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HOUSE BILL NO. 2244

Offered January 9, 2019

Prefiled January 8, 2019

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 purchase, possession, and transport of firearms following certain convictions; permit to restore rights; penalty.

Patrons—Sullivan and Levine

Referred to Committee on Militia, Police and Public Safety

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, 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 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

HB2244

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." Disqualification under this subdivision shall  
69 not apply to an individual with previous adjudications of delinquency who has completed a term of  
70 service of no less than two years in the Armed Forces of the United States and, if such person has been  
71 discharged from the Armed Forces of the United States, received an honorable discharge.

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

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

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

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

89 **§ 18.2-308.1:6. Purchase, possession, or transportation of firearms following certain criminal**  
90 **convictions; process to restore rights; penalty.**

91 *A. Any person who knowingly and intentionally purchases, possesses, or transports any firearm*  
92 *following a misdemeanor conviction for an offense that occurred on or after July 1, 2019, for the*  
93 *offense of (i) assault and battery when the person intentionally selects the person against whom a simple*  
94 *assault is committed because of his race, religious conviction, color, or national origin in violation of*  
95 *subsection A of § 18.2-57 or (ii) any offense substantially similar to clause (i) in the laws of any other*  
96 *state or of the United States is guilty of a Class 1 misdemeanor.*

97 *B. Any person prohibited from purchasing, possessing, or transporting a firearm described under this*  
98 *section may, no earlier than two years from the date of conviction, petition the circuit court of the*  
99 *jurisdiction in which he resides, or the circuit court of the county or city where he was last convicted of*  
100 *an offense listed in subsection A, for a permit to possess or carry a firearm. A copy of the petition shall*  
101 *be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was*  
102 *filed, who shall be entitled to respond and represent the interests of the Commonwealth. The court shall*  
103 *conduct a hearing if requested by either party. The court may, in its discretion and for good cause*  
104 *shown, grant such petition and issue a permit. The prohibitions of subsection A shall not apply to any*  
105 *person who has been granted a permit pursuant to this subsection. The clerk of court shall certify and*  
106 *forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a*  
107 *copy of any such order.*

108 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

109 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with  
110 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited  
111 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3,  
112 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  
113 felony. However, this prohibition shall not be applicable when the person convicted of the felony or  
114 misdemeanor, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit  
115 pursuant to subsection C of § 18.2-308.2 or subsection B of § 18.2-308.1:6 or been granted relief  
116 pursuant to subsection B of § 18.2-308.1:1; or § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had  
117 his political disabilities removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a  
118 permit to ship, transport, possess or receive firearms pursuant to the laws of the United States.

119 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**  
120 **firearms.**

121 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a  
 122 form to be provided by the Department of State Police, to have the dealer obtain criminal history record  
 123 information. Such form shall include only the written consent; the name, birth date, gender, race,  
 124 citizenship, and social security number and/or any other identification number; the number of firearms  
 125 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the  
 126 following questions: (i) has the applicant been convicted of a felony offense *or a misdemeanor listed in*  
 127 *§ 18.2-308.1:6* or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the  
 128 time of the offense of a delinquent act that *if committed by an adult* would be a felony if ~~committed~~ by  
 129 ~~an adult~~ *or is a misdemeanor listed in § 18.2-308.1:6*; (ii) is the applicant subject to a court order  
 130 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,  
 131 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant  
 132 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a  
 133 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been  
 134 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and  
 135 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any  
 136 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to  
 137 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3  
 138 or any substantially similar law of any other jurisdiction.

139 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
 140 person who is a resident of Virginia until he has (i) obtained written consent and the other information  
 141 on the consent form specified in subsection A, and provided the Department of State Police with the  
 142 name, birth date, gender, race, citizenship, and social security and/or any other identification number and  
 143 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested  
 144 criminal history record information by a telephone call to or other communication authorized by the  
 145 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish  
 146 personal identification and residence in Virginia for purposes of this section, a dealer must require any  
 147 prospective purchaser to present one photo-identification form issued by a governmental agency of the  
 148 Commonwealth or by the United States Department of Defense that demonstrates that the prospective  
 149 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm  
 150 purchase, residency of a member of the armed forces shall include both the state in which the member's  
 151 permanent duty post is located and any nearby state in which the member resides and from which he  
 152 commutes to the permanent duty post. A member of the armed forces whose photo identification issued  
 153 by the Department of Defense does not have a Virginia address may establish his Virginia residency  
 154 with such photo identification and either permanent orders assigning the purchaser to a duty post,  
 155 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo  
 156 identification presented to a dealer by the prospective purchaser is a driver's license or other photo  
 157 identification issued by the Department of Motor Vehicles, and such identification form contains a date  
 158 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by  
 159 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until  
 160 30 days after the date of issue of an original or duplicate driver's license unless the prospective  
 161 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing  
 162 that the original date of issue of the driver's license was more than 30 days prior to the attempted  
 163 purchase.

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

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

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

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

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

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

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

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

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

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

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

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

232 G. For purposes of this section:

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

235 "Antique firearm" means:

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

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

242 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use  
243 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this

244 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame  
245 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon  
246 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any  
247 combination thereof; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

304 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such

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

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

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

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

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

329 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**  
330 **firearms; exemptions; penalties.**

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

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

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

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

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

367 employed prior to July 1, 2000.

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

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

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

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

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

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

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

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

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

398 N. For purposes of this section:

399 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.  
 400 § 921 et seq.

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

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

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

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

409 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in**  
 410 **violation of law.**

411 Any firearm, *any* stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed,  
 412 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,  
 413 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,  
 414 or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

415 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
 416 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
 417 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
 418 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**  
 419 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**  
 420 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
 421 **appropriation cannot be determined for periods of commitment to the custody of the Department**  
 422 **of Juvenile Justice.**