

CHAPTER 137
FORMERLY
HOUSE BILL NO. 48
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 11, 16 AND 29 OF THE DELAWARE CODE RELATING TO REPORTING PERSONS PROHIBITED FROM POSSESSING FIREARMS AND THE NATIONAL CRIMINAL INSTANT BACKGROUND CHECK SYSTEM ("NICS").

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5161(b)(13)g., Title 16 of the Delaware Code by striking the phrase “pursuant to paragraph (b)(14) of this section and 11 Del. C. § 8509” and substituting in lieu thereof the phrase “pursuant to 11 Del. C. §8509 and to the Federal Bureau of Investigation, National Instant Criminal Background Check System pursuant to 11 Del. C. §1448A”.

Section 2. Amend §5161(b)(14), Title 16 of the Delaware Code by striking all language following the phrase “§ 5001(4) of this title” therein and substituting in lieu thereof the following: “shall, pursuant to §1448A of Title 11, cause to be submitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System such information as may be required to comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms. Such information shall include only names and other non-clinical identifying information of persons so committed.”.

Section 3. Amend §8509, Title 11 of the Delaware Code by inserting a colon (“:”) following the word “shall” but before the word “transmit” in the first sentence therein, and by inserting a subsection (a) header following said colon (“:”).

Section 4. Amend §8509, Title 11 of the Delaware Code by inserting subsection (b) as follows:

“(b) pursuant to §1448A of Title 11, cause to be transmitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System, such information as may be required to comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms.”.

Section 5. Amend §1448(a)(2), Title 11, of the Delaware Code by striking therefrom all language following the phrase “hospital, mental institution or sanitarium” and substituting therefor the following: “, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to 11 Del. C. §1448A”.

Section 6. Amend §1448A, Title 11 of the Delaware Code by striking subsections (a)-(h) thereof and substituting in lieu thereof the following subsections (a)-(b):

“(a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in §222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check System (“NICS”), 28 C.F.R. §§24.1-25.11, as the same may be amended from time to time, to determine whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. §923 would be in violation of federal or state law.

(b) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) hereunder may request from the Federal Bureau of Investigation (“FBI”) a written explanation for such denial; an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous information on the NICS system be corrected and that the person’s rights to possess a firearm be restored. All requests pursuant to this subsection (b) shall be made in accordance with applicable federal laws and regulations, including without limitation 28 C.F.R. §25.10. In connection herewith, at the request of a denied person, the Federal

Firearms Licensed (FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in order for such person to appeal or seek additional information hereunder.”.

Section 7. Amend §1448A, Title 11 of the Delaware Code by striking in subsection (k) the term “SBI” and substituting in lieu thereof “Federal Bureau of Investigation, National Instant Criminal Background Check System”.

Section 8. Amend §1448A, Title 11 of the Delaware Code by striking in subsection (n) the phrase “, and the estimated costs of administering this section” , and substituting in lieu thereof a period (“.”).

Section 9. Amend §1448A, Title 11 of the Delaware Code by striking subsections (o) and (p) in their entirety.

Section 10. Amend §1448A, Title 11 of the Delaware Code by striking in subsection (q) the phrase “subsections (b) and (c) of”.

Section 11. Amend §1448A, Title 11 of the Delaware Code by renumbering subsections (i)-(n) and (q) as subsections (c)-(i) respectively.

Section 12. Amend §1448A, Title 11 of the Delaware Code by adding a new subsection (j) as follows:

“(j) Relief from Disabilities Program. A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and (g)(4) or of 11 Del. C. § 1448(a)(2) because of an adjudication or commitment under the laws of this state may petition for relief from a firearms prohibition from the Relief from Disabilities Board. The Relief from Disabilities Board shall be comprised of three (3) members, with the chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and two members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, one of whom shall be a licensed psychiatrist.

(1) The Board shall consider the petition for relief in accordance with the following:

- a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and confidential hearing on the record; and
- b. A record of the hearing shall be maintained by the Board for purposes of appellate

review.

(2) In determining whether to grant relief, the Board shall consider evidence regarding the following:

- a. The circumstances regarding the firearms disabilities pursuant to 11 Del. C. § 1448(a)(2) and 18 U.S.C. 922 §§(d)(4) and (g)(4);
- b. The petitioner’s record, which must include, at a minimum, the petitioner’s mental health record, including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;
- c. Criminal history records; and
- d. The petitioner’s reputation as evidenced through character witness statements, testimony, or other character evidence.

(3) The Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk assessment, which it may also consider as evidence in determining whether to approve or deny the petition for relief.

(4) After a hearing on the record, the Board shall grant relief if it finds, by a preponderance of the evidence, that:

- a. The petitioner will not be likely to act in a manner dangerous to public safety; and
- b. Granting the relief will not be contrary to the public interest.

(5) The Board shall issue its decision in writing explaining the reasons for a denial or grant of relief.

(6) Any person whose petition for relief has been denied by the Relief from Disabilities Board shall have a right to a de novo judicial review in the Superior Court. The Superior Court shall consider the record of the Board hearing on the petition for relief, the decision of the Board, and, at the Court’s discretion, any additional evidence it deems necessary to conduct its review.

(7) Upon notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as practicable:

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition as it relates to 11 Del. C. § 1448(a)(2) and 18 U.S.C. §§922(d)(4) and (g)(4); and

b. Notify the Attorney General of the United States that the petitioner is no longer subject to a firearms prohibition pursuant to 11 Del. C. §1448(a)(2) and 18 U.S.C. §§922(d)(4) and (g)(4).”.

Section 13. Amend §1448A, Title 11 of the Delaware Code by adding a new subsection (k) as follows:

“(k) The Department of Safety and Homeland Security shall adopt regulations relating to compliance with NICS, including without limitation issues relating to the transmission of data, the transfer of existing data in the existing state criminal background check database and the relief from disabilities process set forth in subsection (j). In preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth & Their Families, the Department of State and such other entities as may be necessary or advisable. Such regulations shall include provisions to ensure the identity, confidentiality and security of all records and data provided pursuant to this section.”.

Section 14. Amend §9017, Title 29 by renumbering existing subsections (c)-(d) as subsections (d)-(e) respectively and by adding a new subsection (c) as follows:

“(c) The Department shall cause to be submitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System such information as may be required to comply with federal laws and regulations relating to background checks for the purchase and transfer of firearms. Such information shall include only names and other non-clinical identifying information.”.

Section 15. This Act shall become effective on the earlier of (1) the effective date of the regulations adopted by the Secretary of Safety and Homeland Security in accordance with Section 13 above, and (2) June 30, 2012.

Section 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

Approved July 13, 2011