

20100165D

HOUSE BILL NO. 78

Offered January 8, 2020
Prefiled December 7, 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—Kory, Delaney and Levine

Referred to Committee on 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. (Effective until January 1, 2021) 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.

6. (Effective January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a restoration order 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

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59 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such
60 individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the
61 specific acts, or upon a written statement made under oath before a notary public of a competent person
62 having personal knowledge of the specific acts.

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

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

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

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

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

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

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

93 **§ 18.2-308.1:6. Purchase, possession, or transportation of firearms following conviction for**
94 **misdemeanor assault and battery of a family or household member; process to restore rights; penalty.**

95 *A. Any person who knowingly and intentionally purchases, possesses, or transports any firearm*
96 *following a misdemeanor conviction for an offense that occurred on or after July 1, 2020, for the*
97 *offense of assault and battery of a family or household member in violation of § 18.2-57.2 or any*
98 *substantially similar offense in the laws of any other state or of the United States is guilty of a Class 1*
99 *misdemeanor.*

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

111 *C. For the purposes of this section, "family or household member" has the same meaning as in §*
112 *16.1-228.*

113 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

114 Any person who sells, barter, gives, or furnishes, or has in his possession or under his control with
115 the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is prohibited
116 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3,
117 18.2-308.1:6, or 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be is guilty of a
118 Class 4 felony. However, this prohibition shall not be applicable when the person convicted of the
119 felony or misdemeanor, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a
120 permit pursuant to subsection B of § 18.2-308.1:6 or subsection C of § 18.2-308.2 or been granted

121 relief pursuant to subsection B of § 18.2-308.1:1, or § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned
122 or had his political disabilities removed in accordance with subsection B of § 18.2-308.2; or (iii)
123 obtained a permit to ship, transport, possess, or receive firearms pursuant to the laws of the United
124 States.

125 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**
126 **firearms.**

127 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a
128 form to be provided by the Department of State Police, to have the dealer obtain criminal history record
129 information. Such form shall include only the written consent; the name, birth date, gender, race,
130 citizenship, and social security number and/or any other identification number; the number of firearms
131 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the
132 following questions: (i) has the applicant been convicted of a felony offense *or a misdemeanor violation*
133 *of § 18.2-57.2* or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the
134 time of the offense of a delinquent act that *if committed by an adult* would be a felony if ~~committed~~ by
135 ~~an adult~~ *or is a misdemeanor violation of § 18.2-57.2*; (ii) is the applicant subject to a court order
136 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,
137 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant
138 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a
139 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been
140 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and
141 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any
142 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to
143 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3
144 or any substantially similar law of any other jurisdiction.

145 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other
146 person who is a resident of Virginia until he has (i) obtained written consent and the other information
147 on the consent form specified in subsection A, and provided the Department of State Police with the
148 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
149 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested
150 criminal history record information by a telephone call to or other communication authorized by the
151 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
152 personal identification and residence in Virginia for purposes of this section, a dealer must require any
153 prospective purchaser to present one photo-identification form issued by a governmental agency of the
154 Commonwealth or by the United States Department of Defense that demonstrates that the prospective
155 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm
156 purchase, residency of a member of the armed forces shall include both the state in which the member's
157 permanent duty post is located and any nearby state in which the member resides and from which he
158 commutes to the permanent duty post. A member of the armed forces whose photo identification issued
159 by the Department of Defense does not have a Virginia address may establish his Virginia residency
160 with such photo identification and either permanent orders assigning the purchaser to a duty post,
161 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo
162 identification presented to a dealer by the prospective purchaser is a driver's license or other photo
163 identification issued by the Department of Motor Vehicles, and such identification form contains a date
164 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by
165 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until
166 30 days after the date of issue of an original or duplicate driver's license unless the prospective
167 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
168 that the original date of issue of the driver's license was more than 30 days prior to the attempted
169 purchase.

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

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

178 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
179 by return call without delay. If the criminal history record information check indicates the prospective
180 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
181 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,

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

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

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

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

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

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

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

230 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
231 exercise his right of access to and review and correction of criminal history record information under
232 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
233 30 days of such denial.

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

238 G. For purposes of this section:

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

241 "Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

310 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
311 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
312 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
313 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
314 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
315 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
316 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
317 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
318 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
319 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
320 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

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

335 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**
336 **firearms; exemptions; penalties.**

337 A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C.
338 § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent,
339 temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be
340 prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B
341 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
342 from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5.

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

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

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

367 understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5
 368 felony and that in addition to any other penalties imposed by law, a conviction under this section shall
 369 result in the forfeiture of my federal firearms license."

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

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

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

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

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

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

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

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

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

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

404 N. For purposes of this section:

405 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
 406 § 921 et seq.

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

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

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

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

415 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in**
 416 **violation of law.**

417 Any firearm, any stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed,
 418 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,
 419 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,
 420 or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

421 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
 422 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
 423 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
 424 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
 425 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**
 426 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**
 427 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**