereof, the proceeds therefrom to be paid over to the
812 Commonwealth. Provided, however, that such forfeiture shall not extinguish the rights of any person
813 without knowledge of the illegal use of such property who is the lawful owner or who has a lien on the
814 same, which has been perfected in the manner provided by law.

815 § 19.2-386.31. Seizure and forfeiture of property used in connection with production of sexually
816 explicit items involving children.

817 All audio and visual equipment, electronic equipment, devices and other personal property used in
818 connection with the production, distribution, publication, sale, possession with intent to distribute or
819 making of sexually explicit visual material having a person less than 18 years of age as a subject shall
820 be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture to the
821 Commonwealth pursuant to Chapter 22 (§ 19.2-369 et seq.) of this title by order of the court in which a
822 conviction under § 18.2-374.1 is obtained. Notwithstanding the provisions of § 19.2-381, the court shall
823 dispose of the forfeited property as it deems proper, including awarding the property to a state agency
824 for lawful purposes. If the property is disposed of by sale, the court shall provide that the proceeds be
825 paid into the Literary Fund.

826 A forfeiture under this section shall not extinguish the rights of any person without knowledge of the
827 illegal use of the property who (i) is the lawful owner or (ii) has a valid and perfected lien on the
828 property.

829 § 59.1-148.4. Sale of firearms by law-enforcement agencies prohibited; exception.

830 A law-enforcement agency of this Commonwealth shall not sell or trade any firearm owned and used
831 or otherwise lawfully in its possession except (i) to another law-enforcement agency of the
832 Commonwealth, (ii) to a licensed firearms dealer, (iii) to the persons as provided in § 59.1-148.3 or (iv)
833 as authorized by a court in accordance with § ~~18.2-310~~ 19.2-386.29.

834 2. That §§ 18.2-46.9, 18.2-110, 18.2-152.16, 18.2-190.7, 18.2-246.4, 18.2-249, 18.2-253, 18.2-253.1,
835 18.2-253.2, 18.2-265.4, 18.2-310, 18.2-336, and 18.2-374.2 of the Code of Virginia are repealed.