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SENATE BILL NO. 240
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Surovell)
(Patron Prior to Substitute—Senator Barker)
Senate Amendments in [] - January 21, 2020

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2, and 18.2-308.2:3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.1:6, by adding in Title 19.2 a chapter numbered 9.2, consisting of sections numbered 19.2-152.13 through 19.2-152.17, and by adding a section numbered 19.2-387.3 as follows:

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, or 18.2-308.1:6 or the substantially similar law of any other state or of the United States.

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

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

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

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

6. (Effective until January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

6. (Effective January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a restoration order may be obtained in accordance with subsection C of that section.

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

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

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

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

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

12. An individual who is a fugitive from justice.

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

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

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

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

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

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

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

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

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

93 **§ 18.2-308.1:6. Purchase, possession, or transportation of firearms by persons subject to substantial**
94 **risk orders; penalty.**

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

103 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons.**

104 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with
105 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited
106 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3,
107 18.2-308.1:6, or 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be is guilty of a Class
108 4 felony. However, this prohibition shall not be applicable when the person convicted of the felony,
109 adjudicated delinquent, or acquitted by reason of insanity has (i) been issued a permit pursuant to
110 subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1; or
111 § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had his political disabilities removed in accordance
112 with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport, possess or receive
113 firearms pursuant to the laws of the United States.

114 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**
115 **firearms.**

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

122 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent
 123 act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order
 124 restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner,
 125 or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant
 126 ever been acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a
 127 firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been
 128 adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and
 129 prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any
 130 other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to
 131 outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3
 132 or any substantially similar law of any other jurisdiction; and (iv) is the applicant subject to an
 133 emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or
 134 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to
 135 § 18.2-308.1:6 or any substantially similar law of any other jurisdiction.

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

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

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

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

183 subdivision 1 and is told by the State Police that a response will not be available by the end of the
184 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
185 violation of this section with respect to such sale or transfer.

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

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

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

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

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

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

221 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
222 exercise his right of access to and review and correction of criminal history record information under
223 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
224 30 days of such denial.

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

229 G. For purposes of this section:

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

232 "Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

306 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
307 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
308 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
309 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
310 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
311 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

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

326 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer**
327 **firearms; exemptions; penalties.**

328 A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C.
329 § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent,
330 temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be
331 prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, ~~or~~ 18.2-308.1:3, *or*
332 *18.2-308.1:6*, subsection B of § 18.2-308.1:4, or § 18.2-308.2 or 18.2-308.2:01 or is an illegal alien, or
333 is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or
334 § 18.2-308.1:5.

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

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

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

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

366 E. If any applicant is denied employment because of information appearing on the criminal history
367 record and the applicant disputes the information upon which the denial was based, the Central Criminal

368 Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a
 369 copy of the criminal history record from the Federal Bureau of Investigation. The information provided
 370 to the dealer shall not be disseminated except as provided in this section.

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

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

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

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

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

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

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

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

396 N. For purposes of this section:

397 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
 398 § 921 et seq.

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

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

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

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

407 CHAPTER 9.2.

408 SUBSTANTIAL RISK ORDERS.

409 § 19.2-152.13. Emergency substantial risk order.

410 A. Upon the petition of either an attorney for the Commonwealth or two law-enforcement officers [
 411 supported by an affidavit of supporting facts] , [after consulting with the attorney for the
 412 Commonwealth,] a judge of a circuit court, general district court, or juvenile and domestic relations
 413 district court or a magistrate, upon a finding that there is probable cause to believe that a person poses
 414 a substantial risk of personal injury to himself or others in the near future by such person's possession
 415 or acquisition of a firearm, shall issue an ex parte emergency substantial risk order. Such order shall
 416 prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm
 417 for the duration of the order. In determining whether probable cause for the issuance of an order exists,
 418 the judge or magistrate shall consider any relevant evidence, including any recent act of violence, force,
 419 or threat as defined in § 19.2-152.7:1 by such person directed toward another person or toward himself,
 420 and whether any reasonable alternative exists. No petition shall be filed unless an independent
 421 investigation has been conducted by law enforcement that determines that grounds for the petition exist.
 422 The order shall contain a statement (i) informing the person who is subject to the order of the
 423 requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such person to
 424 purchase, possess, or transport a firearm for the duration of the order and that such person is required
 425 to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such person to
 426 voluntarily relinquish any firearm within his custody to the law-enforcement agency that serves the
 427 order.

428 B. Upon service of an emergency substantial risk order, the person who is subject to the order shall

429 *be given the opportunity to voluntarily relinquish any firearm, though voluntary relinquishment shall not*
430 *preclude a law-enforcement officer from later obtaining a search warrant to search for any firearms if a*
431 *law-enforcement officer has reason to believe that the person who is subject to an emergency substantial*
432 *risk order has not relinquished all firearms in his possession. The law-enforcement agency that executed*
433 *the emergency substantial risk order shall take custody of all firearms that are voluntarily relinquished*
434 *by such person. The law-enforcement agency that takes into custody a firearm pursuant to the order*
435 *shall prepare a written receipt containing the name of the person who is subject to the order and the*
436 *manufacturer, model, condition, and serial number of the firearm and shall provide a copy thereof to*
437 *such person.*

438 *C. The petition for an emergency substantial risk order shall be made under oath and shall be*
439 *supported by an affidavit.*

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

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

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

479 *G. The law-enforcement agency that serves the emergency substantial risk order shall make due*
480 *return to the circuit court, which shall be accompanied by a written inventory of all firearms*
481 *relinquished.*

482 *H. Proceedings in which an emergency substantial risk order is sought pursuant to this section shall*
483 *be commenced where the person who is subject to the order (i) has his principal residence or (ii) has*
484 *engaged in any conduct upon which the petition for the emergency substantial risk order is based.*

485 *I. A proceeding for a substantial risk order shall be a separate civil legal proceeding subject to the*
486 *same rules as civil proceedings.*

487 **§ 19.2-152.14. Substantial risk order.**

488 *A. Not later than 14 days after the issuance of an emergency substantial risk order pursuant to*
489 *§ 19.2-152.13, the circuit court for the jurisdiction where the order was issued shall hold a hearing to*
490 *determine whether a substantial risk order should be entered. The attorney for the Commonwealth for*

491 the jurisdiction that issued the emergency substantial risk order shall represent the interests of the
 492 Commonwealth. Notice of the hearing shall be given to the person subject to the emergency substantial
 493 risk order and the attorney for the Commonwealth. However, upon motion of the respondent and for
 494 good cause shown, the court may continue the hearing. The order shall remain in effect until the
 495 hearing. The Commonwealth shall have the burden of proving all material facts by clear and convincing
 496 evidence. If the court finds by clear and convincing evidence that the person poses a substantial risk of
 497 personal injury to himself or to other individuals in the near future by such person's possession or
 498 acquisition of a firearm, the court shall issue a substantial risk order. Such order shall prohibit the
 499 person who is subject to the order from purchasing, possessing, or transporting a firearm for the
 500 duration of the order. In determining whether clear and convincing evidence for the issuance of an
 501 order exists, the judge shall consider any relevant evidence including any recent act of violence, force,
 502 or threat as defined in § 19.2-152.7:1 by such person directed toward another person or toward himself.
 503 The order shall contain a statement (i) informing the person who is subject to the order of the
 504 requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such person to
 505 purchase, possess, or transport a firearm for the duration of the order and that such person is required
 506 to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such person to
 507 voluntarily relinquish any firearm that has not been taken into custody to the law-enforcement agency
 508 that served the emergency substantial risk order.

509 B. If the court issues a substantial risk order pursuant to subsection A, the court shall order that any
 510 firearm that was previously relinquished pursuant to § 19.2-152.13 from the person who is subject to the
 511 substantial risk order continue to be held by the agency that has custody of the firearm for the duration
 512 of the order and shall also advise such person that a law-enforcement officer may obtain a search
 513 warrant to search for any firearms from such person if such law-enforcement officer has reason to
 514 believe that such person has not relinquished all firearms in his possession.

515 If the court finds that the person does not pose a substantial risk of personal injury to himself or to
 516 other individuals in the near future, the court shall order that any firearm that was previously
 517 relinquished be returned to such person in accordance with the provisions of § 19.2-152.15.

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

531 D. Any person whose firearm has been voluntarily relinquished pursuant to this section or
 532 § 19.2-152.13, or such person's legal representative, may transfer the firearm to another individual 21
 533 years of age or older who is not otherwise prohibited by law from possessing such firearm, provided
 534 that:

- 535 1. The person subject to the order and the transferee appear at the hearing;
- 536 2. At the hearing, the attorney for the Commonwealth advises the court that a law-enforcement
 537 agency has determined that the transferee is not prohibited from possessing or transporting a firearm;
- 538 3. The transferee does not reside with the person subject to the order;
- 539 4. The court informs the transferee of the requirements and penalties under § 18.2-308.2:1; and
- 540 5. The court, after considering all relevant factors and any evidence or testimony from the person
 541 subject to the order, approves the transfer of the firearm subject to such restrictions as the court deems
 542 necessary.

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

545 E. The court shall forthwith, but in all cases no later than the end of the business day on which the
 546 substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information
 547 Network the identifying information of the person who is subject to the order provided to the court and
 548 shall forthwith forward the attested copy of the order containing any such identifying information to the
 549 primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the
 550 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
 551 modification as necessary to the identifying information and other appropriate information required by

552 the Department of State Police into the Virginia Criminal Information Network established and
553 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall
554 be served forthwith upon the person who is subject to the order and due return made to the court. Upon
555 service, the agency making service shall enter the date and time of service and other appropriate
556 information required by the Department of State Police into the Virginia Criminal Information Network
557 and make due return to the court. If the person who is subject to an emergency substantial risk order
558 fails to appear at the hearing conducted pursuant to this section because such person was not
559 personally served with notice of the hearing pursuant to subsection A, or if personally served was
560 incarcerated and not transported to the hearing, the court may extend the emergency substantial risk
561 order for a period not to exceed 14 days. The extended emergency substantial risk order shall specify a
562 date for a hearing to be conducted pursuant to this section and shall be served forthwith on such person
563 and due return made to the court. If the order is later dissolved or modified, a copy of the dissolution
564 or modification order shall also be attested and forwarded forthwith to the primary law-enforcement
565 agency responsible for service and entry of the order. Upon receipt of the dissolution or modification
566 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
567 modification as necessary to the identifying information and other appropriate information required by
568 the Department of State Police into the Virginia Criminal Information Network, and the order shall be
569 served forthwith and due return made to the court.

570 **§ 19.2-152.15. Return or disposal of firearms.**

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

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

588 **§ 19.2-152.16. False statement to law-enforcement officer, etc.; penalty.**

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

592 **§ 19.2-152.17. Immunity of law-enforcement officers, etc.; chapter not exclusive.**

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

596 B. Any law-enforcement agency or law-enforcement officer that takes into custody, stores, possesses,
597 or transports a firearm pursuant to § 19.2-152.13 or 19.2-152.14, or by a search warrant for a person
598 who has failed to voluntarily relinquish his firearm, shall be immune from civil or criminal liability for
599 any damage to or deterioration, loss, or theft of such firearm.

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

602 **§ 19.2-387.3. Substantial Risk Order Registry; maintenance; access.**

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

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

613 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**

614 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
615 necessary appropriation cannot be determined for periods of imprisonment in state adult
616 correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia
617 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to
618 § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be
619 determined for periods of commitment to the custody of the Department of Juvenile Justice.
620 3. That the Supreme Court shall create standard forms to implement the intent of this act.

ENGROSSED

SB240ESS3