20105922D

SENATE BILL NO. 240

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Surovell
on January 16, 2020)

(Patron Prior to Substitute—Senator Barker)

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

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

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

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency 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.

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

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

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

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

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

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

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

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

§ 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*; and (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:6 or any substantially similar law of any other jurisdiction*.

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 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 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 resident of Virginia 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.

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

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

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

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

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

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

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

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

a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. For purposes of this section:

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

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

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

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

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

CHAPTER 9.2.

SUBSTANTIAL RISK ORDERS.

§ 19.2-152.13. Emergency substantial risk order.

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

B. Upon service of an emergency substantial risk order, the person who is subject to the order shall be given the opportunity to voluntarily relinquish any firearm, though voluntary relinquishment shall not preclude a law-enforcement officer from later obtaining a search warrant to search for any firearms if a

law-enforcement officer has reason to believe that the person who is subject to an emergency substantial risk order has not relinquished all firearms in his possession. The law-enforcement agency that executed the emergency substantial risk order shall take custody of all firearms that are voluntarily relinquished by such person. The law-enforcement agency that takes into custody a firearm pursuant to the order shall prepare a written receipt containing the name of the person who is subject to the order and the manufacturer, model, condition, and serial number of the firearm and shall provide a copy thereof to such person.

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

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

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

F. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the emergency substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information Network the identifying information of the person who is subject to the order provided to the court or magistrate. A copy of an order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall be served forthwith upon the person who is subject to the order and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the identifying information of the person who is subject to the order provided to the court to the primary law-enforcement agency providing service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall be served forthwith upon the person who is subject to the order. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested and forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the dissolution or modification order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall be served forthwith and due return made to the court.

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

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

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

§ 19.2-152.14. Substantial risk order.

A. Not later than 14 days after the issuance of an emergency substantial risk order pursuant to § 19.2-152.13, the circuit court for the jurisdiction where the order was issued shall hold a hearing to determine whether a substantial risk order should be entered. The attorney for the Commonwealth for the jurisdiction that issued the emergency substantial risk order shall represent the interests of the Commonwealth. Notice of the hearing shall be given to the person subject to the emergency substantial

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

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

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

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

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

1. The person subject to the order and the transferee appear at the hearing;

2. At the hearing, the attorney for the Commonwealth advises the court that a law-enforcement agency has determined that the transferee is not prohibited from possessing or transporting a firearm;

3. The transferee does not reside with the person subject to the order;

4. The court informs the transferee of the requirements and penalties under § 18.2-308.2:1; and

5. The court, after considering all relevant factors and any evidence or testimony from the person subject to the order, approves the transfer of the firearm subject to such restrictions as the court deems necessary.

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

E. The court shall forthwith, but in all cases no later than the end of the business day on which the substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information Network the identifying information of the person who is subject to the order provided to the court and shall forthwith forward the attested copy of the order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52, and the order shall

be served forthwith upon the person who is subject to the order and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the person who is subject to an emergency substantial risk order fails to appear at the hearing conducted pursuant to this section because such person was not personally served with notice of the hearing pursuant to subsection A, or if personally served was incarcerated and not transported to the hearing, the court may extend the emergency substantial risk order for a period not to exceed 14 days. The extended emergency substantial risk order shall specify a date for a hearing to be conducted pursuant to this section and shall be served forthwith on such person and due return made to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested and forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the dissolution or modification order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network, and the order shall be served forthwith and due return made to the court.

§ 19.2-152.15. Return or disposal of firearms.

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

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

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

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

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

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

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

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

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

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

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

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 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.

3. That the Supreme Court shall create standard forms to implement the intent of this act.