

LAWS OF DELAWARE
VOLUME 83
CHAPTER 330
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 423
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 11, 16, 24, AND 29 OF THE DELAWARE CODE RELATING TO BACKGROUND CHECKS FOR FIREARMS SALE, TRANSFER, OR CONCEALED CARRY PERMIT.

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

Section 1. Amend Chapter 85, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Firearm Transaction Approval Program (FTAP). ~~Criminal Background Check for Public School-Related Employment [Repealed].~~

§ 8570. Purpose and intent. ~~Definitions [Repealed].~~

The purpose and intent of this subchapter is to establish the Delaware Firearm Transaction Approval Program that is compliant with the federal Brady Act, P.L. 103-159, 107 Stat. 1536, 18 U.S.C. § 921 et seq., and to make this State a federally-compliant point of contact state in conjunction with the federal National Instant Criminal Background Check System.

§ 8571. ~~Definitions. Screening procedure required [Repealed].~~

As used in this subchapter:

- (1) “FBI” means the Federal Bureau of Investigation.
- (2) “Federal firearms licensee” or “FFL” means a person licensed by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives as a manufacturer, importer, or dealer of firearms.
- (3) “Firearm” means as defined under 18 U.S.C. § 921(a)(3).
- (4) “Licensed dealer” means as defined under 27 C.F.R. § 178.11.
- (5) “Licensed importer” means as defined under 27 C.F.R. § 178.11.
- (6) “Licensed manufacturer” means as defined under 27 C.F.R. § 178.11.
- (7) “National Crime Information Center” or “NCIC” means the nationwide computerized federal information system of criminal justice data established by the FBI as a service to local, state, and federal criminal justice agencies.
- (8) “NICS” means the National Instant Criminal Background Check System.
- (9) “NICS POC” means as point of contact is defined under this section.
- (10) “NICS POC Guidelines” means the guidelines established and published by the federal government for the operation and implementation of the NICS program by a POC agency.
- (11) “Point of contact” or “POC” means a state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by NICS.

(12) "SBI" means the State Bureau of Identification of the Delaware State Police.

§ 8572. SBI as point of contact for NICS, entity to conduct required background checks. Penalties [Repealed].

(a)(1) The SBI shall serve as the NICS POC for this State.

(2) Except as provided by other laws of this State, SBI's NICS POC operations are governed by and shall strictly adhere to 28 C.F.R. Part 25 and the NICS POC Guidelines.

(b) The SBI shall conduct background checks required for the lawful sale, transfer, or delivery of firearms under federal law and the law of this State, including under §§ 1448A and 1448B of this title, that occur within this State.

(c)(1) The SBI shall establish a toll-free telephone number that must be operational between the hours of 9:00 a.m. and 9:00 p.m. local time, Monday through Saturday, and 9:00 a.m. and 5:00 p.m. local time, Sunday, to respond to inquiries from FFLs for background checks required under subsection (b) of this section. The SBI may establish another electronic means to respond to inquiries from FFLs for background checks required under subsection (b) of this section in addition to a toll-free telephone number.

(2) Notwithstanding paragraph (c)(1) of this section, the telephone number may, but need not be, operational on Thanksgiving Day, Christmas Day, Good Friday, or on Easter Sunday.

(3) The SBI shall employ and maintain personnel as necessary to effectively and efficiently administer this subchapter and to otherwise effectively serve as this State's federal NICS POC.

(d) On receipt of a request for a background check required under paragraph (c)(1) of this section, SBI shall do all of the following:

(1) Transmit a request for a background check to the Federal Bureau of Investigation, NICS Section, and search other available databases to determine if the potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of this title or federal law.

(2) After receipt of a response from the Federal Bureau of Investigation, NICS Section, and the completion of its search of other available databases, inform the FFL making the inquiry or the of 1 of the following:

a. That the potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of this title or federal law.

b. That the FFL may proceed with the sale, transfer, or delivery of the firearm may proceed with the process for issuing a license to carry concealed deadly weapons. SBI shall provide the FFL with a unique approval number.

(e) If electronic failure or similar emergency beyond the control of the SBI occurs, the SBI shall immediately notify a requesting FFL of the reason for, and estimated length of, the delay. After a notification under this subsection, the SBI shall inform the FFL making the inquiry of 1 of the following no later than the end of the third business day following a request for a background check by the FFL:

(1) That the potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of this title or federal law.

(2) That the FFL may proceed with the sale, transfer, or delivery of the firearm. SBI shall provide the FFL with a unique approval number.

(f) The SBI may promulgate regulations necessary to administer and enforce this section.

§ 8573. Confidentiality of NICS check and POC records.

(a) The SBI is responsible for maintaining the security, integrity, and confidentiality of all information and records pertaining to the Firearm Transaction Approval Program. The SBI may share such information and records with another state or federal law enforcement agency or the Judicial Information Center in order to carry out its functions under §§ 8572 and 8574 of this title.

(b) As this State's designated NICS POC, the SBI shall strictly adhere to the federal regulations pertaining to the confidentiality and security of NICS information including 28 C.F.R. § 25.6, § 25.7, § 25.8, § 25.9, and § 25.11.

(c)(1) The SBI may promulgate regulations consistent with 28 C.F.R. Part 25 to ensure the security, integrity, and confidentiality of all information and records coming into its custody under the Firearm Transaction Approval Program.

(2) Regulations under this section may protect the privacy and confidentiality of this State's citizens to a greater extent than federal law.

(d) Nothing in this subchapter may be construed to allow the State to maintain records containing the names of FFLs who receive unique approval numbers or to maintain records of firearm transactions, including the names or other identification of FFLs and potential buyers or transferees, involving individuals who are not prohibited by § 1448 of this title or federal law from the receipt or possession of firearms for longer than 6 months. However, the SBI may retain whatever information it receives including the identifying information of a potential buyer or transferee if the SBI has reasonable cause to believe the potential buyer or transferee is committing a crime. Nothing in this paragraph may be construed to be a waiver of sovereign immunity.

(e) The Superior Court has exclusive jurisdiction over a violation of subsection (d) of this section.

§ 8574. Procedure and remedies upon denial.

(a) An individual who is denied the right to receive or purchase a firearm under this subchapter may do 1 or more of the following:

(1) Request from the SBI a written explanation for the denial.

(2) Petition the SBI to amend erroneous information in a record pertaining to the individual.

(b) SBI shall respond to a request for a written explanation for the denial under paragraph (a)(1) within 30 days of receipt of the request.

(c) On receipt of a petition under paragraph (a)(2) of this section, the SBI shall do all of the following:

(1) Perform a thorough review of the records that prompted the denial.

(2) Render, within 30 days of receipt of the petition, a final decision regarding the denial. If exceptional circumstances exist, SBI may extend the deadline to file a final decision for an additional 30 days with notice to the petitioner providing the exceptional circumstances.

(d) If the SBI reverses its denial, the SBI shall immediately do all of the following:

(1) Request that an entity that provided it with information that prompted its denial amend its records to reflect accurate information.

(2) Amend its records to reflect accurate information.

(3) Destroy records it maintains which contain erroneous information derived from a background check conducted under this subchapter.

(e) If the SBI upholds its denial, the individual may appeal the decision to the Superior Court on the record.

(e)(1) If the SBI fails to issue a decision on a petition under paragraph (a)(2) of this section within the time requirements in paragraph (c)(2) of this section, the individual may petition the Superior Court for a writ of mandamus to compel the issuance of the decision.

(2) If the SBI fails to amend its records to reflect accurate information under paragraph (d) of this section, the individual may petition the Superior Court for a writ of mandamus to require the SBI to correct its records.

(3) If the Superior Court determines that the SBI wilfully refused to issue its decision or amend the record, the Court may award the petitioner costs and reasonable attorneys' fees.

Section 2. Amend § 1448A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1448A. ~~Criminal history record~~ Background checks for sales of firearms.

(a) ~~No~~ A licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer shall ~~may not~~ may not sell, ~~transfer~~ transfer, or deliver from inventory any firearm, as defined in § ~~222~~ § 8571 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. §§ 25.1-25.11, as the same may be amended from time to time,~~ background check by the State Bureau of Identification, through the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title, 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) ~~No~~ A licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer shall ~~may not~~ may not sell, ~~transfer~~ transfer, or deliver from inventory any firearm, as defined in § ~~222~~ § 8571 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless and until being informed that it may "proceed" with the sale, ~~transfer~~ transfer, or delivery from inventory of a firearm by the ~~Federal Bureau of Investigation (FBI), NICS Section pursuant to the request for a criminal history record check required by the State Bureau of Identification, through the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title,~~ following a request for a background check under subsection (a) of this section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(c) ~~Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this section or § 1448B(a) of this title may request from the Federal Bureau of Investigation 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 (c) 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. [Repealed.]~~

(d) Compliance with ~~the provisions of~~ this section shall be is a complete defense to any claim or cause of action under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or § 1448B of this title, as the case may be, shall be is a complete defense to any claim or cause of action under the laws of this State for liability for damages allegedly arising from the actions of the transferee subsequent to the date of said the compliance wherein the claim for damages is factually connected to said the compliant transfer.

~~(e) The provisions of this section shall~~ This section does not apply to: to any of the following:

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

(2) Any replica of any firearm described in paragraph (e)(1) of this section if ~~such replica:~~ the replica meets 1 of the following:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ~~ammunition;~~ or ammunition.

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial ~~trade;~~ trade.

(3) Any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the ~~trigger;~~ trigger.

(4) The return, by a licensed pawnbroker, of a firearm to the person from whom it was ~~received;~~ received.

(5) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license ~~pursuant to~~ under §§ 1441, 1441A, 1441A, and 1441B of this ~~title;~~ and title.

(6) Transactions involving a "law-enforcement officer" as defined by § 222 of this title.

(f) Any licensed dealer, licensed manufacturer, licensed ~~importer~~ importer, or employee thereof who wilfully and intentionally requests a ~~criminal history record check from the Federal Bureau of Investigation,~~ NICS background check from the State Bureau of Identification, through the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title, for any purpose other than compliance with subsection (a) of this ~~section~~ section, or § 1441(a)(1) or § 1448B(a) of this title, or wilfully and intentionally disseminates any ~~criminal history record~~ information from the background check to any person other than the subject of such information

or discloses to any person the unique identification number ~~shall be~~ is guilty of a class A misdemeanor. The Superior Court ~~shall have~~ has exclusive jurisdiction for all offenses under this subsection.

(g) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to subsection (a) of this section or § 1448B(a) of this title, wilfully and intentionally makes any materially false oral or written statement or wilfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee ~~shall be~~ is guilty of a class G felony.

(h) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally sells or delivers a firearm in violation of this section ~~shall be~~ is guilty of a class A misdemeanor. ~~Second~~ A second or subsequent ~~offenses~~ offense by an individual ~~shall be~~ is a class G felony. The Superior Court has exclusive jurisdiction for all offenses under this subsection.

(i) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report including the number of inquiries made ~~pursuant to~~ under this section and § 1448B of this title for the prior calendar year.

~~Such report shall include, but not be limited to,~~ The report must include the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm ~~pursuant to §§ 1448 and 1448B~~ under § 1448 of this title or federal ~~law.~~ law, and the estimated costs of administering the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title.

(j) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other ~~Delaware laws,~~ laws of this State, the SBI ~~is authorized and directed to~~ shall release records and data required by this section and by § 1448B of this title. The SBI ~~shall~~ may not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

(k) ~~No records,~~ Records, data, ~~information~~ information, or reports containing the name, address, date of ~~birth~~ birth, or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial ~~number~~ number, or other identifying data of any firearm which are required, ~~authorized~~ authorized, or maintained ~~pursuant to~~ under this section, § 1448B of this ~~title~~ title, or by Chapter 9 of Title 24, ~~shall be~~ are not subject to disclosure or release ~~pursuant to~~ under the Freedom of Information Act, Chapter 100 of Title 29.

(l) 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 § 1448(a)(2) of this title, except a person subject to an order for relinquishment under § 1448C(d)(1) of this title, 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 3 members, with the chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and 2 members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, 1 of whom shall be a licensed psychiatrist.

(1) The Board shall consider the petition for relief in accordance with all of 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~~ record.

b. A The Board shall maintain 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 all of the following:

a. The circumstances regarding the firearms disabilities pursuant to § 1448(a)(2) of this title and 18212 U.S.C. § 922(d)(4) and ~~(g)(4);~~ (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; weapons~~.

c. Criminal history ~~records; and~~ records.

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:~~ all of the following apply:

a. The petitioner will not be likely to act in a manner dangerous to public ~~safety; and~~ safety.

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~~ has 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~~ On notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as ~~practicable;~~ practicable, do both of the following:

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

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

(m) ~~The Department of Safety and Homeland Security~~ The SBI shall adopt ~~regulations~~ regulations, consistent with federal law, 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~~ database, and the relief from disabilities process ~~set forth in subsection (k)~~ under subsection (l) of this section. In preparing such regulations, ~~the Department~~ the SBI shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and Their Families, the Department of ~~State~~ State, and such other entities as may be necessary or advisable. ~~Such regulations shall~~ Regulations adopted under this section must include provisions to ensure the identity, ~~confidentiality~~ confidentiality, and security of all records and data provided ~~pursuant to~~ under this section.

Section 3. Amend § 1448B, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1448B. ~~Criminal history record~~ Background checks for sales of firearms — Unlicensed persons.

(a) ~~No~~ An unlicensed person shall may not sell or transfer any ~~firearm, as defined in § 222 of this title,~~ firearm to any other unlicensed person without having conducted a ~~criminal history~~ background check through a licensed firearms dealer in accordance with § 1448A of this title and § 904A of Title 24, ~~as the same may be amended from time to time,~~ Title 24 to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed firearms dealer has been informed that the sale or transfer of the firearm may “proceed” by ~~the Federal Bureau of Investigation, NICS Section~~ the State Bureau of Identification, through the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(b) For purposes of this section:

(1) “Licensed dealer” means any person licensed as a deadly weapons dealer ~~pursuant to~~ under Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(2) “Firearm” means as defined under § 8571 of Title 11.

(3) “Prospective buyer” includes a prospective transferee.

(4) “Prospective seller” includes a prospective transferor.

~~(2)~~ (5) “Transfer” means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not ~~include:~~ include any of the following:

a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of ~~said~~ the firearm to a person known personally to ~~him or her;~~ the owner.

b. A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, ~~provided that such~~ if the temporary transfer ~~shall~~ does not exceed 24 hours in ~~duration;~~ duration.

c. The transfer of a firearm for repair, ~~service~~ service, or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or ~~business;~~ business.

d. A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

~~(3)~~ (6) “Unlicensed person” means any person who is not a licensed importer, licensed manufacturer or licensed dealer.

(c) ~~The provisions of this~~ This section shall ~~does not apply to:~~ to any of the following:

(1) Transactions in which the ~~potential purchaser or transferee~~ prospective buyer is a parent, mother-in-law, father-in-law, stepparent, legal guardian, grandparent, child, daughter-in-law, son-in-law, stepchild, grandchild, sibling, sister-in-law, brother-in-law, spouse, or civil union partner of the seller or ~~transferor;~~ transferor.

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

(3) Any replica of any firearm described in paragraph (c)(2) of this section if ~~such replica:~~ the replica meets 1 of the following:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ~~ammunition;~~ ammunition.

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial ~~trade;~~ trade.

(4) Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check ~~pursuant to federal law;~~ under federal law.

(5) Transactions in which the ~~potential purchaser or transferee~~ prospective buyer is a qualified law-enforcement officer, as defined in § 1441A of this title, or a qualified retired law-enforcement officer, as defined in § 1441B of this ~~title;~~ title.

(6) Transactions in which the ~~potential purchaser or transferee~~ prospective buyer holds a current and valid concealed carry permit issued by the Superior Court of the State of Delaware ~~pursuant to~~ under § 1441 of this title.

(7) Transactions in which the prospective buyer ~~or transferee~~ is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic ~~identification;~~ identification. ~~provided, however, that no unlicensed person shall~~ Notwithstanding this paragraph (c)(7), an unlicensed person may not sell or transfer any firearm to ~~any such person~~ the prospective buyer without having ~~conducted a criminal history background check in accordance with~~ conducted under subsection (f) of this section ~~hereunder~~ to determine whether the sale or transfer would be in violation of federal or state ~~law;~~ law.

(8) Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 C.F.R. 478.11, ~~as the same may be amended from time to time;~~ § 478.11.

(9) Transactions involving the sale or transfer of a firearm to an authorized representative of the State or any subdivision thereof as part of an authorized voluntary gun buyback program.

(d) Notwithstanding anything to the contrary ~~herein,~~ no fee for a criminal history in this section, a fee for a background check may not be charged for the return of a firearm to its owner that has been repaired, ~~serviced~~

serviced, or modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

(e) Any person who knowingly sells or transfers a firearm in violation of this section ~~shall be~~ is guilty of a class A misdemeanor. Any subsequent offense ~~shall be~~ is a class G felony. The Superior Court ~~shall have~~ has exclusive jurisdiction for all offenses under this section.

(f) The State Bureau of ~~Investigation~~ Identification (the "Bureau") shall facilitate the sale or transfer of any firearm in which the prospective buyer is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification, ~~pursuant to the following procedure. For purposes of this subsection, the terms "prospective buyer" and "prospective seller" shall include prospective transferors and prospective transferees, respectively. under the following procedure:~~

(1) The prospective buyer and prospective seller shall jointly appear at the ~~State Bureau of Investigation~~ Bureau during regular hours of business, and shall inform the Bureau of their desire to avail themselves of ~~the procedure set forth herein. this section.~~ The actual cost of the ~~criminal history~~ background check ~~shall~~ must be paid by either the prospective buyer or prospective seller.

(2) The prospective buyer shall ~~be required to~~ submit fingerprints and other necessary information ~~in order to obtain a report of the individual's entire criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). to complete a background check under the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title.~~ In addition, the prospective buyer shall submit to the Bureau a signed affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer is a bona fide member.

(3) ~~In the event that said background check~~ If the background check under paragraph (f)(2) of this section reveals that the prospective buyer is prohibited from possessing, ~~purchasing~~ purchasing, or owning a firearm, the Bureau shall ~~so~~ inform ~~both parties~~ the prospective buyer and prospective seller of that fact and the transfer ~~shall~~ may not take place.

(4) The Bureau shall maintain a record of all background checks conducted under this section to the same extent as is required of licensed dealers ~~pursuant to~~ under Chapter 9 of Title 24.

(5) The Bureau ~~is hereby authorized to~~ may promulgate such reasonable forms and ~~regulations~~ regulations consistent with federal law, as may be necessary or desirable to ~~effectuate the provisions of~~ administer and enforce this subsection.

Section 4. Amend § 1455, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1455. Engaging in a firearms transaction on behalf of another; class E felony; class C felony.

(a) A person is guilty of engaging in a firearms transaction on behalf of another when the person purchases or obtains a firearm on behalf of a person not qualified to legally purchase, own or possess a firearm in this State or

for the purpose of selling, giving or otherwise transferring a firearm to a person not legally qualified to purchase, own or possess a firearm in this State.

(b) Engaging in a firearms transaction on behalf of another is a class E felony for the first offense, and a class C felony for each subsequent like offense.

(c)(1) A federal firearms licensee who suspects a person engaged in a firearms transaction may be violating this section may alert SBI through the same hotline established under § 8572 of this title for background checks.

(2) Upon receiving notice of a possible transaction in violation of this section, SBI shall forward information relating to the transaction to the appropriate law enforcement agency for further investigation.

Section 5. Amend § 5161, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5161. Rights of patients in mental health hospitals or residential centers.

(b) Any hospital or residential center that admits persons pursuant to Chapter 50, 51, or 55 of this title shall prominently post in English and Spanish the list of patient rights set forth in this subsection. In addition to the posting, the Department shall distribute a copy of the list to each patient and to other persons, as provided in Department regulations.

Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes.

Furthermore, in defining the scope or extent of any duty imposed by this section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.

(14) The Delaware Psychiatric Center and any other hospital as defined in § 5001(9) of this title shall, ~~pursuant to under~~ § 1448A of Title 11, cause to be submitted to ~~the Federal Bureau of Investigation, National Instant Criminal Background Check System such~~ the State Bureau of Identification (SBI) 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~~ The information must include only names and other nonclinical identifying information of persons so committed. The SBI shall transmit the information, as may be required by law, to the FBI for use in its National Instant Criminal Background Check System (NICS).

Section 6. Amend § 904A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904A. ~~Criminal history~~ Background checks for sales between unlicensed persons.

(a) For purposes of this ~~section,~~ section:

(1) ~~“licensed firearm dealer”~~ “Dealer” means any person licensed as a deadly weapons dealer ~~pursuant to Chapter 9 of Title 24 under this chapter~~ and 18 U.S.C. § 921 et seq.

(2) “Firearm” means as defined under § 8571 of Title 11.

(3) “Prospective buyer” includes a prospective transferee.

(4) “Prospective seller” includes a prospective transferor.

(5) "Transfer" means as defined under § 1448B of Title 11.

(6) "Unlicensed person" means as defined under § 1448B of Title 11.

(b) As a condition of its license, any dealer holding a license ~~pursuant to~~ under this chapter shall facilitate the transfer of a ~~firearm, as that term is defined in § 222 of Title 11,~~ firearm from any unlicensed person ~~as that term is defined in § 1448B of Title 11,~~ upon ~~on~~ the request of said ~~the~~ unlicensed person, ~~pursuant to~~ through the following procedure:

(1) The prospective buyer and prospective seller shall jointly appear at the place of business of the dealer, during ~~said~~ the dealer's regular hours of business, and shall inform the dealer of their desire to avail themselves of ~~the advantages of the procedure set forth herein.~~ this subsection.

(2) The dealer shall ~~then~~ subject the prospective buyer to a ~~criminal history background check pursuant to the terms of~~ background check under § 1448A of Title 11.

(3) ~~In the event that said record check~~ If the background check under paragraph (b)(2) of this section reveals that the prospective buyer is prohibited from possessing, ~~purchasing~~ purchasing, or owning a firearm ~~pursuant to~~ under § 1448 of Title 11, the dealer shall ~~so~~ inform both parties the prospective buyer and prospective seller of that fact and the transfer ~~shall~~ may not take place.

(4) The dealer shall maintain a record of all ~~criminal history~~ background checks conducted under this section in accordance with § 904 of this title.

(5) Any dealer who is asked to facilitate the transfer of a firearm ~~pursuant to the terms of~~ under this section, may charge a reasonable fee for ~~said~~ the service, ~~said fee which may not to exceed \$30 per~~ criminal history background check performed pursuant to this procedure. under this section. Notwithstanding the foregoing, ~~no~~ a fee may not be charged for the return of a firearm to its owner ~~in the event that~~ if the proposed transaction may not be immediately and legally completed as the result, or lack thereof, of a ~~criminal history~~ background check ~~hereunder.~~ under this subsection.

(6) Failure or refusal on the part of the dealer to facilitate the transfer of a firearm ~~pursuant to the~~ procedures set forth herein shall be under this subsection is adequate cause to suspend the license of ~~said~~ the dealer for a period not to exceed 30 days per occurrence.

(7) Subject to subchapter IV of Chapter 101 of Title 29, ~~no~~ a dealer's license shall may not be restricted, ~~suspended~~ suspended, or revoked until ~~a license holder~~ the dealer has been given ~~notice,~~ notice and an opportunity to be heard in accordance with the Administrative Procedures Act (Chapter 101 of Title 29).

(c) Nothing in this section, or any other section of the Code, ~~shall authorize or permit~~ authorizes or permits the State or any agency, ~~department~~ department, or instrumentality thereof to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm ~~as set forth in~~ under Chapter 5 of Title 11. Any such system of registration is expressly prohibited.

Section 7. Amend § 9017, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9017. Confidential Information.

(c) The Department shall cause to be submitted to ~~the Federal Bureau of Investigation, National Instant Criminal~~

~~Background Check System~~ such the State Bureau of Identification (SBI) 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~~ The information must include only names and other nonclinical identifying information. The SBI shall transmit the information, as may be required by law, to the FBI for use in its National Instant Criminal Background Check System (NICS).

Section 8. This Act is effective upon enactment and is to be implemented the earlier of the following:

(1) One year from the date of the Act's enactment.

(2) On notice by the Secretary of the Department of Safety and Homeland Security published in the Register of Regulations that the State Bureau of Identification has notified all licensed importers, licensed manufacturers, and licensed dealers in this State in writing that any final regulations deemed necessary by the Secretary to implement this Act have been promulgated and the toll-free number required under § 8572 of Title 11 of the Delaware Code is operational.

Approved June 30, 2022