SPONSOR: Rep. Osienski & Rep. Longhurst & Sen. Townsend
Reps. Baumbach, Bentz, Heffernan, Jaques, Kowalko, Lynn, Mitchell, Schwartzkopf, B. Short, Viola; Sens. Blevins, McDowell, Peterson

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 325

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

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

Section 1. Amend § 1448A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 222 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, 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 licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 222 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 or delivery from inventory of a firearm by the Federal Bureau of Investigation, NICS Section pursuant to the request for a criminal history record check required by subsection (a) or 30 days have elapsed from the date of the request for a background check and a denial has not occurred.

~~(b)~~(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 ("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)~~(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

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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.

~~(c)~~(d) Compliance with the provisions of this section 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 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 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 compliance wherein the claim for damages is factually connected to said compliant transfer.

~~(d)~~(e) The provisions of this section shall not apply to:

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

(2) Any replica of any firearm described in paragraph ~~(d)~~(e)(1) 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;

(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;

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

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

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

~~(e)~~(f) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally requests a criminal history record check from the Federal Bureau of Investigation, NICS for any purpose other than compliance with subsection (a) of this section or § 1448B(a) of this title, or wilfully 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 this subsection.

~~(f)~~(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 guilty of a class G felony.

~~(g)~~(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 guilty of a class A misdemeanor. Second or subsequent offenses by an individual shall be a class G felony.

~~(h)~~(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 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.

~~(i)~~(j) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, 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.

~~(j)~~(k) No records, data, information or reports containing the name, address, date of birth or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of any firearm which are required, authorized or maintained pursuant to this section, § 1448B of this title or by Chapter 9 of Title 24, shall be subject to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

~~(k)~~(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 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 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

b. 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 the following:

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

c. Criminal history records; and

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:

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

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 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 notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as practicable:

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS 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

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

~~(l)~~(m) 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)~~(k) of this section. In preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and 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 2. Amend § 1448B(a), Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(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 § 904A of Title 24, 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, 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 or 30 days have elapsed from the date of the request for a background check and a denial has not occurred.

Section 3. 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 4. This Act shall have an effective date of July 1, 2016.

SYNOPSIS

This bill closes a loophole to our gun background check laws. The current loophole allows for guns to be given to a potential purchaser if the background check is delayed for 3 days or more. In some cases a gun is given to a person who should not be in possession of a firearm. This leads to law enforcement having to retrieve a gun from a person prohibited if the background check provides that a person should not have a gun.