

16103693D

SENATE BILL NO. 546

Offered January 13, 2016

Prefiled January 13, 2016

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; penalties.

Patron—Favola

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 **penalty.**

88 A. A person is guilty of a Class 1 misdemeanor who knowingly and intentionally purchases,  
89 possesses, or transports a firearm following a misdemeanor conviction for an offense that occurred on  
90 or after July 1, 2016, for the following offenses where the victim was a family or household member: (i)  
91 sexual battery in violation of § 18.2-67.4, (ii) assault and battery, or (iii) any offense substantially  
92 similar to clause (i) or (ii) in the laws of any other state, the District of Columbia, the United States or  
93 any territory thereof.

94 B. For purposes of this section, "family or household member" has the same meaning as in  
95 § 16.1-228.

96 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

97 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with  
98 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited  
99 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3,  
100 18.2-308.1:6, 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be is guilty of a Class 4  
101 felony. However, this prohibition shall not be applicable when the person convicted of the felony or  
102 misdemeanor, adjudicated delinquent, or acquitted by reason of insanity has (i) been issued a permit  
103 pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of  
104 § 18.2-308.1:1, ~~or~~ § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had his political disabilities  
105 removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport,  
106 possess or receive firearms pursuant to the laws of the United States.

107 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**  
108 **firearms.**

109 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a  
110 form to be provided by the Department of State Police, to have the dealer obtain criminal history record  
111 information. Such form shall include only the written consent; the name, birth date, gender, race,  
112 citizenship, and social security number and/or any other identification number; the number of firearms  
113 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the  
114 following questions: (i) has the applicant been convicted of a felony offense or a misdemeanor listed in  
115 § 18.2-308.1:6 or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the  
116 time of the offense of a delinquent act that if committed by an adult would be a felony if committed by  
117 an adult or is a misdemeanor listed in § 18.2-308.1:6; (ii) is the applicant subject to a court order  
118 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,  
119 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant  
120 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a

121 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been  
122 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and  
123 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any  
124 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to  
125 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3  
126 or any substantially similar law of any other jurisdiction.

127 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
128 person who is a resident of Virginia until he has (i) obtained written consent and the other information  
129 on the consent form specified in subsection A, and provided the Department of State Police with the  
130 name, birth date, gender, race, citizenship, and social security and/or any other identification number and  
131 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested  
132 criminal history record information by a telephone call to or other communication authorized by the  
133 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish  
134 personal identification and residence in Virginia for purposes of this section, a dealer must require any  
135 prospective purchaser to present one photo-identification form issued by a governmental agency of the  
136 Commonwealth or by the United States Department of Defense, and other documentation of residence.  
137 Except where the photo-identification was issued by the United States Department of Defense, the other  
138 documentation of residence shall show an address identical to that shown on the photo-identification  
139 form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease,  
140 (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile  
141 registration, or (g) hunting or fishing license; other current identification allowed as evidence of  
142 residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or  
143 other documentation of residence determined to be acceptable by the Department of Criminal Justice  
144 Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the  
145 photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser  
146 to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of  
147 residence. For the purposes of this section and establishment of residency for firearm purchase,  
148 residency of a member of the armed forces shall include both the state in which the member's permanent  
149 duty post is located and any nearby state in which the member resides and from which he commutes to  
150 the permanent duty post. When the photo-identification presented to a dealer by the prospective  
151 purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles,  
152 and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's  
153 license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise  
154 transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or  
155 duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia  
156 Department of Motor Vehicles driver's record showing that the original date of issue of the driver's  
157 license was more than 30 days prior to the attempted purchase.

158 In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any  
159 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent  
160 residence. To establish citizenship or lawful admission for a permanent residence for purposes of  
161 purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth  
162 certificate or a certificate of birth abroad issued by the United States State Department, a certificate of  
163 citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration  
164 Services, an unexpired U.S. passport, a United States citizen identification card, a current voter  
165 registration card, a current selective service registration card, or an immigrant visa or other  
166 documentation of status as a person lawfully admitted for permanent residence issued by the United  
167 States Citizenship and Immigration Services.

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

173 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or  
174 by return call without delay. If the criminal history record information check indicates the prospective  
175 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity  
176 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,  
177 the State Police shall have until the end of the dealer's next business day to advise the dealer if its  
178 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state  
179 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled  
180 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be  
181 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or

182 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of  
183 the reason for such delay and be given an estimate of the length of such delay. After such notification,  
184 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business  
185 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from  
186 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of  
187 subdivision 1 and is told by the State Police that a response will not be available by the end of the  
188 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in  
189 violation of this section with respect to such sale or transfer.

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

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

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

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

212 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the  
213 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of  
214 subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the  
215 Department of State Police a report indicating that a search of all available criminal history record  
216 information has not disclosed that the person is prohibited from possessing or transporting a firearm  
217 under state or federal law. The dealer shall obtain the required report by mailing or delivering the  
218 written consent form required under subsection A to the State Police within 24 hours of its execution. If  
219 the dealer has complied with the provisions of this subsection and has not received the required report  
220 from the State Police within 10 days from the date the written consent form was mailed to the  
221 Department of State Police, he shall not be deemed in violation of this section for thereafter completing  
222 the sale or transfer.

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

226 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may  
227 exercise his right of access to and review and correction of criminal history record information under  
228 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within  
229 30 days of such denial.

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

234 G. For purposes of this section:

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

237 "Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

271 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to  
 272 fire single or multiple projectiles by means of an explosion of a combustible material from one or more  
 273 barrels when held in one hand.

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

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

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

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

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

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

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

301 L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or  
 302 otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and  
 303 intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not  
 304 apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the

305 performance of his official duties, or other person under his direct supervision.

306 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such  
307 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise  
308 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the  
309 Commonwealth to be resold or otherwise provided to another person who the transferor knows is  
310 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to  
311 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection  
312 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory  
313 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the  
314 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §  
315 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,  
316 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

324 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his  
325 inventory to any other person, a dealer may require such other person to consent to have the dealer  
326 obtain criminal history record information to determine if such other person is prohibited from  
327 possessing or transporting a firearm by state or federal law. The Department of State Police shall  
328 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to  
329 be made by the Department of State Police, and the processes established for making such  
330 determinations shall conform to the provisions of this section.

331 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**  
332 **firearms; exemptions; penalties.**

333 A. No person, corporation or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921  
334 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary,  
335 paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited  
336 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,  
337 or § 18.2-308.2:01 or is an illegal alien, or is prohibited from purchasing or transporting a firearm  
338 pursuant to § 18.2-308.1:4 or § 18.2-308.1:5.

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

344 C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons  
345 employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from  
346 possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000,  
347 the dealer shall submit the employee's fingerprints and personal descriptive information to the Central  
348 Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the  
349 purpose of obtaining national criminal history record information regarding the request.

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

366 D. The Department of State Police, upon receipt of an individual's record or notification that no

367 record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant  
 368 beginning his duties for new employees or within 30 days of the applicant's birthday for a person  
 369 employed prior to July 1, 2000.

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

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

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

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

385 I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history  
 386 record information under false pretenses, or who willfully and intentionally disseminates or seeks to  
 387 disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2,  
 388 shall be guilty of a Class 2 misdemeanor.

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

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

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

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

400 N. For purposes of this section:

401 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.  
 402 § 921 et seq.

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

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

406 "Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent  
 407 of a dealer, who may lawfully transfer firearms and who actually performs the criminal background  
 408 check in accordance with the provisions of § 18.2-308.2:2.

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

411 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in**  
 412 **violation of law.**

413 Any firearm, stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed,  
 414 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,  
 415 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,  
 416 or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

417 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
 418 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
 419 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
 420 **665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to**  
 421 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
 422 **necessary appropriation cannot be determined for periods of commitment to the custody of the**  
 423 **Department of Juvenile Justice.**