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SENATE BILL NO. 639

Offered January 11, 2024

**3 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
4 of Virginia and to repeal § 18.2-308.1:6, Chapter 9.2 (§§ 19.2-152.13 through 19.2-152.17) of Title
5 19.2, and § 19.2-387.3 of the Code of Virginia, relating to firearms; removal from persons posing
6 substantial risk; penalties.**

Patron—Sturtevant

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

12 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
13 amended and reenacted as follows:

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

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

16 1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2,
17 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
18 state or of the United States.

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

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

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

28 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
29 § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

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

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

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

39 9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local
40 ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other
41 state, the District of Columbia, the United States, or its territories within the three-year period
42 immediately preceding the application.

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

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

46 12. An individual who is a fugitive from justice.
47 13. An individual who is a fugitive from justice.

47 13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by
48 the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief
49 of police, or attorney for the Commonwealth may submit to the court a sworn, written statement
50 indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based
51 upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is
52 likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief
53 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such
54 individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the
55 specific acts, or upon a written statement made under oath before a notary public of a competent person
56 having personal knowledge of the specific acts.

57 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
58 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in

59 violation of § 18.2-282 within the three-year period immediately preceding the application.

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

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

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

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

74 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
75 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
76 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
77 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any
78 controlled substance, under the laws of any state, the District of Columbia, or the United States or its
79 territories.

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

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

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

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

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

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

106 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a
107 form to be provided by the Department of State Police, to have the dealer obtain criminal history record
108 information. Such form shall include only the written consent; the name, birth date, gender, race,
109 citizenship, and social security number and/or any other identification number; the number of firearms
110 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the
111 following questions: (i) has the applicant been convicted of a felony offense or a misdemeanor offense
112 listed in § 18.2-308.1:8 or found guilty or adjudicated delinquent as a juvenile 14 years of age or older
113 at the time of the offense of a delinquent act that if committed by an adult would be a felony or a
114 misdemeanor listed in § 18.2-308.1:8; (ii) is the applicant subject to a court order restraining the
115 applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of
116 such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been
117 acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm
118 pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated
119 legally incompetent, mentally incapacitated, or adjudicated an incapacitated person and prohibited from
120 purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other

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

128 B. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm to any other
129 person who is a resident of Virginia until he has (i) obtained written consent and the other information
130 on the consent form specified in subsection A, and provided the Department of State Police with the
131 name, birth date, gender, race, citizenship, and social security and/or any other identification number and
132 the number of firearms by category intended to be sold, rented, traded, or transferred and (ii) requested
133 criminal history record information by a telephone call to or other communication authorized by the
134 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
135 personal identification and residence in Virginia for purposes of this section, a dealer must require any
136 prospective purchaser to present one photo-identification form issued by a governmental agency of the
137 Commonwealth or by the United States Department of Defense or a special identification card without a
138 photograph issued pursuant to § 46.2-345.2 that demonstrates that the prospective purchaser resides in
139 Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency
140 of a member of the armed forces shall include both the state in which the member's permanent duty post
141 is located and any nearby state in which the member resides and from which he commutes to the
142 permanent duty post. A member of the armed forces whose photo identification issued by the
143 Department of Defense does not have a Virginia address may establish his Virginia residency with such
144 photo identification and either permanent orders assigning the purchaser to a duty post, including the
145 Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the identification
146 presented to a dealer by the prospective purchaser is a driver's license or other photo identification
147 issued by the Department of Motor Vehicles or a special identification card without a photograph issued
148 pursuant to § 46.2-345.2, and such identification form or card contains a date of issue, the dealer shall
149 not, except for a renewed driver's license or other photo identification issued by the Department of
150 Motor Vehicles or a renewed special identification card without a photograph issued pursuant to §
151 46.2-345.2, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date
152 of issue of an original or duplicate driver's license or special identification card without a photograph
153 unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles
154 driver's record showing that the original date of issue of the driver's license was more than 30 days prior
155 to the attempted purchase.

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

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

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

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

176 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
177 deliver the written consent form required by subsection A to the Department of State Police. The State
178 Police shall immediately initiate a search of all available criminal history record information to
179 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
180 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
181 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in

182 the jurisdiction where the sale or transfer occurred and the dealer without delay.

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

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

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

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

206 D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
207 exercise his right of access to and review and correction of criminal history record information under
208 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
209 30 days of such denial.

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

214 F. For purposes of this section:

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

217 "Antique firearm" means:

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

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

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

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

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

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

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

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

243 3. Any other firearms that derive a substantial part of their monetary value from the fact that they

244 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.
 245 Proof of qualification of a particular firearm under this category may be established by evidence of
 246 present value and evidence that like firearms are not available except as collectors' items, or that the
 247 value of like firearms available in ordinary commercial channels is substantially less.

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

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

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

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

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

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

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

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

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

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

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

286 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
 287 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
 288 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
 289 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
 290 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
 291 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
 292 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
 293 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
 294 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
 295 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
 296 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

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

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

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

304 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his

305 inventory to any other person, a dealer may require such other person to consent to have the dealer
306 obtain criminal history record information to determine if such other person is prohibited from
307 possessing or transporting a firearm by state or federal law. The Department of State Police shall
308 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to
309 be made by the Department of State Police, and the processes established for making such
310 determinations shall conform to the provisions of this section.

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

317 1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an
318 enhanced background check, as described in this subsection, by special application to the Department of
319 State Police listing the number and type of handguns to be purchased and transferred for lawful business
320 or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar
321 purposes. Such applications shall be signed under oath by the applicant on forms provided by the
322 Department of State Police, shall state the purpose for the purchase above the limit, and shall require
323 satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales
324 report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The
325 Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act
326 (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above
327 the limit.

328 Upon being satisfied that these requirements have been met, the Department of State Police shall
329 immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from
330 the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to
331 the consummation of such sale and shall be kept on file at the dealer's place of business for inspection
332 as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local
333 law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such
334 local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the
335 Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and
336 certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3.
337 The Department of State Police shall make available to local law-enforcement agencies all records
338 concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B
339 3.

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

- 341 a. A law-enforcement agency;
- 342 b. An agency duly authorized to perform law-enforcement duties;
- 343 c. A state or local correctional facility;
- 344 d. A private security company licensed to do business within the Commonwealth;
- 345 e. The purchase of antique firearms;

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

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

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

- 361 i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private
362 sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms
363 for the enhancement of a personal collection of curios or relics or who sells all or part of such
364 collection of curios and relics; or
- 365 j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any
366 employee of a police department or sheriff's office that is part of or administered by the Commonwealth

367 or any political subdivision thereof and who is responsible for the prevention and detection of crime and
 368 the enforcement of the penal, traffic, or highway laws of the Commonwealth.

369 **§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer
 370 firearms; exemptions; penalties.**

371 A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C.
 372 § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent,
 373 temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be
 374 prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B
 375 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
 376 illegal alien, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of
 377 § 18.2-308.1:4 or § 18.2-308.1:5.

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

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

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

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

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

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

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

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

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

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

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

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

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

439 N. For purposes of this section:

440 "Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C.
441 § 921 et seq.

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

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

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

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

450 2. That § 18.2-308.1:6, Chapter 9.2 (§§ 19.2-152.13 through 19.2-152.17) of Title 19.2, and
451 § 19.2-387.3 of the Code of Virginia are repealed.