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**HOUSE BILL NO. 1763**

Offered January 9, 2019

Prefiled December 21, 2018

A BILL to amend and reenact §§ 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2, and 18.2-308.2:3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.1:6, by adding in Title 19.2 a chapter numbered 9.2, consisting of sections numbered 19.2-152.13 through 19.2-152.17, and by adding a section numbered 19.2-387.3, relating to firearms; removal from persons posing substantial risk; penalties.

Patrons—Sullivan, Hurst, Kory, Levine, Lopez, Price and Rasoul; Senator: McClellan

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, and 18.2-308.2:3 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, by adding in Title 19.2 a chapter numbered 9.2, consisting of sections numbered 19.2-152.13 through 19.2-152.17, and by adding a section numbered 19.2-387.3 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, possessing, 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

59 specific acts, or upon a written statement made under oath before a notary public of a competent person  
60 having personal knowledge of the specific acts.

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

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

65 16. An individual whose previous convictions or adjudications of delinquency were based on an  
66 offense that would have been at the time of conviction a felony if committed by an adult under the laws  
67 of any state, the District of Columbia, the United States or its territories. For purposes of this  
68 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the  
69 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or  
70 adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall  
71 not apply to an individual with previous adjudications of delinquency who has completed a term of  
72 service of no less than two years in the Armed Forces of the United States and, if such person has been  
73 discharged from the Armed Forces of the United States, received an honorable discharge.

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

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

78 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period  
79 immediately preceding the application for the permit, was found guilty of any criminal offense set forth  
80 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession  
81 or 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.

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

91 **§ 18.2-308.1:6. Purchase, possession, or transportation of firearms by persons subject to substantial**  
92 **risk orders; penalty.**

93 *It is unlawful for any person who is subject to a substantial risk order entered pursuant to §*  
94 *19.2-152.13 or 19.2-152.14 or an order issued by a tribunal of another state, the United States or any*  
95 *of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that*  
96 *is substantially similar to § 19.2-152.13 or 19.2-152.14 to purchase, possess, or transport any firearm*  
97 *while the order is in effect. Any such person with a concealed handgun permit is prohibited from*  
98 *carrying any concealed firearm while the order is in effect and shall surrender his permit to the court*  
99 *entering the order pursuant to § 19.2-152.13 or 19.2-152.14. A violation of this section is a Class 1*  
100 *misdemeanor.*

101 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

102 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with  
103 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited  
104 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3,  
105 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  
106 felony. However, this prohibition shall not be applicable when the person convicted of the felony,  
107 adjudicated delinquent, or acquitted by reason of insanity has (i) been issued a permit pursuant to  
108 subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1; or  
109 § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had his political disabilities removed in accordance  
110 with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport, possess or receive  
111 firearms pursuant to the laws of the United States.

112 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**  
113 **firearms.**

114 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a  
115 form to be provided by the Department of State Police, to have the dealer obtain criminal history record  
116 information. Such form shall include only the written consent; the name, birth date, gender, race,  
117 citizenship, and social security number and/or any other identification number; the number of firearms  
118 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the  
119 following questions: (i) has the applicant been convicted of a felony offense or found guilty or  
120 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent

121 act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order  
 122 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,  
 123 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant  
 124 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a  
 125 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been  
 126 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and  
 127 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any  
 128 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to  
 129 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3  
 130 or any substantially similar law of any other jurisdiction; and (iv) is the applicant subject to a  
 131 substantial risk order entered pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing,  
 132 possessing, or transporting a firearm pursuant to § 18.2-308.1:6 or any substantially similar law of any  
 133 other jurisdiction.

134 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
 135 person who is a resident of Virginia until he has (i) obtained written consent and the other information  
 136 on the consent form specified in subsection A, and provided the Department of State Police with the  
 137 name, birth date, gender, race, citizenship, and social security and/or any other identification number and  
 138 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested  
 139 criminal history record information by a telephone call to or other communication authorized by the  
 140 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish  
 141 personal identification and residence in Virginia for purposes of this section, a dealer must require any  
 142 prospective purchaser to present one photo-identification form issued by a governmental agency of the  
 143 Commonwealth or by the United States Department of Defense that demonstrates that the prospective  
 144 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm  
 145 purchase, residency of a member of the armed forces shall include both the state in which the member's  
 146 permanent duty post is located and any nearby state in which the member resides and from which he  
 147 commutes to the permanent duty post. A member of the armed forces whose photo identification issued  
 148 by the Department of Defense does not have a Virginia address may establish his Virginia residency  
 149 with such photo identification and either permanent orders assigning the purchaser to a duty post,  
 150 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo  
 151 identification presented to a dealer by the prospective purchaser is a driver's license or other photo  
 152 identification issued by the Department of Motor Vehicles, and such identification form contains a date  
 153 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by  
 154 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until  
 155 30 days after the date of issue of an original or duplicate driver's license unless the prospective  
 156 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing  
 157 that the original date of issue of the driver's license was more than 30 days prior to the attempted  
 158 purchase.

159 In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any  
 160 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent  
 161 residence.

162 Upon receipt of the request for a criminal history record information check, the State Police shall (a)  
 163 review its criminal history record information to determine if the buyer or transferee is prohibited from  
 164 possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates  
 165 that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number  
 166 for that inquiry.

167 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or  
 168 by return call without delay. If the criminal history record information check indicates the prospective  
 169 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity  
 170 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,  
 171 the State Police shall have until the end of the dealer's next business day to advise the dealer if its  
 172 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state  
 173 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled  
 174 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be  
 175 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or  
 176 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of  
 177 the reason for such delay and be given an estimate of the length of such delay. After such notification,  
 178 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business  
 179 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from  
 180 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of  
 181 subdivision 1 and is told by the State Police that a response will not be available by the end of the

182 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in  
183 violation of this section with respect to such sale or transfer.

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

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

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

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

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

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

219 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may  
220 exercise his right of access to and review and correction of criminal history record information under  
221 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within  
222 30 days of such denial.

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

227 G. For purposes of this section:

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

230 "Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed  
 274 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)  
 275 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth  
 276 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of  
 277 Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

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

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

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

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

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

299 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such  
 300 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise  
 301 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the  
 302 Commonwealth to be resold or otherwise provided to another person who the transferor knows is  
 303 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to  
 304 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection

305 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory  
306 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the  
307 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to  
308 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,  
309 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

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

324 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**  
325 **firearms; exemptions; penalties.**

326 A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C.  
327 § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent,  
328 temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be  
329 prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, ~~or~~ 18.2-308.1:3, *or*  
330 *18.2-308.1:6*, subsection B of § 18.2-308.1:4, or § 18.2-308.2 or 18.2-308.2:01 or is an illegal alien, or  
331 is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or  
332 § 18.2-308.1:5.

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

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

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

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

364 E. If any applicant is denied employment because of information appearing on the criminal history  
365 record and the applicant disputes the information upon which the denial was based, the Central Criminal  
366 Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a

367 copy of the criminal history record from the Federal Bureau of Investigation. The information provided  
368 to the dealer shall not be disseminated except as provided in this section.

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

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

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

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

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

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

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

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

394 N. For purposes of this section:

395 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.  
396 § 921 et seq.

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

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

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

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

#### 405 CHAPTER 9.2.

#### 406 SUBSTANTIAL RISK ORDERS.

#### 407 § 19.2-152.13. *Emergency substantial risk order.*

408 A. *Upon the petition of an attorney for the Commonwealth or a law-enforcement officer, any judge*  
409 *of a circuit court, general district court, or juvenile and domestic relations district court or any*  
410 *magistrate, upon a finding that there is probable cause to believe that a person poses a substantial risk*  
411 *of personal injury to himself or others in the near future by such person's possession or acquisition of a*  
412 *firearm, shall issue an ex parte emergency substantial risk order. Such order shall prohibit the person*  
413 *who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of*  
414 *the order. In determining whether probable cause for the issuance of an order exists, the judge or*  
415 *magistrate shall consider any relevant evidence, including any recent act of violence, force, or threat as*  
416 *defined in § 19.2-152.7:1 by such person directed toward another person or toward himself. No petition*  
417 *shall be filed unless an independent investigation has been conducted by law enforcement that*  
418 *determines that probable cause for the petition exists. The order shall contain a statement (i) informing*  
419 *the person who is subject to the order of the requirements and penalties under § 18.2-308.1:6, including*  
420 *that it is unlawful for such person to purchase, possess, or transport a firearm for the duration of the*  
421 *order and that such person is required to surrender any firearm that has not been taken into custody*  
422 *pursuant to a warrant issued pursuant to this section to the law-enforcement agency that served the*  
423 *order.*

424 B. *If a judge or magistrate issues an emergency substantial risk order pursuant to subdivision A, the*  
425 *judge or magistrate, upon a finding that there is probable cause to believe that a person who is subject*  
426 *to the order possesses a firearm and such firearm is within or upon any place, thing, or person, shall*  
427 *issue a warrant commanding a law-enforcement officer to enter into or upon such place or thing, search*

428 *the same or the person, and take into such officer's custody any firearm. The warrant shall name or*  
429 *describe the person, place, or thing to be searched and state the grounds and probable cause for its*  
430 *issuance.*

431 *C. The petition for an emergency substantial risk order shall be supported by an affidavit or by*  
432 *sworn testimony before the judge or magistrate. If an order is issued without an affidavit being*  
433 *presented, the court, in its order, shall state the basis upon which the order was entered, including a*  
434 *summary of the allegations made and the court's findings. If a search warrant is issued pursuant to*  
435 *subsection B, the petitioner shall file a copy of any affidavit upon which the warrant is based with the*  
436 *clerk of court for the jurisdiction where the search will be conducted no later than the next business day*  
437 *following the execution of the warrant. Prior to the execution and return of the warrant, the clerk of*  
438 *court shall not disclose any information pertaining to the application for the warrant or any affidavits*  
439 *upon which the warrant is based.*

440 *D. An emergency substantial risk order issued pursuant to this section shall expire at 11:59 p.m. on*  
441 *the fourteenth day following issuance of the order. If the expiration occurs on a day that the court is*  
442 *not in session, the order shall be extended until 11:59 p.m. on the next day that the court that issued*  
443 *the order is in session. The person who is subject to the order may at any time file a motion to dissolve*  
444 *the order.*

445 *E. An emergency substantial risk order issued pursuant to this section is effective upon personal*  
446 *service on the person who is subject to the order. The order shall be served and the warrant shall be*  
447 *executed forthwith after issuance. A copy of the order and the warrant, if any, shall be given to the*  
448 *person who is subject to the order together with a notice informing the person that he has a right to a*  
449 *hearing under § 19.2-152.14 and may be represented by counsel at the hearing.*

450 *F. During the execution of a warrant issued pursuant to this section, the person who is subject to the*  
451 *order shall be informed of the items sought and given the opportunity to voluntarily relinquish any*  
452 *firearm, though voluntary relinquishment shall not preclude the law-enforcement officer from conducting*  
453 *a search if he has reason to believe the person who is subject to the order has not relinquished all*  
454 *firearms in his possession. The law-enforcement officer executing the warrant shall take custody of any*  
455 *firearm that is in the person's possession or that is owned by the person. The law-enforcement agency*  
456 *that takes into custody a firearm pursuant to a warrant shall prepare a written receipt containing the*  
457 *name of the person who is subject to the order and the manufacturer, model, and serial number of the*  
458 *firearm and provide a copy to such person.*

459 *G. If the location to be searched during the execution of the warrant is jointly occupied by the*  
460 *person who is subject to the order and other persons, and the law-enforcement officer executing the*  
461 *warrant finds a firearm that is not owned by the person who is subject to the order, the firearm shall*  
462 *not be taken if there is no independent evidence of unlawful possession of the firearm by the owner of*  
463 *the firearm. The owner of the firearm shall be given written notice by the law-enforcement officer*  
464 *executing the warrant of the requirements and penalties under § 18.2-308.2:1.*

465 *H. The court or magistrate shall forthwith, but in all cases no later than the end of the business day*  
466 *on which the emergency substantial risk order was issued, enter and transfer electronically to the*  
467 *Virginia Criminal Information Network the identifying information of the person who is subject to the*  
468 *order provided to the court of magistrate. A copy of an order issued pursuant to this section containing*  
469 *any such identifying information shall be forwarded forthwith to the primary law-enforcement agency*  
470 *responsible for service and entry of the order. Upon receipt of the order by the primary*  
471 *law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the*  
472 *identifying information and other appropriate information required by the Department of State Police*  
473 *into the Virginia Criminal Information Network established and maintained by the Department pursuant*  
474 *to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall be served forthwith upon the person who*  
475 *is subject to the order and due return made to the court. However, if the order is issued by the circuit*  
476 *court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the*  
477 *identifying information of the person who is subject to the order provided to the court to the primary*  
478 *law-enforcement agency providing service and entry of the order. Upon receipt of the order by the*  
479 *primary law-enforcement agency, the agency shall enter the name of the person subject to the order and*  
480 *other appropriate information required by the Department of State Police into the Virginia Criminal*  
481 *Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et*  
482 *seq.) of Title 52, and the order shall be served forthwith upon the person who is subject to the order.*  
483 *Upon service, the agency making service shall enter the date and time of service and other appropriate*  
484 *information required into the Virginia Criminal Information Network and make due return to the court.*  
485 *If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be*  
486 *attested and forwarded forthwith to the primary law-enforcement agency responsible for service and*  
487 *entry of the order. Upon receipt of the dissolution or modification order by the primary law-enforcement*  
488 *agency, the agency shall forthwith verify and enter any modification as necessary to the identifying*  
489 *information and other appropriate information required by the Department of State Police into the*



490 Virginia Criminal Information Network established and maintained by the Department pursuant to  
 491 Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall be served forthwith and due return made to  
 492 the court.

493 I. The law-enforcement agency that executes the warrant shall make due return to the court, which  
 494 shall be accompanied by a written inventory of all firearms taken. A warrant issued pursuant to this  
 495 section that is not executed by the time the order expires shall be returned to and voided by the judge  
 496 or magistrate who issued the warrant.

497 **§ 19.2-152.14. Substantial risk order.**

498 A. Not later than 14 days after the issuance of an emergency substantial risk order pursuant to §  
 499 19.2-152.13, the circuit court for the jurisdiction where the person who is subject to the order resides  
 500 shall hold a hearing to determine whether a substantial risk order should be entered. The attorney for  
 501 the Commonwealth for the jurisdiction that issued the emergency substantial risk order shall represent  
 502 the interests of the Commonwealth. The Commonwealth shall have the burden of proving all material  
 503 facts by clear and convincing evidence. If the court finds by clear and convincing evidence that the  
 504 person poses a substantial risk of personal injury to himself or to other individuals in the near future by  
 505 such person's possession or acquisition of a firearm, the court shall issue a substantial risk order. Such  
 506 order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting  
 507 a firearm for the duration of the order. In determining whether clear and convincing evidence for the  
 508 issuance of an order exists, the judge shall consider any relevant evidence including any recent act of  
 509 violence, force, or threat as defined in § 19.2-152.7:1 by such person directed toward another person  
 510 or toward himself. The order shall contain a statement (i) informing the person who is subject to the  
 511 order of the requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such  
 512 person to purchase, possess, or transport a firearm for the duration of the order and that such person is  
 513 required to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such  
 514 person to surrender any firearm that has not been taken into custody pursuant to a warrant issued  
 515 pursuant to this section to the law-enforcement agency that served the order.

516 B. If the court issues a substantial risk order pursuant to subsection A, the court shall order that any  
 517 firearm taken from the person who is subject to the order pursuant to a warrant issued pursuant to  
 518 § 19.2-152.13 continue to be held by the agency that took the firearm for the duration of the order. If  
 519 the court finds that the person does not pose a substantial risk of personal injury to himself or to other  
 520 individuals in the near future, the court shall order that any firearm taken be returned to such person in  
 521 accordance with the provisions of § 19.2-152.15.

522 C. The substantial risk order may be issued for a specified period of time up to a maximum of 180  
 523 days. The order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of  
 524 the 180-day period if no date is specified. Prior to the expiration of the order, an attorney for the  
 525 Commonwealth or a law-enforcement officer may file a written motion requesting a hearing to extend  
 526 the order. Proceedings to extend an order shall be given precedence on the docket of the court. The  
 527 court may extend the order for a period not longer than 180 days if the court finds by clear and  
 528 convincing evidence that the person continues to pose a substantial risk of personal injury to himself or  
 529 to other individuals in the near future by such person's possession or acquisition of a firearm at the  
 530 time the request for an extension is made. The extension of the order shall expire at 11:59 p.m. on the  
 531 last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified. Nothing  
 532 herein shall limit the number of extensions that may be requested or issued. The person who is subject  
 533 to the order may file a motion to dissolve the order one time during the duration of the order; however,  
 534 such motion may not be filed earlier than 30 days from the date the order was issued.

535 D. Any person whose firearm has been taken pursuant to this section, or such person's legal  
 536 representative, may transfer the firearm to another individual 21 years of age or older who is not  
 537 otherwise prohibited by law from possessing such firearm, provided that:

- 538 1. The person subject to the order and the transferee appear at the hearing;
- 539 2. At the hearing, the court determines that the transferee is not prohibited from possessing a  
 540 firearm;
- 541 3. The transferee does not reside with the person subject to the order;
- 542 4. The court informs the transferee of the requirements and penalties under § 18.2-308.2:1; and
- 543 5. The court, after considering all relevant factors and any evidence or testimony from the person  
 544 subject to the order, approves the transfer of the firearm subject to such restrictions as the court deems  
 545 necessary.

546 The law-enforcement agency holding the firearm shall deliver the firearm to the transferee within five  
 547 days of receiving a copy of the court's approval of the transfer.

548 E. The court shall forthwith, but in all cases no later than the end of the business day on which the  
 549 substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information  
 550 Network the identifying information of the person who is subject to the order provided to the court and

551 shall forthwith forward the attested copy of the order and containing any such identifying information to  
 552 the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the  
 553 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any  
 554 modification as necessary to the identifying information and other appropriate information required by  
 555 the Department of State Police into the Virginia Criminal Information Network established and  
 556 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall  
 557 be served forthwith upon the person who is subject to the order and due return made to the court. Upon  
 558 service, the agency making service shall enter the date and time of service and other appropriate  
 559 information required by the Department of State Police into the Virginia Criminal Information Network  
 560 and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution  
 561 or modification order shall also be attested and forwarded forthwith to the primary law-enforcement  
 562 agency responsible for service and entry of the order. Upon receipt of the dissolution or modification  
 563 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any  
 564 modification as necessary to the identifying information and other appropriate information required by  
 565 the Department of State Police into the Virginia Criminal Information Network, and the order shall be  
 566 served forthwith and due return made to the court.

567 **§ 19.2-152.15. Return or disposal of firearms.**

568 A. Any firearm taken into custody pursuant to a warrant issued pursuant to § 19.2-152.13 and held  
 569 by a law-enforcement agency shall be returned by such agency to the person from whom the firearm  
 570 was taken upon a court order for the return of the firearm issued pursuant to § 19.2-152.14 or the  
 571 expiration or dissolution of an order issued pursuant to § 19.2-152.13 or 19.2-152.14. Such agency shall  
 572 return the firearm within five days of receiving a written request for the return of the firearm by the  
 573 person from whom the firearm was taken and a copy of the receipt provided to such person pursuant to  
 574 § 19.2-152.13. Prior to returning the firearm to such person, the law-enforcement agency holding the  
 575 firearm shall confirm that such person is no longer subject to an order issued pursuant to § 19.2-152.13  
 576 or 19.2-152.14 and is not otherwise prohibited by law from processing a firearm.

577 B. A firearm taken into custody pursuant to a warrant issued pursuant to § 19.2-152.13 and held by  
 578 a law-enforcement agency may be disposed of in accordance with the provisions of § 15.2-1721 if (i)  
 579 the person from whom the firearm was seized provides written authorization for such disposal to the  
 580 agency or (ii) the firearm remains in the possession of the agency more than 120 days after such person  
 581 is no longer subject to an order issued pursuant to § 19.2-152.13 or 19.2-152.14 and such person has  
 582 not submitted a request in writing for the return of the firearm.

583 **§ 19.2-152.16. False statement to law-enforcement officer, etc.; penalty.**

584 Any person who knowingly and willfully makes any materially false statement or representation to a  
 585 law-enforcement officer or attorney for the Commonwealth who is in the course of conducting an  
 586 investigation undertaken pursuant to this chapter is guilty of a Class 1 misdemeanor.

587 **§ 19.2-152.17. Immunity of law-enforcement officers, etc.; chapter not exclusive.**

588 A. An attorney for the Commonwealth or a law-enforcement officer shall be immune from civil  
 589 liability for any act or omission related to petitioning or declining to petition for a substantial risk  
 590 order pursuant to this chapter.

591 B. Any law-enforcement agency or law-enforcement officer that takes into custody, stores, possesses,  
 592 or transports a firearm pursuant to a warrant issued pursuant to § 19.2-152.13 or 19.2-152.14 shall be  
 593 immune from civil or criminal liability for any damage to or deterioration, loss, or theft of such firearm.

594 C. Nothing in this chapter precludes a law-enforcement officer from conducting a search for a  
 595 firearm or removing a firearm from a person under any other lawful authority.

596 **§ 19.2-387.3. Substantial Risk Order Registry; maintenance; access.**

597 A. The Department of State Police shall keep and maintain a computerized Substantial Risk Order  
 598 Registry (the Registry) for the entry of orders issued pursuant to § 19.2-152.13 or 19.2-152.14. The  
 599 purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their  
 600 communities and their citizens. The Department of State Police shall make the Registry information  
 601 available, upon request, to criminal justice agencies, including local law-enforcement agencies, through  
 602 the Virginia Criminal Information Network (VCIN). Registry information provided under this section  
 603 shall be used only for the purposes of the administration of criminal justice as defined in § 9.1-101.

604 B. No liability shall be imposed upon any law-enforcement official who disseminates information or  
 605 fails to disseminate information in good faith compliance with the requirements of this section, but this  
 606 provision shall not be construed to grant immunity for gross negligence or willful misconduct.

607 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
 608 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
 609 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
 610 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**  
 611 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**  
 612 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**

613 appropriation cannot be determined for periods of commitment to the custody of the Department  
614 of Juvenile Justice.

**INTRODUCED**

HB1763