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## SENATE BILL NO. 1429

Offered January 23, 2015

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 in Chapter 5 of Title 19.2 a section numbered 19.2-60.1 and by adding a section numbered 19.2-387.2, relating to the removal of firearms from persons posing a substantial risk of personal injury to self or others; penalty.

Patron—Barker

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 in Chapter 5 of Title 19.2 a section numbered 19.2-60.1 and by adding a section numbered 19.2-387.2 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 the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery,

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59 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in  
60 violation of § 18.2-282 within the three-year period immediately preceding the application.

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

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

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

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

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

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

85 21. *An individual who has been served with a warrant or who is subject to an order pursuant to*  
86 *§ 19.2-60.1.*

87 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

88 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with  
89 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited  
90 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, or  
91 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 *or to a person who has been served with a*  
92 *warrant or who is subject to an order pursuant to § 19.2-60.1* shall be guilty of a Class 4 felony.  
93 However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated  
94 delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to subsection C of  
95 § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1, or § 18.2-308.1:2 or  
96 18.2-308.1:3; (ii) been pardoned or had his political disabilities removed in accordance with subsection  
97 B of § 18.2-308.2; or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to  
98 the laws of the United States.

99 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**  
100 **firearms.**

101 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a  
102 form to be provided by the Department of State Police, to have the dealer obtain criminal history record  
103 information. Such form shall include only the written consent; the name, birth date, gender, race,  
104 citizenship, and social security number and/or any other identification number; the number of firearms  
105 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the  
106 following questions: (i) has the applicant been convicted of a felony offense or found guilty or  
107 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent  
108 act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order  
109 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,  
110 or a child of such partner, or is the applicant subject to a protective order; ~~and~~ (iii) has the applicant  
111 ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a  
112 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been  
113 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and  
114 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any  
115 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to  
116 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3  
117 or any substantially similar law of any other jurisdiction; *and (iv) has the applicant been served with a*  
118 *warrant or is the applicant subject to an order pursuant to § 19.2-60.1.*

119 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
120 person who is a resident of Virginia until he has (i) obtained written consent and the other information

on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. When the photo-identification presented to a dealer by the prospective purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

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

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

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

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

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

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

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

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

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

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

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

226 G. For purposes of this section:

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

229 "Antique firearm" means:

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

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

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

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

243 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple

projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**  
317 **firearms; exemptions; penalties.**

318 A. No person, corporation or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921  
319 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary,  
320 paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited  
321 from possessing a firearm under §§ § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.2, or  
322 § 18.2-308.2:01 or is an illegal alien; or is prohibited from purchasing or transporting a firearm pursuant  
323 to § 18.2-308.1:4 or § 18.2-308.1:5, *or if such employee has been served with a warrant or is subject to*  
324 *an order pursuant to § 19.2-60.1.*

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

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

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

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

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

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

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

discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

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

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

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

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

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

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

N. For purposes of this section:

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

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

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

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

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

**§ 19.2-60.1. Warrant and order for removal of firearms from persons posing a substantial risk of personal injury to self or others.**

A. Upon complaint on oath, by any attorney for the Commonwealth or by any law-enforcement officer, to a circuit court judge that such attorney for the Commonwealth or law-enforcement officer has probable cause to believe that (i) a person poses a substantial risk of personal injury to himself or to other individuals in the near future, (ii) such person possesses one or more firearms, and (iii) such firearms are within or upon any place, thing, or person, the judge may issue a warrant commanding a law-enforcement officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms. An attorney for the Commonwealth or law-enforcement officer shall make a complaint only after he has conducted an independent investigation and determined that probable cause for the complaint exists as described in subsection B.

B. A warrant may issue only on affidavit sworn to by the complainant before a circuit court judge and establishing grounds for the issuance of a warrant, which affidavit shall be part of the file.

1. In determining whether probable cause for the issuance of a warrant exists, the judge shall consider: (i) recent threats or acts of violence by such person directed toward other persons; (ii) recent threats or acts of violence by such person directed toward himself; (iii) recent issuance of a protective order pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (iv) recent violation of an unexpired protective order issued pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; and (v) recent acts of cruelty to animals as described in § 3.2-6570 by such person.

2. In evaluating whether such recent threats or acts of violence constitute probable cause to believe that such person poses a substantial risk of personal injury to himself or to others in the near future, the judge may consider other factors, including (i) the reckless use, display, or brandishing of a firearm by such person; (ii) a history of the use, attempted use, or threatened use of physical force by such person against other persons; (iii) prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities; (iv) any prior arrest of such person for a violent felony offense listed in § 17.1-805; (v) any history of a violation of a protective order issued pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (vi) the illegal use of controlled substances or abuse of alcohol by such person; and (vii) evidence of recent acquisition of firearms or other deadly weapons by such person.

3. If the judge determines that probable cause exists, the judge shall issue a warrant naming or

describing the person, place, or thing to be searched. The warrant shall be directed to a law-enforcement officer. It shall state the grounds and probable cause for its issuance, and it shall command the officer to immediately search the person, place, or thing named for any and all firearms. A copy of the warrant shall be given to the person named therein together with a notice informing the person that he has the right to a hearing under this section and may be represented by counsel at the hearing.

C. The applicant for the warrant shall file a copy of the application for the warrant and all affidavits upon which the warrant is based with the clerk of court for the jurisdiction where the search will be conducted no later than the next business day following the execution of the warrant. Prior to the execution and return of the warrant, the clerk of court shall not disclose any information pertaining to the application for the warrant or any affidavits upon which the warrant is based.

D. During the execution of the warrant, the person shall be informed of the items sought and given the opportunity to voluntarily relinquish the firearms. The law-enforcement officer executing the warrant shall take custody of any firearm that is in the person's custody, control, or possession or that is owned by the person. The warrant shall be executed and returned within 15 days after issuance and shall be accompanied by a written inventory of all firearms taken.

E. If the location to be searched during the execution of the warrant is jointly occupied by the person who is the subject of the warrant and other persons and the law-enforcement officer executing the warrant finds a firearm that is not owned by the person who is the subject of the warrant, the firearm shall not be taken if there is no independent evidence of unlawful possession of the firearm by the owner of the firearm.

F. Not later than 14 days after the execution of a warrant under this section, the circuit court for the jurisdiction where the person named in the warrant resides shall hold a hearing to determine whether any firearm taken should be returned to the person named in the warrant or should continue to be held by the agency that took the firearms. The attorney for the Commonwealth for the jurisdiction that issued the warrant shall represent the interests of the Commonwealth. The Commonwealth shall have the burden of proving all material facts by clear and convincing evidence. If, after such hearing, the court finds by clear and convincing evidence that the person poses a substantial risk of personal injury to himself or to other individuals in the near future, the court may order that any firearm taken pursuant to the warrant issued under this section continue to be held by the agency that took the firearm for a period not to exceed 180 days; otherwise, the court shall order any firearm taken to be returned to the person named in the warrant. If the court finds that the person poses a substantial risk of personal injury to himself or to other individuals in the near future, the court shall give notice to the local community services board, which may take such action as it deems appropriate. A person who is the subject of an order may petition the court one time during the 180 days for the return of his firearms after 30 days from the date the order was issued.

G. Any person whose firearm has been taken pursuant to this section, or such person's legal representative, may transfer the firearm to a third party, provided:

1. The person named in the warrant and the third party appear at the hearing.

2. At the hearing, the court determines that the third party is not prohibited from possessing a firearm.

3. The person to whom the firearm is to be transferred does not reside with the individual named in the warrant.

4. The court informs the person to whom the firearm is surrendered of the requirements and penalties under § 18.2-308.2:1.

5. The court, after considering all relevant factors and any input from the person named in the warrant, approves the surrender of the firearm subject to such restrictions as the court deems necessary.

Upon notification in writing by such person, or such person's legal representative, and the transferee, the head of the agency that took the firearm or his designee holding such firearm shall within 10 days deliver the firearm to the transferee.

H. The court shall forthwith, but in all cases no later than the end of the business day on which the warrant was served or order was issued, enter and transfer electronically the identifying information and the name, date of birth, sex, and race of the person who is the subject of the warrant or order along with other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 ( § 52-12 et seq.) of Title 52 and shall forthwith forward the attested copy of the warrant or order to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information. The warrant shall be served forthwith and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police and make due return to the court. If the warrant or order is later dissolved or modified, a copy of the



dissolution or modification shall be attested and forwarded forthwith to the primary law-enforcement agency responsible for entry of the warrant or order, and upon receipt of the warrant or order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described in this subsection.

I. "Law-enforcement officer" is defined, for the purpose of this section, as any full-time or part-time employee of the Department of State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101.

**§ 19.2-387.2. Firearm Order Registry; maintenance; access.**

A. The Department of State Police shall keep and maintain a computerized Firearm Order Registry for the entry of warrants and orders issued pursuant to § 19.2-60.1. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities and their citizens. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies, including local law-enforcement agencies, through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used only for the purposes of the administration of criminal justice.

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

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