SPONSOR: Rep. Longhurst & Sen. McDowell
Reps. Barbieri, Baumbach, Bolden, Heffernan, Mitchell, Osienski, Schwartzkopf, Scott, B. Short, Viola, K. Williams; Sens. Henry, Peterson, Poore, Sokola, Townsend

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 35

AN ACT TO AMEND TITLE 11 AND TITLE 24 OF THE DELAWARE CODE RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS IN CONNECTION WITH THE SALE OR TRANSFER OF FIREARMS.

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

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 1448B. Criminal history record checks for sales of firearms – unlicensed persons.

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title, 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 24 Del.C. § 904A, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law.

(b) For purposes of this section:

(1) "Unlicensed person" means any person who is not a licensed importer, licensed manufacturer or licensed dealer.

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

(c) The provisions of this section shall not apply to:

(1) Transactions in which the potential purchaser or transferee is a parent, grandparent, child, grandchild, sibling or spouse of the seller or transferor;

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

(3) Any replica of any firearm described in paragraph (b)(2) of this section if such replica:

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

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;

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

(5) Transactions involving a qualified active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in 11 Del.C. §1441A.

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

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

(b) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this section or subsection (a) of § 1448B of this title 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 3. Amend § 1448A(c), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(c) Compliance with the provisions of this section or § 1448B of this title, as the case may be, shall be 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, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year, of any firearm which has been shipped or transported in interstate or foreign commerce.

Section 4. Amend § 1448A(e), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(e) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who willfully and intentionally requests a criminal history record check from the Federal Bureau of Investigation, National Instant Criminal Background Check System for any purpose other than compliance with subsection (a) of this section or subsection (a) of § 1448B of this title, or willfully and intentionally disseminates any criminal history record information to any person other than the subject of such information or discloses to any person the unique identification number shall be guilty of a class A misdemeanor. The Superior Court shall have exclusive jurisdiction for all offenses under § 1448A(e) of this title.

Section 5. Amend § 1448A(f), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(f) 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 subsection (a) of § 1448B of this title, willfully and intentionally makes any materially false oral or written statement or willfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee shall be guilty of a class G felony.

Section 6. Amend § 1448A(h), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(h) 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 this section and § 1448B of this title for the prior calendar year. Such report shall include, but not be limited to, 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 of this title or federal law.

Section 7. Amend § 1448A(i), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(i) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 24, and other Delaware laws, the SBI is authorized and directed to release records and data required by this section and by § 1448B of this title. The SBI shall not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

Section 8. Amend § 904, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) Any person desiring to engage in the business described in this chapter shall keep and maintain in the place of business at all times a record in accordance with this section and all applicable federal laws and regulations (including, without limitation, 18 U.S.C. §§ 921 et seq. and 27 C.F.R. §§ 478.121 et seq.). In such record the businessperson shall enter the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly weapon so purchased, the age of the purchaser, ~~and~~ the mode of identification bearing a picture which shall include but it is not limited to a driver's license, and any other information as shall be required by federal law and regulation. The record shall at all times be open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of this State.

Section 9. Amend § 904A, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in § 222 of Title 11, from any unlicensed person ~~who is not so licensed~~ as that term is defined in § 1448B of Title 11, upon the request of said unlicensed ~~seller~~ person, pursuant to the following procedure:

(1) The prospective buyer and seller shall jointly appear at the place of business of the dealer, during said 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.

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

(3) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to § 1448 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

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

~~(4)~~(5) Any dealer who is asked to facilitate the transfer of a firearm pursuant to the terms of this section, may charge a reasonable fee for said service, said fee not to exceed ~~$20~~ $50 per criminal history check performed pursuant to this procedure.

~~(5)~~(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 adequate cause to suspend the license of said dealer for a period not to exceed 30 days per occurrence.

Section 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

Section 11. This Act shall have an effective date of July 1, 2013.

Ssynopsis

Federally licensed firearms dealers (FFLs) are required to perform criminal history background checks on prospective firearms purchasers. However, when the sale or transfer of a firearm does not involve a licensed dealer, no background check is required. This is an enormous loophole—one in which convicted felons, minors and other prohibited purchasers can readily avoid background checks and more easily acquire guns.

This bill would require that a criminal history background check be performed in connection with the sale or transfer of all firearms, with a few exceptions noted below. Background checks would be performed by licensed firearms dealers, who are already required to conduct a background check whenever they sell a firearm or when requested by private parties. Dealers would be required to maintain records of such background checks in accordance with state and federal law.

Background checks would not be required in private party transactions (1) in which the buyer or transferee is a member of the seller or transferor's immediate family (parent, grandparent, child, grandchild, sibling or spouse); (2) involving antique firearms and certain replicas thereof; (3) involving the return by a licensed pawnbroker of a firearm to the person from whom it was received; or (4) involving qualified active duty and retired law-enforcement officers. Persons who violate this act would be guilty of a class A misdemeanor for a first offense. Any subsequent offense would be a class G felony.