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HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 48

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

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

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

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

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

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

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

18 Section 5. Amend §1448(a)(2), Title 11, of the Delaware Code by striking therefrom all language
19 following the phrase “hospital, mental institution or sanitarium” and substituting therefor the following: “ , unless

such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to 11 Del. C. §1448A”.

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

“(a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in §222(11) of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check System (“NICS”), 28 C.F.R. §§24.1-25.11, as the same may be amended from time to time, to determine whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. §923 would be in violation of federal or state law.

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

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

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

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

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

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

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

“(j) Persons who have been or may be disqualified from possessing a firearm pursuant to 18 U.S.C. §922(g)(4) may petition the Relief From Disabilities Board for relief from that disability where such person’s record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of relief would not be contrary to public safety. The procedures governing the Relief From Disabilities Board shall be adopted pursuant to subsection (k) hereunder and shall include, without limitation, an opportunity for a disqualified person to petition for relief in writing and a requirement that such Board issue a decision in writing explaining the reasons for a denial or grant of relief. The Relief From Disabilities Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk assessment. Said Board shall be comprised of three members, with the chairperson appointed by and serving at the pleasure of the Secretary of the Department of Safety and Homeland Security, and two members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, one of whom shall be a licensed psychiatrist.”

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

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

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

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

Section 15. This Act shall become effective on the earlier of (1) the effective date of the regulations adopted by the Secretary of Safety and Homeland Security in accordance with Section 13 above, and (2) December 31, 2011.

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

SYNOPSIS

The National Instant Criminal Background Check System (NICS) Improvement Act of 2007 was enacted by Congress in response to the Virginia Tech shooting tragedy. Among other things, it requires states to provide certain information to the federal National Instant Criminal Background Check System ("NICS") database about persons prohibited from possessing firearms, including mentally ill individuals. Delaware is one of only 10 states that have provided no information on mentally ill individuals to the federal database.

This bill would help remedy that problem by authorizing state agencies to provide such information to NICS. It also creates a federally mandated "relief from disabilities" program, which allows individuals adjudicated as mentally ill to once again become eligible for gun ownership by showing they are not likely to act in a manner dangerous to public safety. Once the new system is established, the bill will also abolish the state's existing firearms transaction program, which will be duplicative.