

CHAPTER 135
FORMERLY
HOUSE BILL NO. 46
AS AMENDED BY
HOUSE AMENDMENT NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT
NO. 1
AND
HOUSE AMENDMENT NOS. 2, 3 & 5

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DISPOSITION OF
VALIDLY SEIZED WEAPONS AND AMMUNITION.

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

Section 1. Amend §2311, Title 11 of the Delaware Code by striking in subsection (c) thereof the phrase “under § 1448(a)(1) or (a)(3) of this title, or prohibited under § 1448(a)(8) of this title” and substituting in lieu thereof the phrase “under Delaware law, federal law or the law of any other state, or who is otherwise prohibited under § 1448 of this title”.

Section 2. Amend §2311(c), Title 11 of the Delaware Code by striking the phrase “subject only to any claim that has been asserted on the part of any third party claiming ownership in the weapon or ammunition” and substituting in lieu thereof the phrase “and after proper notice of the intent to dispose of such deadly weapon or ammunition six (6) months from the date of the notice, unless such deadly weapon or ammunition has been claimed by the owner or a third party. If the deadly weapon or ammunition shall remain unclaimed after six (6) months from the date of notice, then no party shall thereafter have the right to assert ownership thereof, and the law enforcement agency may dispose of such deadly weapon or ammunition following the expiration of the period set forth in subsection (d) hereunder. For purposes of this section, ‘disposition’ may include the sale or transfer of the firearms to a federal licensed dealer, defined as a person licensed as a firearms collector, dealer, importer, or manufacturer under the provisions of 18 U.S.C. §§ 922 et seq., or destruction of the firearms and ammunition.

(1) Any person requesting the return of any deadly weapon or ammunition hereunder shall have the burden to prove that he or she is the owner thereof and is not otherwise prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition.

(2) Any third party requesting the return of any deadly weapon or ammunition hereunder shall also have the burden to prove ownership by devise, gift, sale or other legally-recognized process for conveying ownership.”

Section 3. Amend §2311, Title 11 of the Delaware Code by adding a new subsection (d) to state as follows:

“(d) Any law enforcement agency denying an owner or a third party the possession of any deadly weapon or ammunition pursuant to this section shall not dispose of such deadly weapon or ammunition until the expiration of sixty (60) calendar days from the date of denial.”

Section 4. Amend §2311, Title 11 of the Delaware Code by adding a new subsection (e) to state as follows:

“(e) Notwithstanding anything in this section to the contrary, any law enforcement agency holding a deadly weapon or ammunition validly seized from a person who is subject to a Family Court protection from abuse order pursuant to 11 Del.C. §1448(a)(6) may dispose of such deadly weapon or ammunition after the expiration or termination of such order and after proper notice is provided to the owner in accordance with subsections (c) and (d) hereunder.”

Section 5. Amend §2311, Title 11 of the Delaware Code by adding a new subsection (f) to state as follows:

“(f) For purposes of this section:

(1) ‘Proper notice’ shall mean notice of a law enforcement agency’s intention to dispose of a deadly weapon or ammunition in accordance with this section by written notice, via certified letter, return

receipt requested, to the owner's last known address and by publication in a local or statewide newspaper at least once a week for two consecutive weeks. Such notice shall state that the local law enforcement agency may not dispose of said deadly weapon or ammunition until the expiration of the notice period set forth in this section.

(2) 'Last-known address' shall mean the last known address of the owner of any deadly weapon or ammunition hereunder as determined through the Delaware Criminal Justice Information System (DELJIS), the Family Court of the State of Delaware or the address noted on the owner's most recent driver's license, vehicle registration or Division of Motor Vehicle identification card. In accordance with this section, the Family Court is authorized to provide to law enforcement the most recent address of an owner who was, or is, a party to any Family Court proceeding.

(3) 'Third party' shall mean any person requesting the return of any deadly weapon or ammunition hereunder who is not the party to whom notice was sent in accordance with subsection (c)."

Section 6. Amend §1448(a)(9), Title 11 of the Delaware Code by striking the word "and" and substituting the word "any" in lieu thereof.

Section 7. Amend §1448(a)(9), Title 11 of the Delaware Code by striking the phrase ", under paragraph (a)(1) or (a)(3) of this section, or validly seized under paragraph (a)(8) of this section" and substituting in lieu thereof the phrase "under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a)".

Section 8. Amend §1448(a)(9), Title 11 of the Delaware Code by striking the phrase ", after the exhaustion of any right of direct appeal".

Section 9. 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.

Section 10. Amend §2311 of Title 11 by adding new subsections (g)-(i) to read as follows:

"(g) If a law enforcement agency denies any request for the return of a deadly weapon or ammunition hereunder, the person or third party so denied shall have the right to file a petition in any court of competent jurisdiction for the return of the deadly weapon or ammunition, in addition to any other rights such person may have. A law enforcement agency shall not dispose of a deadly weapon or ammunition subject to such a petition until a final adjudication and the expiration of any appeal period. The petition filed pursuant to this subsection shall include the following:

- (1) A complete description of the property including all identification and registration numbers if applicable;
- (2) The name and last known address of the owner or owners of the property;
- (3) The names and addresses of any persons who claim to or have an interest or lien in the subject property;
- (4) A statement of the value of the subject property; and
- (5) A statement by the petitioner that he or she requested the return of a deadly weapon or ammunition from a law enforcement agency, and that such request was denied.

(h) Upon receipt of a petition which is made pursuant to subsection (g) of this section, the court shall send a notice and a copy of the petition to the law enforcement agency holding the deadly weapon or ammunition and to all other owners and/or lienholders of said property identified in the petition. Such notice shall include:

- (1) A statement that a petition has been made with the court;
- (2) A statement that the owner or other person has a legal right to a hearing in the courts and that if a hearing is desired then the owner or other person shall file with the court an answer to the petition;
- (3) A statement that if an answer is filed a hearing will be promptly scheduled and the owners or other interested persons may appear to contest the claim;

(4) A statement that the court will enter a judgment in favor of the petitioner unless an answer is filed within 20 days after the date on which the notice was mailed;

(5) A statement that the person may be liable for costs if a judgment is entered in favor of the petitioner.

(i) If the court receives an answer described in paragraph (h)(3) of this section, the court shall notify the petitioner and all parties of the hearing date to determine ownership of the deadly weapon or ammunition. If no answer is filed pursuant to paragraph (h)(3) of this section, then the court shall issue an order declaring that the petitioner has full right, title and interest to the said deadly weapon or ammunition.”.

Approved July 13, 2011