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SENATE BILL NO. 1178

Offered January 14, 2015

Prefiled January 13, 2015

A *BILL to amend and reenact §§ 15.2-915.4, 15.2-915.5, 18.2-56.2, 18.2-287.4, 18.2-308.02, 18.2-308.04, 18.2-308.06, 18.2-308.09, and 18.2-308.2:2 of the Code of Virginia; to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 8.01 sections numbered 8.01-44.8 and 8.01-44.9, by adding in Article 4 of Chapter 7 of Title 18.2 a section numbered 18.2-287.5, and by adding a section numbered 18.2-308.1:01; and to repeal § 18.2-308.012 of the Code of Virginia, relating to firearms; penalties.*

Patron—Ebbin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-915.4, 15.2-915.5, 18.2-56.2, 18.2-287.4, 18.2-308.02, 18.2-308.04, 18.2-308.06, 18.2-308.09, and 18.2-308.2:2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 8.01 sections numbered 8.01-44.8 and 8.01-44.9, by adding in Article 4 of Chapter 7 of Title 18.2 a section numbered 18.2-287.5, and by adding a section numbered 18.2-308.1:01 as follows:

§ 8.01-44.8. Action for injury resulting from negligent storage of firearms.

A person may be held civilly liable for injury to the person or property of another or for wrongful death resulting from the use of a firearm in the commission of a crime if it can be shown by clear and convincing evidence that the firearm came into the possession of the person who committed the crime resulting in the injury to the person or property of another or wrongful death because of the failure of the civil defendant to adequately secure the firearm from theft or unauthorized possession.

§ 8.01-44.9. Action for injury resulting from allowing children access to firearms.

A person may be held civilly liable for injury to the person or property of another or for wrongful death resulting from the use of a firearm by a child under the age of 14 if it can be shown by clear and convincing evidence that the firearm came into the possession of such child because of the failure of the civil defendant to adequately secure the firearm.

§ 15.2-915.4. Counties, cities, and towns authorized to regulate use of pneumatic guns.

A. A locality may prohibit, by ordinance, the shooting of pneumatic guns in any areas of the locality that are in the opinion of the governing body so heavily populated as to make such conduct dangerous to the inhabitants thereof, and may require supervision by a parent, guardian, or other adult supervisor approved by a parent or guardian of any minor below the age of 16 in all uses of pneumatic guns on private or public property. In addition, a locality may prohibit, by ordinance, the possession of pneumatic guns on (i) the property of any public, private, or religious elementary, middle, or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; and (iii) any school bus owned or operated by such school. The ordinance may specify that minors above the age of 16 may, with the written consent of a parent or guardian, use a pneumatic gun at any place designated for such use by the local governing body or on private property with the consent of the owner. The ordinance may specify that any minor, whether permitted by a parent or guardian to use a pneumatic gun or not, shall be responsible for obeying all laws, regulations, and restrictions governing such use. Any penalty for a pneumatic gun offense set forth in such an ordinance shall not exceed a Class 3 misdemeanor.

B. No such ordinance authorized by subsection A shall prohibit the use of pneumatic guns at facilities approved for shooting ranges, on other property where firearms may be discharged, or on or within private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

No ordinance authorized by subsection A shall prohibit the possession or use of pneumatic guns (i) by any law-enforcement officer or (ii) by persons who possess pneumatic guns as part of the school's curriculum or activities or as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school property. No ordinance authorized by subsection A shall prohibit the possession of any pneumatic gun that is in a closed container in or upon a motor vehicle that is on property encompassed in clause (i) or (ii) of subsection A.

C. Training of minors in the use of pneumatic guns shall be done only under direct supervision of a

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parent, guardian, Junior Reserve Officers Training Corps instructor, or a certified instructor. Training of minors above the age of 16 may also be done without direct supervision if approved by the minor's instructor, with the permission of and under the responsibility of a parent or guardian, and in compliance with all requirements of this section. Ranges and instructors may be certified by the National Rifle Association, a state or federal agency that has developed a certification program, any service of the Department of Defense, or any person authorized by these authorities to certify ranges and instructors.

D. Commercial or private areas designated for use of pneumatic paintball guns may be established and operated for recreational use. Equipment designed to protect the face and ears shall be provided to participants at such recreational areas, and signs must be posted to warn against entry into the paintball area by persons who are unprotected or unaware that paintball guns are in use.

E. As used in this section, "pneumatic gun" means any implement, designed as a gun, that will expel a BB or a pellet by action of pneumatic pressure. "Pneumatic gun" includes a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

§ 15.2-915.5. Disposition of firearms acquired by localities.

A. No locality or agent of such locality may participate in any program in which individuals are given a thing of value provided by another individual or other entity in exchange for surrendering a firearm to the locality or agent of such locality unless the governing body of the locality has enacted an ordinance, pursuant to § 15.2-1425, authorizing the participation of the locality or agent of such locality in such program.

B. Any ordinance enacted pursuant to this section shall require that any firearm received, except a firearm of the type defined in § 18.2-288 or 18.2-299 or a firearm the transfer for which is prohibited by federal law, ~~shall~~ *may* be offered for sale by public auction or sealed bids to a person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq. Notice of the date, time, and place of sale shall be given by advertisement in at least two newspapers published and having general circulation in the Commonwealth, at least one of which shall have general circulation in the locality in which the property to be sold is located. At least 30 days shall elapse between publication of the notice and the auction or the date on which sealed bids will be opened. Any firearm remaining in possession of the locality or agent of the locality after attempts to sell at public auction or by sealed bids shall be disposed of in a manner the locality deems proper, which may include destruction of the firearm or, subject to any registration requirements of federal law, sale of the firearm to a licensed dealer.

§ 18.2-56.2. Allowing access to firearms by children; penalty.

A. It shall be unlawful for any person to recklessly leave a ~~loaded~~, *an* unsecured firearm in such a manner as to endanger the life or limb of any child under the age of ~~fourteen~~ *14*. Any person violating the provisions of this subsection shall be guilty of a Class 3 *1* misdemeanor.

B. It shall be unlawful for any person to negligently leave an unsecured firearm in such a manner as to endanger the life or limb of any child under the age of 14. Any person violating the provisions of this subsection shall be guilty of a Class 3 misdemeanor.

~~B.~~ C. It shall be unlawful for any person knowingly to authorize a child under the age of ~~twelve~~ *12* to use a firearm except when the child is under the *direct* supervision of an adult. Any person violating this subsection shall be guilty of a Class 1 misdemeanor.

D. If a child under the age of 12 kills or injures another person and the proximate cause of the death or injury is the negligent supervision of such child in the use of a firearm by an adult pursuant to subsection C, the adult is guilty of a Class 1 misdemeanor.

E. For purposes of this ~~subsection~~ *section*, "adult" ~~shall mean~~ *means* a parent, guardian, or person standing in loco parentis to the child or a person ~~twenty-one~~ *21* years or over who has the permission of the parent, guardian, or person standing in loco parentis to supervise the child in the use of a firearm.

For purposes of this section, "unsecured" means that the firearm is loaded and (i) is not stored in a locked container with the means to open the container not reasonably accessible, (ii) is not made temporarily inoperable by a trigger lock or other means, or (iii) is left in a place to which the person knew or should have known the child would gain access.

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

It shall be unlawful for any person to carry a loaded (a) 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 that will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (b) shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond, or Virginia Beach or in the Counties of Arlington, Fairfax, Henrico, Loudoun, or Prince William.

The provisions of this section shall not apply to law-enforcement officers, licensed security guards,

121 military personnel in the performance of their lawful duties, ~~or any person having a valid concealed~~
 122 ~~handgun permit~~ or to any person actually engaged in lawful hunting or lawful recreational shooting
 123 activities at an established shooting range or shooting contest. Any person violating the provisions of
 124 this section shall be guilty of a Class 1 misdemeanor.

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

127 **§ 18.2-287.5. Carrying a firearm while under the influence of alcohol or illegal drugs and**
 128 **consuming alcohol while carrying a firearm; penalty.**

129 A. A person who is under the influence of alcohol or illegal drugs while carrying a loaded firearm
 130 on or about his person in a public place is guilty of a Class 1 misdemeanor. Conviction of any of the
 131 following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the
 132 influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of
 133 § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of
 134 § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. A person convicted of a violation
 135 of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

136 B. A person who carries a loaded firearm on or about his person onto the premises of any
 137 restaurant or club as defined in § 4.1-400 for which a license to sell and serve alcoholic beverages for
 138 on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under
 139 Title 4.1 and consumes an alcoholic beverage while on the premises is guilty of a Class 2 misdemeanor.

140 The provisions of this subsection shall not apply to law-enforcement officers or military personnel in
 141 the performance of their lawful duties as law-enforcement officers.

142 **§ 18.2-308.02. Application for a concealed handgun permit; Virginia resident or domiciliary.**

143 A. Any person 21 years of age or older may apply in writing to the clerk of the circuit court of the
 144 county or city in which he resides, or if he is a member of the United States armed forces, the county
 145 or city in which he is domiciled, for a five-year permit to carry a concealed handgun. There shall be no
 146 requirement regarding the length of time an applicant has been a resident or domiciliary of the county or
 147 city. The application shall be made under oath before a notary or other person qualified to take oaths
 148 and shall be made only on a form prescribed by the Department of State Police, in consultation with the
 149 Supreme Court, requiring only that information necessary to determine eligibility for the permit. No
 150 information or documentation other than that which is allowed on the application in accordance with this
 151 section may be requested or required by the clerk or the court.

152 B. The court shall require proof that the applicant has demonstrated competence with a handgun and
 153 the applicant may demonstrate such competence by one of the following, but no applicant shall be
 154 required to submit to any additional demonstration of competence, nor shall any proof of demonstrated
 155 competence expire:

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

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

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

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

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

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

171 7. Completing any firearms training or safety course or class, ~~including an electronic, video, or~~
 172 ~~online course~~, conducted by a state-certified or National Rifle Association-certified firearms instructor;

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

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

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

181 C. The making of a materially false statement in an application under this article shall constitute

182 perjury, punishable as provided in § 18.2-434.

183 D. The clerk of court ~~shall~~ *may* withhold from public disclosure the ~~applicant's name and any other~~
184 ~~information~~ *social security number* contained in a permit application ~~or any order issuing a concealed~~
185 ~~handgun permit in response to a request to inspect or copy any such permit application~~, except that
186 such ~~information~~ *social security number* shall not be withheld from any law-enforcement officer acting
187 in the performance of his official duties or from the applicant with respect to his own information. The
188 prohibition on public disclosure of information under this subsection shall not apply to any reference to
189 the issuance of a concealed handgun permit in any order book before July 1, 2008; however, any other
190 concealed handgun records maintained by the clerk shall be withheld from public disclosure.

191 E. An application is deemed complete when all information required to be furnished by the applicant,
192 including the fee for a concealed handgun permit as set forth in § 18.2-308.03, is delivered to and
193 received by the clerk of court before or concomitant with the conduct of a state or national criminal
194 history records check.

195 **§ 18.2-308.04. Processing of the application and issuance of a concealed handgun permit.**

196 A. The clerk of court shall enter on the application the date on which the application and all other
197 information required to be submitted by the applicant is received.

198 B. Upon receipt of the completed application, the court shall consult with either the sheriff or police
199 department of the county or city and receive a report from the Central Criminal Records Exchange.

200 C. *As a condition of issuance of a concealed handgun permit, the applicant shall submit to*
201 *fingerprinting in the county or city where he resides and provide personal descriptive information to be*
202 *forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau*
203 *of Investigation for the purpose of obtaining criminal history record information regarding the applicant*
204 *and obtaining fingerprint identification information from federal records pursuant to criminal*
205 *investigations by state and local law-enforcement agencies. Where feasible and practical, the local*
206 *law-enforcement agency may transfer information electronically to the Department of State Police*
207 *instead of inked fingerprint cards. Upon completion of the criminal history record information check, the*
208 *Department of State Police shall return the fingerprint cards to the submitting local agency or, in the*
209 *case of scanned fingerprints, destroy the electronic record. The local agency shall then promptly notify*
210 *the person that he has 21 days from the date of the notice to request return of the fingerprint cards, if*
211 *any. All fingerprint cards not claimed by the applicant within 21 days of notification by the local agency*
212 *shall be destroyed. All optically scanned fingerprints shall be destroyed upon completion of the criminal*
213 *history record information check without requiring that the applicant be notified. Fingerprints taken for*
214 *the purposes described in this section shall not be copied, held, or used for any other purposes.*

215 C. D. The court shall issue the permit via United States mail and notify the Department of State
216 Police of the issuance of the permit within 45 days of receipt of the completed application unless it is
217 determined that the applicant is disqualified. Any order denying issuance of the permit shall be in
218 accordance with § 18.2-308.08. If the applicant is later found by the court to be disqualified after a
219 five-year permit has been issued, the permit shall be revoked.

220 D. E. A court may authorize the clerk to issue concealed handgun permits, without judicial review,
221 to applicants who have submitted complete applications, for whom the criminal history records check
222 does not indicate a disqualification and, after consulting with either the sheriff or police department of
223 the county or city, about which application there are no outstanding questions or issues. The court clerk
224 shall be immune from suit arising from any acts or omissions relating to the issuance of concealed
225 handgun permits without judicial review pursuant to this section unless the clerk was grossly negligent
226 or engaged in willful misconduct. This section shall not be construed to limit, withdraw, or overturn any
227 defense or immunity already existing in statutory or common law, or to affect any cause of action
228 accruing prior to July 1, 2010.

229 E. F. The permit to carry a concealed handgun shall specify only the following information: name,
230 address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee;
231 the signature of the judge issuing the permit, of the clerk of court who has been authorized to sign such
232 permits by the issuing judge, or of the clerk of court who has been authorized to issue such permits
233 pursuant to subsection D E; the date of issuance; and the expiration date. The permit to carry a
234 concealed handgun shall be no larger than two inches wide by three and one-fourth inches long and
235 shall be of a uniform style prescribed by the Department of State Police.

236 **§ 18.2-308.06. Nonresident concealed handgun permits.**

237 A. Nonresidents of the Commonwealth 21 years of age or older may apply in writing to the Virginia
238 Department of State Police for a five-year permit to carry a concealed handgun. Every applicant for a
239 nonresident concealed handgun permit shall submit two photographs of a type and kind specified by the
240 Department of State Police for inclusion on the permit and shall submit fingerprints on a card provided
241 by the Department of State Police for the purpose of obtaining the applicant's state or national criminal
242 history record. As a condition for issuance of a concealed handgun permit, the applicant shall submit to
243 fingerprinting by his local or state law-enforcement agency and provide personal descriptive information

to be forwarded with the fingerprints through the Central Criminal Records Exchange to the U.S. 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. The application shall be made under oath before a notary or other person qualified to take oaths on a form provided by the Department of State Police, requiring only that information necessary to determine eligibility for the permit. If the permittee is later found by the Department of State Police to be disqualified, the permit shall be revoked and the person shall return the permit after being so notified by the Department of State Police. The permit requirement and restriction provisions of subsection C of § 18.2-308.02 and § 18.2-308.09 shall apply, mutatis mutandis, to the provisions of this subsection.

B. The applicant shall demonstrate competence with a handgun by one of the following:

1. Completing a hunter education or hunter safety course approved by the Virginia 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 or a similar agency of another state;

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 approved by the Department of State Police 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 the Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class, ~~including an electronic, video, or on-line course~~, 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 that the Virginia Department of State Police deems adequate.

A photocopy of a certificate of completion of any such course or class; 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 that shows completion of the course or class or evidences participation in firearms competition shall satisfy the requirement for demonstration of competence with a handgun.

C. The Department of State Police may charge a fee not to exceed \$100 to cover the cost of the background check and issuance of the permit. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the nonresident concealed handgun permit program.

D. The permit to carry a concealed handgun shall contain only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and photograph of the permittee; the signature of the Superintendent of the Virginia Department of State Police or his designee; the date of issuance; and the expiration date.

E. The Superintendent of the State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for obtaining a nonresident concealed handgun permit.

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

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

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

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

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

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

5. An individual who is subject to a restraining order, or to a protective order and prohibited by

§ 18.2-308.1:4 from purchasing or transporting a firearm.

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

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

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

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

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

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

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

15. An individual who has been convicted of stalking.

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

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

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

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, 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.

21. *An individual who has been convicted of a violation of § 18.2-287.5 within the five-year period immediately preceding the application.*

§ 18.2-308.1:01. Firearm transfers.

A. Any person other than a licensed dealer who sells, rents, trades, or transfers any firearm to any person other than a licensed dealer is guilty of a Class 2 misdemeanor.

B. Any person other than a licensed dealer who buys, rents, trades, or transfers any firearm from

any person other than a licensed dealer is guilty of a Class 2 misdemeanor.

C. If neither party to a prospective firearm transfer is a licensed dealer, the parties to the transaction shall complete the transfer through a licensed dealer.

D. Notwithstanding subsection A, B, or C, unless otherwise prohibited by state or federal law, any person may transfer a firearm to any other person if:

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

2. The transfer occurs by operation of law;

3. The transferor is an executor or administrator of an estate or is a trustee of a trust created by a will;

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

5. The transfer is temporary and occurs while in the continuous presence of the owner of the firearm.

§ 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; (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; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction.

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 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, including the Pentagon, shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. 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

428 Department of Motor Vehicles driver's record showing that the original date of issue of the driver's
429 license was more than 30 days prior to the attempted purchase.

430 In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any
431 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent
432 residence. To establish citizenship or lawful admission for a permanent residence for purposes of
433 purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth
434 certificate or a certificate of birth abroad issued by the United States State Department, a certificate of
435 citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration
436 Services, an unexpired U.S. passport, a United States citizen identification card, a current voter
437 registration card, a current selective service registration card, or an immigrant visa or other
438 documentation of status as a person lawfully admitted for permanent residence issued by the United
439 States Citizenship and Immigration Services.

440 Upon receipt of the request for a criminal history record information check, the State Police shall (1)
441 review its criminal history record information to determine if the buyer or transferee is prohibited from
442 possessing or transporting a firearm by state or federal law, (2) inform the dealer if its record indicates
443 that the buyer or transferee is so prohibited, and (3) provide the dealer with a unique reference number
444 for that inquiry.

445 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
446 by return call without delay. If the criminal history record information check indicates the prospective
447 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
448 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,
449 the State Police shall have until the end of the dealer's next business day to advise the dealer if its
450 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state
451 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
452 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
453 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
454 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
455 the reason for such delay and be given an estimate of the length of such delay. After such notification,
456 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
457 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
458 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
459 subdivision 1 and is told by the State Police that a response will not be available by the end of the
460 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
461 violation of this section with respect to such sale or transfer.

462 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer
463 than 30 days, except for multiple handgun firearm transactions for which records shall be maintained for
464 12 months, from any dealer's request for a criminal history record information check pertaining to a
465 buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under
466 state or federal law. However, the log on requests made may be maintained for a period of 12 months,
467 and such log shall consist of the name of the purchaser, the dealer identification number, the unique
468 approval number and the transaction date.

469 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
470 deliver the written consent form required by subsection A to the Department of State Police. The State
471 Police shall immediately initiate a search of all available criminal history record information to
472 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
473 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
474 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
475 the jurisdiction where the sale or transfer occurred and the dealer without delay.

476 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
477 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
478 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof
479 of citizenship or status as a person lawfully admitted for permanent residence and one
480 photo-identification form issued by a governmental agency of the person's state of residence and one
481 other form of identification determined to be acceptable by the Department of Criminal Justice Services.

482 6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include
483 December 25.

484 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the
485 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
486 subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the
487 Department of State Police a report indicating that a search of all available criminal history record
488 information has not disclosed that the person is prohibited from possessing or transporting a firearm
489 under state or federal law. The dealer shall obtain the required report by mailing or delivering the

written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check through the dealer as provided in subsection C.

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

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

G. For purposes of this section:

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

"Antique firearm" means:

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

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

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

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

"Assault firearm" means any semi-automatic center-fire 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.

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

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

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

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

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

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

"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.

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

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant

551 to this section.

552 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
553 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
554 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
555 or any local government, or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of
556 Title 23; or (iii) antique firearms, curios or relics.

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

562 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal
563 history record information check is required pursuant to this section, except that a fee of \$5 shall be
564 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
565 Department of State Police by the last day of the month following the sale for deposit in a special fund
566 for use by the State Police to offset the cost of conducting criminal history record information checks
567 under the provisions of this section.

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

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

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

578 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
579 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
580 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
581 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
582 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
583 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
584 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
585 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
586 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
587 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
588 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

596 Q. *Except as provided in subdivisions 1, 2, and 3, it shall be unlawful for any person who is not a*
597 *licensed firearms dealer to purchase more than one firearm within any 30-day period. A violation of*
598 *this subsection shall be punishable as a Class 1 misdemeanor.*

599 *1. Purchases in excess of one firearm within a 30-day period may be made upon completion of an*
600 *enhanced background check, as described in this subdivision, by special application to the Department*
601 *of State Police listing the number and type of firearms to be purchased and transferred for lawful*
602 *business or personal use, in a collector series, for collections, as a bulk purchase from estate sales, or*
603 *for similar purposes. Such applications shall be signed under oath by the applicant on forms provided*
604 *by the Department of State Police, shall state the purpose for the purchase above the limit, and shall*
605 *require satisfactory proof of residency and identity. Such application shall be in addition to the firearms*
606 *sales report required by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives. The*
607 *Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act*
608 *(§ 2.2-4000 et seq.), for the implementation of an application process for purchases of firearms above*
609 *the limit.*

610 *Upon being satisfied that these requirements have been met, the Department of State Police shall*
611 *forthwith issue to the applicant a nontransferable certificate, which shall be valid for seven days from*
612 *the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to*

the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates forthwith pursuant to this subdivision. Applications and certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

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

a. A law-enforcement agency;

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

c. State and local correctional facilities;

d. A law-enforcement officer;

e. The purchase of antique firearms as herein defined;

f. A person whose handgun is stolen or irretrievably lost who deems it essential that such firearm be replaced immediately. Such person may purchase another firearm, even if the person has previously purchased a firearm 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 firearm; (ii) the official police report or summary thereof contains the name and address of firearm owner, the description of the firearm, 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 firearm. 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 firearm at the same time he makes a firearms purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day; or

h. A law-enforcement officer.

For purposes of this subdivision, "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 or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 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" does not include the exchange or replacement of a firearm by a seller for a firearm 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 § 18.2-308.012 of the Code of Virginia is repealed.

3. 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 is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.