

23100071D

HOUSE BILL NO. 1394

Offered January 11, 2023

Prefiled November 30, 2022

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 repeal § 18.2-308.1:6, Chapter 9.2 (§§ 19.2-152.13 through 19.2-152.17) of Title 19.2, and § 19.2-387.3 of the Code of Virginia, relating to firearms; removal from persons posing substantial risk; penalties.

Patrons—March, Scott, P.A., Williams and Wright

Referred to Committee on Rules

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 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, 18.2-308.1:3, ~~18.2-308.1:6~~, 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 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,

INTRODUCED

HB1394

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

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

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

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

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

75 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
76 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
77 in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article 1 (§ 18.2-247 et seq.), or former § 18.2-248.1:1
78 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any
79 controlled substance, under the laws of any state, the District of Columbia, or the United States or its
80 territories.

81 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the
82 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
83 in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article 1 (§ 18.2-247 et seq.), or former § 18.2-248.1:1
84 or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any
85 controlled substance under the laws of any state, the District of Columbia, or the United States or its
86 territories, the trial court found that the facts of the case were sufficient for a finding of guilt and
87 disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the
88 District of Columbia, or the United States or its territories.

89 **§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons; penalties.**

90 Any person who sells, barter, gives, or furnishes, or has in his possession or under his control with
91 the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is prohibited
92 from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3,
93 subsection B of § 18.2-308.1:4, ~~§ 18.2-308.1:6 or~~ 18.2-308.2, subsection B of § 18.2-308.2:01, or
94 § 18.2-308.7 is guilty of a Class 4 felony.

95 Any person who sells, barter, gives, or furnishes, or has in his possession or under his control with
96 the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is prohibited
97 from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:7 or 18.2-308.1:8 is
98 guilty of a Class 1 misdemeanor.

99 However, this prohibition shall not be applicable when the person convicted of the felony or
100 misdemeanor, adjudicated delinquent, or acquitted by reason of insanity has (i) been issued a permit
101 pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of
102 § 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
103 removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport,
104 possess, or receive firearms pursuant to the laws of the United States.

105 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**
106 **firearms.**

107 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a
108 form to be provided by the Department of State Police, to have the dealer obtain criminal history record
109 information. Such form shall include only the written consent; the name, birth date, gender, race,
110 citizenship, and social security number and/or any other identification number; the number of firearms
111 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the
112 following questions: (i) has the applicant been convicted of a felony offense or a misdemeanor offense
113 listed in § 18.2-308.1:8 or found guilty or adjudicated delinquent as a juvenile 14 years of age or older
114 at the time of the offense of a delinquent act that if committed by an adult would be a felony or a
115 misdemeanor listed in § 18.2-308.1:8; (ii) is the applicant subject to a court order restraining the
116 applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of
117 such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been
118 acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm
119 pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated
120 legally incompetent, mentally incapacitated, or adjudicated an incapacitated person and prohibited from

121 purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other
 122 jurisdiction, been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient
 123 mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any
 124 substantially similar law of any other jurisdiction, or been the subject of a temporary detention order
 125 pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; and
 126 (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered
 127 pursuant to ~~§ 19.2-152.13 or 19.2-152.14~~ and prohibited from purchasing, possessing, or transporting a
 128 firearm pursuant to ~~§ 18.2-308.1:6~~ or any substantially similar law of any other jurisdiction.

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

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

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

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

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

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

181 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by

182 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
183 residents of other states under the terms of subsections A and B upon furnishing the dealer with one
184 photo-identification form issued by a governmental agency of the person's state of residence and one
185 other form of identification determined to be acceptable by the Department of Criminal Justice Services.

186 6. For the purposes of this subsection, the phrase "dealer's fifth business day" does not include
187 December 25.

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

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

204 D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
205 exercise his right of access to and review and correction of criminal history record information under
206 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
207 30 days of such denial.

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

212 F. For purposes of this section:

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

215 "Antique firearm" means:

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

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

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

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

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

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

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

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

241 3. Any other firearms that derive a substantial part of their monetary value from the fact that they
242 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.
243 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 or 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 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

305 possessing or transporting a firearm by state or federal law. The Department of State Police shall
306 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to
307 be made by the Department of State Police, and the processes established for making such
308 determinations shall conform to the provisions of this section.

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

315 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an
316 enhanced background check, as described in this subsection, by special application to the Department of
317 State Police listing the number and type of handguns to be purchased and transferred for lawful business
318 or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar
319 purposes. Such applications shall be signed under oath by the applicant on forms provided by the
320 Department of State Police, shall state the purpose for the purchase above the limit, and shall require
321 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales
322 report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The
323 Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act
324 (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above
325 the limit.

326 Upon being satisfied that these requirements have been met, the Department of State Police shall
327 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from
328 the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to
329 the consummation of such sale and shall be kept on file at the dealer's place of business for inspection
330 as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local
331 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such
332 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
333 Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and
334 certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3.
335 The Department of State Police shall make available to local law-enforcement agencies all records
336 concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B
337 3.

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

339 a. A law-enforcement agency;

340 b. An agency duly authorized to perform law-enforcement duties;

341 c. A state or local correctional facility;

342 d. A private security company licensed to do business within the Commonwealth;

343 e. The purchase of antique firearms;

344 f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun
345 be replaced immediately. Such person may purchase another handgun, even if the person has previously
346 purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer
347 with a copy of the official police report or a summary thereof, on forms provided by the Department of
348 State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the
349 official police report or summary thereof contains the name and address of the handgun owner, a
350 description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date
351 the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as
352 reflected on the official police report or summary thereof occurred within 30 days of the person's
353 attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or
354 summary thereof to the original copy of the Virginia firearms transaction report completed for the
355 transaction and retain it for the period prescribed by the Department of State Police;

356 g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of
357 the same transaction, provided that no more than one transaction of this nature is completed per day;

358 h. A person who holds a valid Virginia permit to carry a concealed handgun;

359 i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private
360 sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms
361 for the enhancement of a personal collection of curios or relics or who sells all or part of such
362 collection of curios and relics; or

363 j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any
364 employee of a police department or sheriff's office that is part of or administered by the Commonwealth
365 or any political subdivision thereof and who is responsible for the prevention and detection of crime and
366 the enforcement of the penal, traffic, or highway laws of the Commonwealth.

§ 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, 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.

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

428 offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any
429 dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of
430 this section shall be guilty of a Class 1 misdemeanor.

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

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

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

437 N. For purposes of this section:

438 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
439 § 921 et seq.

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

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

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

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

448 **2. That § 18.2-308.1:6, Chapter 9.2 (§§ 19.2-152.13 through 19.2-152.17) of Title 19.2, and**
449 **§ 19.2-387.3 of the Code of Virginia are repealed.**