VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 1111

An Act to amend and reenact §§ 18.2-308.2, as it is currently effective and as it shall become effective, 18.2-308.2:2, 22.1-277.07, and 54.1-4201.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.2:5, relating to firearm sales; criminal history record information check; penalty.

[H 2]

Approved April 10, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.2, as it is currently effective and as it shall become effective, 18.2-308.2:2, 22.1-277.07, and 54.1-4201.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.2:5 as follows:

§ 18.2-308.2. (Effective until January 1, 2021) Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a permit to possess or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in

its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a permit pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any firearm described in subdivision 3 of the definition of "antique firearm" in subsection ~~G~~ *F* of § 18.2-308.2:2.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

§ 18.2-308.2. (Effective January 1, 2021) Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for restoration order; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a restoration order that unconditionally authorizes possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such an order unless his civil rights

have been restored by the Governor or other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a restoration order. Such order shall contain the petitioner's name and date of birth. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange (CCRE), on a form provided by the CCRE, a copy of the order to be accompanied by a complete set of the petitioner's fingerprints. The Department of State Police shall forthwith enter the petitioner's name and description in the CCRE so that the order's existence will be made known to law-enforcement personnel accessing the computerized criminal history records for investigative purposes. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been issued a restoration order pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any firearm described in subdivision 3 of the definition of "antique firearm" in subsection ~~G~~ *F* of § 18.2-308.2:2.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

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

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, ~~or~~ been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, *or been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805*.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other 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 that demonstrates that the prospective purchaser resides in Virginia. 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. A member of the armed forces whose photo identification issued

by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. 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.

Upon receipt of the request for a criminal history record information check, the State Police shall (a) 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, (b) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (c) 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~~ *third* 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.

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

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

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

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

C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5, to any person who is ~~not~~ a *dual* resident of Virginia *and another state pursuant to applicable federal law* unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. ~~The dealer shall obtain the required report by mailing or delivering the written consent form required under~~

~~subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.~~

To establish personal identification and dual resident eligibility for purposes of this subsection, a dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) 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; (ii) other current identification allowed as evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

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

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

~~F.~~ *E.* Any dealer 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 in this section shall be guilty of a Class 2 misdemeanor.

~~G.~~ *F.* For purposes of this section:

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

"Antique firearm" means:

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

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses 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;

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

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

"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.~~ *G.* 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.~~ *H.* 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 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

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

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

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

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

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

§ 18.2-308.2:5. Criminal history record information check required to sell firearm; penalty.

A. No person shall sell a firearm for money, goods, services or anything else of value unless he has obtained verification from a licensed dealer in firearms that information on the prospective purchaser has been submitted for a criminal history record information check as set out in § 18.2-308.2:2 and that a determination has been received from the Department of State Police that the prospective purchaser is not prohibited under state or federal law from possessing a firearm or such sale is specifically exempted

by state or federal law. The Department of State Police shall provide a means by which sellers may obtain from designated licensed dealers the approval or denial of firearm transfer requests, based on criminal history record information checks. The processes established shall conform to the provisions of § 18.2-308.2:2, and the definitions and provisions of § 18.2-308.2:2 regarding criminal history record information checks shall apply to this section mutatis mutandis. The designated dealer shall collect and disseminate the fees prescribed in § 18.2-308.2:2 as required by that section. The dealer may charge and retain an additional fee not to exceed $15 for obtaining a criminal history record information check on behalf of a seller.

B. Notwithstanding the provisions of subsection A and unless otherwise prohibited by state or federal law, a person may sell a firearm to another person if:

1. The sale of a firearm is to an authorized representative of the Commonwealth or any subdivision thereof as part of an authorized voluntary gun buy-back or give-back program; or

2. The sale occurs at a firearms show, as defined in § 54.1-4200, and the seller has received a determination from the Department of State Police that the purchaser is not prohibited under state or federal law from possessing a firearm in accordance with § 54.1-4201.2.

C. Any person who willfully and intentionally sells a firearm to another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.

D. Any person who willfully and intentionally purchases a firearm from another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.

§ 22.1-277.07. Expulsion of students under certain circumstances; exceptions.

A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in this article, to have possessed a firearm on school property or at a school-sponsored activity as prohibited by § 18.2-308.1 or to have possessed a firearm or destructive device as defined in subsection E, a firearm muffler or firearm silencer, or a pneumatic gun as defined in subsection E of § 15.2-915.4 on school property or at a school-sponsored activity. A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article. Nothing in this section shall be construed to require a student's expulsion regardless of the facts of the particular situation.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994 and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section; and

2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. No school operating a Junior Reserve Officers Training Corps (JROTC) program shall prohibit the JROTC program from conducting marksmanship training when such training is a normal element of such programs. Such programs may include training in the use of pneumatic guns. The administration of a school operating a JROTC program shall cooperate with the JROTC staff in implementing such marksmanship training.

E. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known that will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter that is homemade or was not made by a duly licensed weapon manufacturer, any fully automatic firearm, any sawed-off shotgun or sawed-off rifle as defined in § 18.2-299 or any firearm prohibited from civilian

ownership by federal law; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" does not include any device that is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device, nor shall it include any antique firearm as defined in ~~subsection G of~~ § 18.2-308.2:2.

"Firearm" means any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel single or multiple projectiles by the action of an explosion of a combustible material or the frame or receiver of any such weapon. "Firearm" does not include any pneumatic gun, as defined in subsection E of § 15.2-915.4.

"One year" means 365 calendar days as required in federal regulations.

"School property" means any real property owned or leased by the school board or any vehicle owned or leased by the school board or operated by or on behalf of the school board.

F. The exemptions set out in §§ 18.2-308 and 18.2-308.016 regarding concealed weapons shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms or pneumatic guns as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

G. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

§ 54.1-4201.2. Firearm transactions by persons other than dealers; voluntary background checks.

A. The Department of State Police shall be available at every firearms show held in the Commonwealth to make determinations in accordance with the procedures set out in § 18.2-308.2:2 of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police.

~~Unless otherwise required by state or federal law, any party involved in the transaction may decide whether or not to have such a determination made.~~

The Department of State Police may charge a reasonable fee for the determination.

B. The promoter, as defined in § 54.1-4201.1, shall give the Department of State Police notice of the time and location of a firearms show at least 30 days prior to the show. The promoter shall provide the Department of State Police with adequate space, at no charge, to conduct such prohibition determinations. The promoter shall ensure that a notice that such determinations are available is prominently displayed at the show.

C. No person who sells or transfers a firearm at a firearms show after receiving a determination from the Department of State Police that the purchaser or transferee is not prohibited by state or federal law from possessing a firearm shall be liable for selling or transferring a firearm to such person.

D. The provisions of § 18.2-308.2:2, including definitions, procedures, and prohibitions, shall apply, mutatis mutandis, to the provisions of this section.

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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.