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SENATE BILL NO. 943

Offered January 14, 2015

Prefiled January 9, 2015

A BILL to amend and reenact §§ 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.2:3, and 19.2-386.28 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.1:6, relating to possession and transport of firearms following certain convictions; permit to restore rights; penalties.

Patrons—Favola; Delegate: Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.2:3, and 19.2-386.28 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.1:6 as follows:

§ 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 18.2-308.1:6 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.

INTRODUCED

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

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

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

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

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

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

78 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the
79 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
80 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or
81 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any
82 state, the District of Columbia, or the United States or its territories, the trial court found that the facts
83 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the
84 substantially similar law of any other state, the District of Columbia, or the United States or its
85 territories.

86 **§ 18.2-308.1:6. Possession or transportation of firearms following certain criminal convictions;**
87 **process to restore rights; penalty.**

88 A. Any person who knowingly and intentionally possesses or transports a firearm following a
89 misdemeanor conviction for an offense that occurred on or after July 1, 2015, for the offenses of (i)
90 stalking in violation of § 18.2-60.3, (ii) sexual battery in violation of § 18.2-67.4, (iii) assault and
91 battery in violation of § 18.2-57 where the victim was a family or household member as "family or
92 household member" is defined in § 16.1-228, (iv) assault and battery in violation of § 18.2-57.2, or (v)
93 any offense substantially similar to clause (i), (ii), (iii) or (iv) in the laws of any other state or of the
94 United States is guilty of a Class 1 misdemeanor.

95 B. The prohibitions of subsection A shall not apply to any person who has been pardoned or whose
96 political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia,
97 provided the Governor, in the document granting the pardon or removing the person's political
98 disabilities, may expressly place conditions upon the reinstatement of the person's right to possess or
99 transport firearms.

100 C. Any time after five years from the date of conviction, any person prohibited from possessing or
101 transporting a firearm under subsection A may petition the circuit court of the jurisdiction in which he
102 resides, or the circuit court of the county or city where he was last convicted of a crime listed in
103 subsection A, for a permit to possess or transport a firearm. A copy of the petition shall be mailed or
104 delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who
105 shall be entitled to represent the interests of the Commonwealth. The court shall conduct a hearing if
106 requested by either party. The court may, in its discretion and for good cause shown, grant such
107 petition and issue a permit. The prohibitions of subsection A shall not apply to any person who has
108 been granted a permit pursuant to this subsection.

109 D. Any time after five years from the date of conviction, any person prohibited by federal law from
110 possessing or transporting a firearm after having been convicted of a misdemeanor crime of domestic
111 violence for (i) stalking in violation of § 18.2-60.3, (ii) sexual battery in violation of § 18.2-67.4, (iii)
112 assault and battery in violation of § 18.2-57 where the victim was a family or household member as
113 "family or household member" is defined in § 16.1-228, or (iv) assault and battery in violation of
114 § 18.2-57.2, may petition the circuit court of the jurisdiction in which he resides, or the circuit court of
115 the county or city where he was last convicted of such a misdemeanor, for a permit to possess or
116 transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the
117 Commonwealth for the jurisdiction where the petition was filed who shall be entitled to represent the
118 interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The
119 court may, in its discretion and for good cause shown, grant such petition and issue a permit. The
120 prohibitions of subsection A shall not apply to any person who has been granted a permit pursuant to

121 *this subsection.*

122 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

123 Any person who sells, barters, gives, or furnishes, or has in his possession or under his control with
124 the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is prohibited
125 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3,
126 18.2-308.1:6, or 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 ~~shall be~~ *is* guilty of a
127 Class 4 felony. However, this prohibition shall not be applicable when the person convicted of the
128 felony *or misdemeanor*, adjudicated delinquent, or acquitted by reason of insanity has (i) been issued a
129 permit pursuant to subsection C of § 18.2-308.2 *or subsection C or D of § 18.2-308.1:6* or been granted
130 relief pursuant to subsection B of § 18.2-308.1:1, ~~or~~ § 18.2-308.1:2, or 18.2-308.1:3; (ii) been pardoned
131 or had his political disabilities removed in accordance with subsection B of § 18.2-308.2, *or*
132 18.2-308.1:6; or (iii) obtained a permit to ship, transport, possess, or receive firearms pursuant to the
133 laws of the United States.

134 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**
135 **firearms.**

136 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a
137 form to be provided by the Department of State Police, to have the dealer obtain criminal history record
138 information. Such form shall include only the written consent; the name, birth date, gender, race,
139 citizenship, and social security number and/or any other identification number; the number of firearms
140 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the
141 following questions: (i) has the applicant been convicted of a felony offense *or a misdemeanor listed in*
142 *§ 18.2-308.1:6* or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the
143 time of the offense of a delinquent act that *if committed by an adult* would be a felony ~~if committed by~~
144 ~~an adult~~ *or is a misdemeanor listed in § 18.2-308.1:6*; (ii) is the applicant subject to a court order
145 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,
146 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant
147 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a
148 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been
149 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and
150 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any
151 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to
152 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3
153 or any substantially similar law of any other jurisdiction.

154 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other
155 person who is a resident of Virginia until he has (i) obtained written consent and the other information
156 on the consent form specified in subsection A, and provided the Department of State Police with the
157 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
158 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested
159 criminal history record information by a telephone call to or other communication authorized by the
160 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
161 personal identification and residence in Virginia for purposes of this section, a dealer must require any
162 prospective purchaser to present one photo-identification form issued by a governmental agency of the
163 Commonwealth or by the United States Department of Defense, and other documentation of residence.
164 Except where the photo-identification was issued by the United States Department of Defense, the other
165 documentation of residence shall show an address identical to that shown on the photo-identification
166 form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease,
167 (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile
168 registration, or (g) hunting or fishing license; other current identification allowed as evidence of
169 residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or
170 other documentation of residence determined to be acceptable by the Department of Criminal Justice
171 Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the
172 photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser
173 to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of
174 residence. For the purposes of this section and establishment of residency for firearm purchase,
175 residency of a member of the armed forces shall include both the state in which the member's permanent
176 duty post is located and any nearby state in which the member resides and from which he commutes to
177 the permanent duty post. When the photo-identification presented to a dealer by the prospective
178 purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles,
179 and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's
180 license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise
181 transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or

182 duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia
183 Department of Motor Vehicles driver's record showing that the original date of issue of the driver's
184 license was more than 30 days prior to the attempted purchase.

185 In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any
186 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent
187 residence. To establish citizenship or lawful admission for a permanent residence for purposes of
188 purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth
189 certificate or a certificate of birth abroad issued by the United States State Department, a certificate of
190 citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration
191 Services, an unexpired U.S. passport, a United States citizen identification card, a current voter
192 registration card, a current selective service registration card, or an immigrant visa or other
193 documentation of status as a person lawfully admitted for permanent residence issued by the United
194 States Citizenship and Immigration Services.

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

200 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
201 by return call without delay. If the criminal history record information check indicates the prospective
202 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
203 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,
204 the State Police shall have until the end of the dealer's next business day to advise the dealer if its
205 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state
206 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
207 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
208 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
209 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
210 the reason for such delay and be given an estimate of the length of such delay. After such notification,
211 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
212 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
213 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
214 subdivision 1 and is told by the State Police that a response will not be available by the end of the
215 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
216 violation of this section with respect to such sale or transfer.

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

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

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

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

239 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the
240 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
241 subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the
242 Department of State Police a report indicating that a search of all available criminal history record
243 information has not disclosed that the person is prohibited from possessing or transporting a firearm

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,

305 confidentiality and security of all records and data provided by the Department of State Police pursuant
306 to this section.

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

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

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

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

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

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

333 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
334 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
335 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
336 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
337 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
338 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
339 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
340 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
341 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
342 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
343 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

351 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**
352 **firearms; exemptions; penalties.**

353 A. No person, corporation or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921
354 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary,
355 paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited
356 from possessing a firearm under §§ 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:6, 18.2-308.2,
357 or § 18.2-308.2:01, or is an illegal alien, or is prohibited from purchasing or transporting a firearm
358 pursuant to § 18.2-308.1:4 or § 18.2-308.1:5.

359 B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement
360 or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit
361 the applicant's fingerprints and personal descriptive information to the Central Criminal Records
362 Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining
363 national criminal history record information regarding the applicant.

364 C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons
365 employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from
366 possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000,

the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person 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 by this section and § 18.2-308.2:2, shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship 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.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background

428 check in accordance with the provisions of § 18.2-308.2:2.

429 "Transfer" means any act performed with intent to sell, rent, barter, trade or otherwise transfer
430 ownership or permanent possession of a firearm at the place of business of a dealer.

431 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported, or carried in**
432 **violation of law.**

433 Any firearm, *any* stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed,
434 transported, or carried in violation of § 18.2-283.1, 18.2-287.01, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3,
435 18.2-308.1:4, 18.2-308.1:6, 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,
436 or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

437 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
438 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
439 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
440 **2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing**
441 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
442 **amount of the necessary appropriation is \$0 for periods of commitment to the custody of the**
443 **Department of Juvenile Justice.**