

21103901D

HOUSE BILL NO. 1992

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 27, 2021)

(Patron Prior to Substitute—Delegate Murphy)

A BILL to amend and reenact §§ 18.2-308.09, 18.2-308.2:1, as it is currently effective and as it shall become effective, 18.2-308.2:2, as it is currently effective and as it shall become effective, 18.2-308.2:3, as it is currently effective and as it shall become effective, and 19.2-386.28 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.1:8, relating to purchase, possession, or transportation of firearms following conviction for assault and battery of a family or household member; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.09, 18.2-308.2:1, as it is currently effective and as it shall become effective, 18.2-308.2:2, as it is currently effective and as it shall become effective, 18.2-308.2:3, as it is currently effective and as it shall become effective, and 19.2-386.28 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.1:8 as follows:

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

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

1. (Effective until July 1, 2021) An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 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.

1. (Effective July 1, 2021) An individual who is ineligible to possess 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~~ 18.2-308.1:7, *or 18.2-308.1:8* 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. 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.

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

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

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

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

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

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

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

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

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

94 **§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and battery**
95 **of a family or household member; penalty.**

96 A. Any person who knowingly and intentionally purchases, possesses, or transports any firearm
97 following a misdemeanor conviction for an offense that occurred on or after July 1, 2021, for (i) the
98 offense of assault and battery of a family or household member or (ii) an offense substantially similar to
99 clause (i) under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

100 B. For the purposes of this section, "family or household member" means (i) the person's spouse,
101 whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or
102 not he resides in the same home with the person; (iii) the person's parents, stepparents, or guardian,
103 regardless of whether such persons reside in the same home with the person; (iv) any individual who
104 has a child in common with the person, whether or not the person and that individual have been
105 married or have resided together at any time; or (v) any individual who cohabits or who, within the
106 previous 12 months, cohabited with the person, and any children of either of them then residing in the
107 same home with the person.

108 **§ 18.2-308.2:1. (Effective until July 1, 2021) Prohibiting the selling, etc., of firearms to certain**
109 **persons.**

110 Any person who sells, barter, gives or furnishes, or has in his possession or under his control with
111 the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited
112 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3,
113 subsection B of § 18.2-308.1:4, § 18.2-308.1:6, 18.2-308.1:8, or 18.2-308.2, subsection B of
114 § 18.2-308.2:01, or § 18.2-308.7 is guilty of a Class 4 felony. However, this prohibition shall not be
115 applicable when the person convicted of the felony or misdemeanor, adjudicated delinquent, or acquitted
116 by reason of insanity has (i) been issued a permit pursuant to subsection C of § 18.2-308.2 or been
117 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
118 pardoned or had his political disabilities removed in accordance with subsection B of § 18.2-308.2; or
119 (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United
120 States.

121 **§ 18.2-308.2:1. (Effective July 1, 2021) Prohibiting the selling, etc., of firearms to certain**

persons; penalties.

A. Any person who sells, barter, 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, or 18.2-308.1:3, subsection B of § 18.2-308.1:4, § 18.2-308.1:6, 18.2-308.1:8, or 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 is guilty of a Class 4 felony. However, this prohibition shall not be applicable when the person convicted of the felony *or misdemeanor*, 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.

B. Any person who sells, barter, 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 purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:7 is guilty of a Class 1 misdemeanor.

§ 18.2-308.2:2. (Effective until July 1, 2021) 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 a misdemeanor offense listed in § 18.2-308.1:8* 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 *if committed by an adult* would be a felony *if committed by an adult or a misdemeanor listed in § 18.2-308.1:8*; (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; (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, been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, or been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; 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

183 30 days after the date of issue of an original or duplicate driver's license unless the prospective
184 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
185 that the original date of issue of the driver's license was more than 30 days prior to the attempted
186 purchase.

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

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

195 2. The State Police shall provide its response to the requesting dealer during the dealer's request or
196 by return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the
197 State Police that a response will not be available by the end of the dealer's third business day may
198 immediately complete the sale or transfer and shall not be deemed in violation of this section with
199 respect to such sale or transfer.

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

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

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

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

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

227 To establish personal identification and dual resident eligibility for purposes of this subsection, a
228 dealer shall require any prospective purchaser to present one photo-identification form issued by a
229 governmental agency of the prospective purchaser's state of legal residence and other documentation of
230 dual residence within the Commonwealth. The other documentation of dual residence in the
231 Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a
232 current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f)
233 automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as
234 evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of
235 residence determined to be acceptable by the Department of Criminal Justice Services and that
236 corroborates that the prospective purchaser currently resides in Virginia.

237 D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
238 exercise his right of access to and review and correction of criminal history record information under
239 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
240 30 days of such denial.

241 E. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history
242 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
243 disseminate criminal history record information except as authorized in this section shall be guilty of a
244 Class 2 misdemeanor.

F. For purposes of this section:

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

"Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

306 under the provisions of this section.

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

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

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

317 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
318 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
319 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
320 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
321 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
322 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
323 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
324 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
325 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
326 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
327 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

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

342 R. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a
343 licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes
344 of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for
345 a handgun purchased from such seller by the same person seeking the exchange or replacement within
346 the 30-day period immediately preceding the date of exchange or replacement. A violation of this
347 subsection is punishable as a Class 1 misdemeanor.

348 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an
349 enhanced background check, as described in this subsection, by special application to the Department of
350 State Police listing the number and type of handguns to be purchased and transferred for lawful business
351 or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar
352 purposes. Such applications shall be signed under oath by the applicant on forms provided by the
353 Department of State Police, shall state the purpose for the purchase above the limit, and shall require
354 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales
355 report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The
356 Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act
357 (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above
358 the limit.

359 Upon being satisfied that these requirements have been met, the Department of State Police shall
360 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from
361 the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to
362 the consummation of such sale and shall be kept on file at the dealer's place of business for inspection
363 as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local
364 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such
365 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
366 Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and
367 certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3.

The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. A state or local correctional facility;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;
- g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;
- h. A person who holds a valid Virginia permit to carry a concealed handgun;
- i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or
- j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.

§ 18.2-308.2:2. (Effective July 1, 2021) 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 a misdemeanor offense listed in § 18.2-308.1:8* 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 *if committed by an adult* would be a felony ~~if committed by an adult~~ *or a misdemeanor listed in § 18.2-308.1:8*; (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; (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, been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, or been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; 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

429 criminal history record information by a telephone call to or other communication authorized by the
430 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
431 personal identification and residence in Virginia for purposes of this section, a dealer must require any
432 prospective purchaser to present one photo-identification form issued by a governmental agency of the
433 Commonwealth or by the United States Department of Defense that demonstrates that the prospective
434 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm
435 purchase, residency of a member of the armed forces shall include both the state in which the member's
436 permanent duty post is located and any nearby state in which the member resides and from which he
437 commutes to the permanent duty post. A member of the armed forces whose photo identification issued
438 by the Department of Defense does not have a Virginia address may establish his Virginia residency
439 with such photo identification and either permanent orders assigning the purchaser to a duty post,
440 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo
441 identification presented to a dealer by the prospective purchaser is a driver's license or other photo
442 identification issued by the Department of Motor Vehicles, and such identification form contains a date
443 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by
444 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until
445 30 days after the date of issue of an original or duplicate driver's license unless the prospective
446 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
447 that the original date of issue of the driver's license was more than 30 days prior to the attempted
448 purchase.

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

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

457 2. The State Police shall provide its response to the requesting dealer during the dealer's request or
458 by return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the
459 State Police that a response will not be available by the end of the dealer's third business day may
460 immediately complete the sale or transfer and shall not be deemed in violation of this section with
461 respect to such sale or transfer.

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

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

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

481 6. For the purposes of this subsection, the phrase "dealer's third business day" does not include
482 December 25.

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

489 To establish personal identification and dual resident eligibility for purposes of this subsection, a
490 dealer shall require any prospective purchaser to present one photo-identification form issued by a

governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

D. 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.

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

F. For purposes of this section:

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

"Antique firearm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

552 to this section.

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

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

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

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

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

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

579 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
580 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
581 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
582 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
583 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
584 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
585 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
586 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
587 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to
588 § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
589 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

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

604 R. Except as provided in subdivisions 1 and 2, it shall be unlawful for any person who is not a
605 licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes
606 of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for
607 a handgun purchased from such seller by the same person seeking the exchange or replacement within
608 the 30-day period immediately preceding the date of exchange or replacement. A violation of this
609 subsection is punishable as a Class 1 misdemeanor.

610 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an
611 enhanced background check, as described in this subsection, by special application to the Department of
612 State Police listing the number and type of handguns to be purchased and transferred for lawful business
613 or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar

purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

2. The provisions of this subsection shall not apply to:

- a. A law-enforcement agency;
- b. An agency duly authorized to perform law-enforcement duties;
- c. A state or local correctional facility;
- d. A private security company licensed to do business within the Commonwealth;
- e. The purchase of antique firearms;
- f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;
- g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;
- h. A person who holds a valid Virginia permit to carry a concealed handgun;
- i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or
- j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.

§ 18.2-308.2:3. (Effective until July 1, 2021) 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, subsection B of § 18.2-308.1:4, or § 18.2-308.1:6, 18.2-308.1:8, 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

675 national criminal history record information regarding the applicant.

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

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

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

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

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

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

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

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

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

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

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

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

732 N. For purposes of this section:

733 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
734 § 921 et seq.

735 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be
736 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.

§ 18.2-308.2:3. (Effective July 1, 2021) 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, subsection B of § 18.2-308.1:4, or § 18.2-308.1:6, 18.2-308.1:7, 18.2-308.1:8, 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.

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

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

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

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

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

813 N. For purposes of this section:

814 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
815 § 921 et seq.

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

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

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

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

824 **§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in**
825 **violation of law.**

826 Any firearm, stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed,
827 transported or carried in violation of § 18.2-283.1, 18.2-287.01, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3,
828 18.2-308.1:4, 18.2-308.1:8, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7,
829 or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

830 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
831 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
832 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
833 **correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the**
834 **Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant**
835 **to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot**
836 **be determined for periods of commitment to the custody of the Department of Juvenile Justice.**