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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 423

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:

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

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4 ~~Related Employment [Repealed]~~.

5 § 8570. Purpose and intent. ~~Definitions [Repealed]~~.

6 The purpose and intent of this subchapter is to establish the Delaware Firearm Transaction Approval Program that
7 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
8 federally-compliant point of contact state in conjunction with the federal National Instant Criminal Background Check
9 System.

10 § 8571. Definitions. ~~Screening procedure required [Repealed]~~.

11 As used in this subchapter:

12 (1) “FBI” means the Federal Bureau of Investigation.

13 (2) “Federal firearms licensee” or “FFL” means a person licensed by the federal Bureau of Alcohol, Tobacco,
14 Firearms, and Explosives as a manufacturer, importer, or dealer of firearms.

15 (3) “Firearm” means as defined under 18 U.S.C. § 921(a)(3).

16 (4) “Licensed dealer” means as defined under 27 C.F.R. § 178.11.

17 (5) “Licensed importer” means as defined under 27 C.F.R. § 178.11.

18 (6) “Licensed manufacturer” means as defined under 27 C.F.R. § 178.11.

19 (7) “National Crime Information Center” or “NCIC” means the nationwide computerized federal information
20 system of criminal justice data established by the FBI as a service to local, state, and federal criminal justice agencies.

21 (8) “NICS” means the National Instant Criminal Background Check System.

22 (9) “NICS POC” means as point of contact is defined under this section.

23 (10) “NICS POC Guidelines” means the guidelines established and published by the federal government for
24 the operation and implementation of the NICS program by a POC agency.

25 (11) “Point of contact” or “POC” means a state or local law enforcement agency serving as an intermediary
26 between an FFL and the federal databases checked by NICS.

27 (12) “SBI” means the State Bureau of Identification of the Delaware State Police.

28 § 8572. SBI as point of contact for NICS, entity to conduct required background checks. Penalties [Repealed].

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

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

32 (b) The SBI shall conduct background checks required for the lawful sale, transfer, or delivery of firearms under
33 federal law and the law of this State, including under §§ 1448A and 1448B of this title, that occur within this State and
34 background checks required for a license to carry concealed deadly weapons in this State under § 1441 of this title.

35 (c)(1) The SBI shall establish a toll-free telephone number that must be operational between the hours of 9:00 a.m.
36 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
37 from FFLs or the Superior Court for background checks required under subsection (b) of this section.

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

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

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

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

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

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

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

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

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

60 (2) That the FFL may proceed with the sale, transfer, or delivery of the firearm or the Superior Court may
61 proceed with the process for issuing a license to carry concealed deadly weapons. SBI shall provide the FFL or
62 Superior Court with a unique approval number.

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

64 § 8573. Confidentiality of NICS check and POC records.

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

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

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

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

76 (d) Nothing in this subchapter may be construed to allow the State to maintain records containing the names of
77 FFLs who receive unique approval numbers or to maintain records of firearm transactions, including the names or other
78 identification of FFLs and potential buyers or transferees, involving individuals who are not prohibited by § 1448 of this

79 title or federal law from the receipt or possession of firearms for longer than 6 months. However, the SBI may retain
80 whatever information it receives including the identifying information of a potential buyer or transferee if the SBI has
81 reasonable cause to believe the potential buyer or transferee is committing a crime. Nothing in this paragraph may be
82 construed to be a waiver of sovereign immunity.

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

84 § 8574. Procedure and remedies upon denial.

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

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

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

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

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

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

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

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

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

99 (2) Amend its records to reflect accurate information.

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

102 (d) If the SBI upholds its denial, the individual may appeal the decision to the Superior Court.

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

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

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

110 Section 2. Amend § 1441, Title 11 of the Delaware Code by making deletions as shown by strike through and
111 insertions as shown by underline as follows:

112 § 1441. License to carry concealed deadly weapons.

113 (a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for
114 personal protection or for the protection of the person's property may be licensed to do so when the following have been
115 strictly complied with:

116 (1) The person shall make application therefore in writing and file the same with the Prothonotary of the
117 proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full
118 age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or
119 protection of the person's property, or both, and also stating the person's residence and occupation. The person shall
120 submit together with such application all information necessary to conduct a ~~criminal history~~ background check. The
121 Superior Court ~~may a criminal history background check pursuant to the procedures set forth in~~ shall conduct or cause
122 to be conducted a background check through the Firearms Transaction Approval Program under Subchapter VI of
123 Chapter 85 of Title 11 this title for the purposes of initial and renewal licensing of any person ~~pursuant to~~ under this
124 section.

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

127 § 1448A. ~~Criminal history record~~ Background checks for sales of firearms.

128 (a) ~~No~~ A licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer ~~shall~~ may not sell, ~~transfer~~
129 transfer, or deliver from inventory any firearm, as defined in ~~§ 222 § 8571~~ of this title, to any other person, other than a
130 licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a ~~criminal history~~
131 ~~background check in accordance with regulations promulgated by the United States Department of Justice pursuant to the~~
132 ~~National Instant Criminal Background Check System ("NICS"), 28 C.F.R. §§ 25.1-25.11, as the same may be amended~~
133 ~~from time to time,~~ background check by the State Bureau of Identification, through the Firearm Transaction Approval
134 Program under Subchapter VI of Chapter 85 of this title, to determine whether the transfer of a firearm to any person who is
135 not licensed under 18 U.S.C. § 923 would be in violation of federal or state law.

136 (b) ~~No~~ A licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer ~~shall~~ may not sell, ~~transfer~~
137 transfer, or deliver from inventory any firearm, as defined in ~~§ 222 § 8571~~ of this title, to any other person, other than a

138 licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless and until being informed that it may
139 “proceed” with the sale, ~~transfer~~ transfer, or delivery from inventory of a firearm by ~~the Federal Bureau of Investigation~~
140 ~~(FBI), NICS Section pursuant to the request for a criminal history record check required by the State Bureau of~~
141 Identification, through the Firearm Transaction Approval Program under Subchapter VI of Chapter 85 of this title,
142 following a request for a background check under subsection (a) of this section or 25 days have elapsed from the date of the
143 request for a background check and a denial has not occurred.

144 (c) ~~Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this~~
145 ~~section or § 1448B(a) of this title may request from the Federal Bureau of Investigation a written explanation for such~~
146 ~~denial; an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous~~
147 ~~information on the NICS system be corrected and that the person’s rights to possess a firearm be restored. All requests~~
148 ~~pursuant to this subsection (c) shall be made in accordance with applicable federal laws and regulations, including without~~
149 ~~limitation 28 C.F.R. § 25.10. In connection herewith, at the request of a denied person, the Federal Firearms Licensed~~
150 ~~(FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in~~
151 ~~order for such person to appeal or seek additional information hereunder. [Repealed.]~~

152 (d) Compliance with ~~the provisions of this section shall be~~ is a complete defense to any claim or cause of action
153 under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has
154 been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or
155 § 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
156 this State for liability for damages allegedly arising from the actions of the transferee subsequent to the date of ~~said~~ the
157 compliance wherein the claim for damages is factually connected to ~~said~~ the compliant transfer.

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

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

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

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

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

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

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

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

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

174 (f) Any licensed dealer, licensed manufacturer, licensed ~~importer~~ importer, or employee thereof who wilfully and
175 intentionally requests a ~~criminal history record check from the Federal Bureau of Investigation, NICS background check~~
176 from the State Bureau of Identification, through the Firearm Transaction Approval Program under Subchapter VI of
177 Chapter 85 of this title, for any purpose other than compliance with subsection (a) of this ~~section~~ section, or § 1441(a)(1) or
178 § 1448B(a) of this title, or wilfully and intentionally disseminates any ~~criminal history record~~ information from the
179 background check to any person other than the subject of such information or discloses to any person the unique
180 identification number ~~shall be~~ is guilty of a class A misdemeanor. The Superior Court ~~shall have~~ has exclusive jurisdiction
181 for all offenses under this subsection.

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

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

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

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

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

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

204 (l) Relief from Disabilities Program. — A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and
205 (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
206 title, because of an adjudication or commitment under the laws of this State may petition for relief from a firearms
207 prohibition from the Relief from Disabilities Board. The Relief from Disabilities Board shall be comprised of 3 members,
208 with the chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and 2
209 members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, 1 of
210 whom shall be a licensed psychiatrist.

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

212 a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and
213 confidential hearing on the ~~record; and record.~~

214 b. ~~A The Board shall maintain a record of the hearing shall be maintained by the Board~~ for purposes of
215 appellate review.

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

217 a. The circumstances regarding the firearms disabilities pursuant to § 1448(a)(2) of this title and 18
218 U.S.C. § 922(d)(4) and ~~(g)(4); (g)(4).~~

219 b. The petitioner's record, which must include, at a minimum, the petitioner's mental health record,
220 including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer
221 suffering from a mental disorder which interferes or handicaps the person from handling deadly ~~weapons;~~
222 weapons.

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

224 d. The petitioner's reputation as evidenced through character witness statements, testimony, or other
225 character evidence.

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

228 (4) After a hearing on the record, the Board shall grant relief if it finds, by a preponderance of the evidence,
229 ~~that:~~ all of the following apply:

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

231 b. Granting the relief will not be contrary to the public interest.

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

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

237 (7) ~~Upon~~ On notice that a petition for relief has been granted, the Department of Safety and Homeland
238 Security shall, as soon as ~~practicable:~~ practicable, do both of the following:

239 a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database
240 maintained and made available to NICS and SBI to reflect that the petitioner is no longer subject to a firearms
241 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).~~

242 b. Notify the Attorney General of the United States and the Attorney General of this State that the
243 petitioner is no longer subject to a firearms prohibition ~~pursuant to~~ under § 1448(a)(2) of this title and 18 U.S.C. §
244 922(d)(4) and (g)(4).

245 (m) ~~The Department of Safety and Homeland Security~~ The SBI shall adopt ~~regulations~~ regulations, consistent with
246 federal law, relating to compliance with NICS, including ~~without limitation~~ issues relating to the transmission of data, the
247 transfer of existing data in the existing state criminal background check ~~database~~ database, and the relief from disabilities
248 process ~~set forth in subsection (k)~~ under subsection (l) of this section. In preparing such regulations, ~~the Department~~ the
249 SBI shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and
250 Their Families, the Department of ~~State~~ State, and such other entities as may be necessary or advisable. ~~Such regulations~~
251 shall Regulations adopted under this section must include provisions to ensure the identity, ~~confidentiality~~ confidentiality,
252 and security of all records and data provided ~~pursuant to~~ under this section.

253 Section 4. Amend § 1448B, Title 11 of the Delaware Code by making deletions as shown by strike through and
254 insertions as shown by underline as follows:

255 § 1448B. ~~Criminal history record~~ Background checks for sales of firearms — Unlicensed persons.

256 (a) ~~No~~ An unlicensed person ~~shall~~ may not sell or transfer any ~~firearm, as defined in § 222 of this title,~~ firearm to
257 any other unlicensed person without having conducted a ~~criminal-history~~ background check through a licensed firearms
258 dealer in accordance with § 1448A of this title and § 904A of Title 24, ~~as the same may be amended from time to time,~~
259 Title 24 to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed
260 firearms dealer has been informed that the sale or transfer of the firearm may “proceed” by ~~the Federal Bureau of~~
261 Investigation, NICS Section the State Bureau of Identification, through the Firearm Transaction Approval Program under
262 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
263 denial has not occurred.

264 (b) For purposes of this section:

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

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

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

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

270 (2) (5) “Transfer” means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but
271 does not ~~include:~~ include any of the following:

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

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

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

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

280 (3) (6) “Unlicensed person” means any person who is not a licensed importer, licensed manufacturer or
281 licensed dealer.

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

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

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

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

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

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

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

296 (5) Transactions in which the ~~potential purchaser or transferee~~ prospective buyer is a qualified law-
297 enforcement officer, as defined in § 1441A of this title, or a qualified retired law-enforcement officer, as defined in §
298 1441B of this ~~title;~~ title.

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

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

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

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

312 (d) Notwithstanding anything to the contrary ~~herein, no fee for a criminal history~~ in this section, a fee for a
313 background check may not be charged for the return of a firearm to its owner that has been repaired, ~~serviced~~ serviced, or
314 modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

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

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

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

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

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

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

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

342 Section 5. Amend § 1455, Title 11 of the Delaware Code by making deletions as shown by strike through and
343 insertions as shown by underline as follows:

344 § 1455. Engaging in a firearms transaction on behalf of another; class E felony; class C felony.

345 (a) A person is guilty of engaging in a firearms transaction on behalf of another when the person purchases or
346 obtains a firearm on behalf of a person not qualified to legally purchase, own or possess a firearm in this State or for the
347 purpose of selling, giving or otherwise transferring a firearm to a person not legally qualified to purchase, own or possess a
348 firearm in this State.

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

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

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

355 Section 6. Amend § 5161, Title 16 of the Delaware Code by making deletions as shown by strike through and
356 insertions as shown by underline as follows:

357 § 5161. Rights of patients in mental health hospitals or residential centers.

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

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

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

366 (14) The Delaware Psychiatric Center and any other hospital as defined in § 5001(9) of this title shall,
367 ~~pursuant to under § 1448A of Title 11, cause to be submitted to the Federal Bureau of Investigation, National Instant~~
368 ~~Criminal Background Check System such~~ the State Bureau of Identification (SBI) information as may be required to
369 comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms. ~~Such~~
370 ~~information shall~~ The information must include only names and other nonclinical identifying information of persons so
371 committed. The SBI shall transmit the information, as may be required by law, to the FBI for use in its National Instant
372 Criminal Background Check System (NICS).

373 Section 7. Amend § 904A, Title 24 of the Delaware Code by making deletions as shown by strike through and
374 insertions as shown by underline as follows:

375 § 904A. ~~Criminal history~~ Background checks for sales between unlicensed persons.

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

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

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

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

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

382 (5) “Transfer” means as defined under § 1448B of Title 11.

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

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

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

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

392 (3) ~~In the event that said record check~~ If the background check under paragraph (b)(2) of this section reveals
393 that the prospective buyer is prohibited from possessing, ~~purchasing~~ purchasing, or owning a firearm ~~pursuant to~~ under
394 § 1448 of Title 11, the dealer shall ~~so~~ inform ~~both parties~~ the prospective buyer and prospective seller of that fact and
395 the transfer ~~shall~~ may not take place.

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

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

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

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

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

414 Section 8. Amend § 9017, Title 29 of the Delaware Code by making deletions as shown by strike through and
415 insertions as shown by underline as follows:

416 § 9017. Confidential Information.

417 (c) The Department shall cause to be submitted to ~~the Federal Bureau of Investigation, National Instant Criminal~~
418 ~~Background Check System~~ such the State Bureau of Identification (SBI) information as may be required to
419 comply with federal laws and regulations relating to background checks for the purchase and transfer of firearms. ~~Such~~
420 ~~information shall~~ The information must include only names and other nonclinical identifying information. The SBI shall
421 transmit the information, as may be required by law, to the FBI for use in its National Instant Criminal Background Check
422 System (NICS).

423 Section 9. This Act is effective upon enactment and is to be implemented the earlier of the following:

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

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

SYNOPSIS

Federal law permits states to require federal firearms licensees (FFLs) to conduct background checks through a state agency, or point of contact, instead of directly through the National Instant Criminal Background Check System (NICS).

This Act creates the Firearm Transaction Approval Program (FTAP) within the State Bureau of Identification (SBI) of the Delaware State Police and designates the SBI's FTAP as the point of contact between an FFL and the federal

databases checked by the Federal Bureau of Investigation for purposes of conducting background checks for firearm purchases or transfers.

By establishing SBI as the point of contact for all firearm purchases or transfers in this State, SBI becomes responsible for determining if a potential buyer or transferee is prohibited from receipt or possession of a firearm under § 1448 of Title 11 of the Delaware Code or federal law. This enables SBI to search other databases in addition to relying on the required NICS check, enhancing background checks conducted in this State.

This Act enables firearms dealers who suspect a straw purchase has or is occurring to notify SBI using the same hotline that is established for background checks through FTAP.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.