



SPONSOR: Rep. Longhurst

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 11 AND TITLE 29 OF THE DELAWARE CODE RELATING TO
CRIMINAL HISTORY BACKGROUND CHECKS IN CONNECTION WITH THE SALE OR
TRANSFER OF FIREARMS.

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

3 § 1448B. Criminal history record checks for sales of firearms – unlicensed persons.

4 (a) No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title, to any other unlicensed
5 person without having conducted a criminal history background check through a licensed firearms dealer in accordance
6 with § 1448A of this title and 24 Del.C. § 904A, as the same may be amended from time to time, to determine whether the
7 sale or transfer would be in violation of federal or state law.

8 (b) For purposes of this section:

9 (1) “Unlicensed person” means any person who is not a licensed importer, licensed manufacturer or licensed
10 dealer.

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

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

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

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

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

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

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

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

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

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

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

36 Section 3. Amend § 1448A(c), Title 11 of the Delaware Code by making insertions as shown by underlining and
 37 deletions as shown by strike through as follows:

38 (c) Compliance with the provisions of this section or § 1448B of this title, as the case may be, shall be a complete
 39 defense to any claim or cause of action under the laws of this State for liability for damages arising from the importation or
 40 manufacture, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by
 41 imprisonment for a term exceeding 1 year, of any firearm which has been shipped or transported in interstate or foreign
 42 commerce.

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

45 (e) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and
 46 intentionally requests a criminal history record check from the Federal Bureau of Investigation, National Instant Criminal
 47 Background Check System for any purpose other than compliance with subsection (a) of this section or subsection (a) of §
 48 1448B of this title, or wilfully and intentionally disseminates any criminal history record information to any person other

49 than the subject of such information or discloses to any person the unique identification number shall be guilty of a class A
50 misdemeanor. The Superior Court shall have exclusive jurisdiction for all offenses under this subchapter.

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

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

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

59 (h) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report
60 including the number of inquiries made pursuant to this section and § 1448B of this title for the prior calendar year. Such
61 report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting
62 in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to §
63 1448 and § 1448B of this title or federal law.

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

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

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

71 (a) Any person desiring to engage in the business described in this chapter shall keep and maintain in the place of
72 business at all times a record in accordance with this section and all applicable federal laws and regulations (including,
73 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
74 the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly
75 weapon so purchased, the age of the purchaser, ~~and~~ the mode of identification bearing a picture which shall include but it is
76 not limited to a driver's license, and any other information as shall be required by federal law and regulation. The record
77 shall at all times be open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of
78 this State.

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

81 (b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of
82 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
83 defined in § 1448B of Title 11, upon the request of said unlicensed ~~seller~~ person, pursuant to the following procedure:

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

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

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

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

94 ~~(4)~~(5) Any dealer who is asked to facilitate the transfer of a firearm pursuant to the terms of this section, may
95 charge a reasonable fee for said service, said fee not to exceed ~~\$20~~ \$50 per criminal history check performed pursuant to
96 this procedure.

97 ~~(5)~~(6) Failure or refusal on the part of the dealer to facilitate the transfer of a firearm pursuant to the procedures set
98 forth herein shall be adequate cause to suspend the license of said dealer for a period not to exceed 30 days per occurrence.

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

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

SYNOPSIS

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 background checks upon private parties who request them. 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; and (3) involving the return by a licensed pawnbroker of a firearm to the person from whom it was received. 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.

Author: Rep. Longhurst

DRAFT



SPONSOR: Sen. Henry & Rep. Barbieri; Sens. Blevins, Poore & Peterson; Reps. Baumbach, Heffernan, Keeley, Kowalko, Longhurst, Osienski, B. Short, Mitchell & Viola

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO.

AN ACT TO AMEND TITLE 11, CHAPTER 5 OF THE DELAWARE CODE RELATING TO THE MANDATORY REPORTING OF LOST OR STOLEN FIREARMS.

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

3 §1461. Report of Loss, Theft of Firearm.

4 (a) Any owner of a firearm, as such term is defined in 11 Del.C. §222, shall report the loss or theft of the firearm
5 within 48 hours after the discovery of the loss or theft to either (1) the law enforcement agency having jurisdiction over the
6 location where the loss or theft of the firearm occurred; or (2) any State Police Troop.

7 (b) Any violation of this section shall be an unclassified misdemeanor for a first offense, punishable by a fine of
8 not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00). Any second offense or
9 subsequent offenses under this section shall be a class G felony.

10 (c) The Superior Court shall have exclusive jurisdiction over all violations of this section.

11 Section 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the
12 invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision
13 or application; and, to that end, the provisions of this Act are declared to be severable.

SYNOPSIS

This bill would require owners of lost or stolen handguns to report such loss or theft within 48 hours of discovery. Owners may report such loss or theft to the law enforcement agency having jurisdiction, or to any State Police Troop.

Author: Sen. Henry



SPONSOR: Rep. Mitchell

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE TO PROHIBIT THE MANUFACTURE, SALE, TRANSFER AND UNLAWFUL POSSESSION OF LARGE-CAPACITY MAGAZINES.

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

3 § 1462. Unlawful possession, manufacture, sale, purchase, transfer or delivery of large-capacity magazines.

4 (a) It shall be unlawful for any person to possess unlawfully, manufacture, sell, purchase, receive, transfer or
5 deliver any large-capacity magazine.

6 (b) For purposes of this section:

7 (1) “Large capacity magazine” means any ammunition feeding device with the capacity to accept more than 10
8 rounds, or any conversion kit, part, or combination of parts, from which such a device can be assembled if those parts are in
9 the possession or under the control of the same person, but shall not be construed to include (A) a feeding device that has
10 been permanently altered so that it cannot accommodate more than 10 rounds, or (B) a .22 caliber rimfire tube ammunition
11 feeding device.

12 (3) “Possess” or “possession” has the meaning set forth in 11 Del.C. § 1460(b)(2).

13 (4) “Possess unlawfully” or “unlawful possession” means possession of a large-capacity magazine in a public
14 place while in possession of a firearm capable of accepting such magazine. Without limitation of the foregoing, unlawful
15 possession shall not include situations in which the firearm and the magazine are unloaded, the firearm is secured in a case,
16 and the firearm is otherwise not readily accessible.

17 (5) “Public place” has the meaning set forth in 11 Del.C. § 1460(b)(3); provided, however, that any shooting
18 range, as such term is defined in subparagraph (6) herein, shall not be deemed to be a public place.

19 (6) “Shooting range” means any land or structure used and operated in accordance with applicable laws and
20 ordinances for the shooting of targets for training, education, practice, recreation, or competition.

21 (c) This section does not apply to the possession, sale, purchase, receipt, transfer or delivery of any large-capacity
22 magazine to or by:

23 (1) any member of the military forces or any police force in this State, provided such person is acting
 24 within the scope of his or her official duties; or

25 (2) any licensed importer, licensed manufacturer or licensed dealer that is (A) providing or servicing a
 26 large-capacity magazine for any person exempted under paragraph (c)(1) of this section; or (B) acting to sell or transfer a
 27 large-capacity magazine to a licensed importer, licensed manufacturer, licensed dealer or other person authorized to possess
 28 such magazine.

29 (d) Any person violating this section shall be guilty of a class A misdemeanor for a first offense and a class G
 30 felony for any subsequent offense, except when a large-capacity magazine prohibited under this section is possessed while
 31 inserted into a firearm capable of accepting it, in which case the person shall be guilty of a class G felony for a first offense
 32 and a class D felony for any subsequent offense. The Superior Court shall have exclusive jurisdiction over all violations of
 33 this section.

34 Section 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the
 35 invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision
 36 or application; and, to that end, the provisions of this Act are declared to be severable.

37 Section 3. This Act shall have an effective date of July 1, 2013.

SYNOPSIS

According to the Citizens Crime Commission of New York, 30 mass shootings occurred in the United States from 1982 through 2012. Although the circumstances of such mass shootings varied, each incident had one thing in common: they all involved one or more large-capacity ammunition magazines.

This bill would prohibit the manufacture, sale, purchase, transfer or delivery of large-capacity magazines, which are defined as ammunition feeding devices with the capacity to accept more than 10 rounds. Acknowledging that thousands of law-abiding Delawareans currently possess large-capacity magazines lawfully, the bill would make such possession unlawful only if it occurs in a public place. Possession of a large-capacity magazine would not be unlawful in areas that are not public places, nor would possession in public be unlawful if the firearm and magazine are unloaded, the firearm is cased, and the firearm is otherwise not readily accessible.

Author: Rep. Mitchell



SPONSOR: Rep. Scott

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO DEADLY WEAPONS, FIREARMS OR DESTRUCTIVE WEAPONS.

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

1 Section 1. Amend Section 1457 of Title 11 of the Delaware Code by making insertions as shown by underlining
2 and deletions as shown by strikethrough as follows:

3 § 1457. Possession of a deadly weapon in a Safe School and Recreation Zone; class ~~D~~, E, or F felony; class A or B
4 misdemeanor.

5 (a) Any person who commits any of the offenses described in subsection (b) of this section, ~~or any juvenile who possesses a~~
6 ~~firearm or other deadly weapon~~, and does so while in or on a "Safe School and Recreation Zone" shall be guilty of the
7 crime of possession of a weapon in a Safe School and Recreation Zone.

8 (b) The underlying offenses in Title 11 shall be:

9 (1) Section 1442. -- Carrying a concealed deadly weapon; class G felony; ~~class D felony.~~

10 (2) ~~Section 1444. -- Possessing a destructive weapon; class E felony.~~

11 (2) (3) Section 1446. -- Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

12 (4) ~~Section 1448. -- Possession and purchase of deadly weapons by persons prohibited; class F felony.~~

13 (3) (5) Section 1452. -- Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

14 (4) (6) Section 1453. -- Unlawfully dealing with martial arts throwing star; class B misdemeanor.

15 Section 2. Amend Chapter 5 of Title 11 of the Delaware Code by making insertions as shown by underlining and
16 deletions as shown by strikethrough as follows:

17 § 1457A. Possession of Firearm or Destructive Weapon in a Safe School Zone; class D felony.

18 Any person who knowingly possesses a firearm or destructive weapon while in or on a "Safe School Zone" shall be guilty
19 of the crime of possession of a weapon in a Safe School Zone.

20 (a) For the purpose of this section, "Safe School Zone" means:

21 (1) any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by any
22 public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical
23 school, or

24 (2) any area accessible to the public located within 300 feet of any building, structure, athletic field, sports
25 stadium or real property owned, operated, leased or rented by any public or private school including, but not limited to, any
26 kindergarten, elementary, secondary or vocational-technical school, or

27 (3) any motor vehicle owned, operated, leased or rented by any public or private school including, but not limited
28 to, any kindergarten, elementary, secondary, or vocational-technical school.

29 For the purposes of this section, an "area accessible to the public" shall include, but is not limited to, sidewalks, streets,
30 alleys, parking lots, parks, playgrounds, and any other outdoor location.

31 (b) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of
32 this chapter or any other provision of law. A person may be convicted both of the crime of possession of a firearm or a
33 destructive weapon in a Safe School Zone and of the underlying offense as defined elsewhere by the laws of the State.

34 (c) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited
35 conduct took place on or in a Safe School Zone.

36 (d) It shall be an affirmative defense to a prosecution for a violation of this section that the firearm was possessed pursuant
37 to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or
38 recreational activity.

39 (e) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely
40 within a private residence, a business or upon private property if the defendant was licensed or privileged to be in or upon
41 such residence, business or private property.

42 (f) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely
43 within a motor vehicle that was located upon a public highway or private property not owned, operated, leased or rented by
44 any public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical
45 school, or while the defendant was directly en route from such motor vehicle to or from a private residence, business or
46 private property if the defendant was licensed or privileged to be in or upon such residence, business or private property.
47 This affirmative defense shall not apply if such motor vehicle was owned, operated, leased or rented by any public or
48 private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school.

49 (g) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely
50 within a motor vehicle that was located upon real property that was owned operated, leased or rented by any public or

51 private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical school if the
52 Defendant was engaged in otherwise lawful activities at such school including, but not limited to, attending an authorized
53 school program, activity or event or transporting another person to such school.

54 (h) The affirmative defenses established in this section shall be proved by the defendant by a preponderance of the
55 evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense
56 defined in any other section of this chapter.

57 (i) This section shall not apply to any law enforcement or police officer, or to any security officer as defined in Chapter 13
58 of Title 24.

59 (j) Possession of a firearm or destructive weapon in a Safe School Zone is a Class D felony.

60 (k) In the event that an elementary or secondary school student possesses a firearm in a Safe School Zone in addition to
61 any other penalties contained in this section, the student shall be expelled by the local school board or charter school board
62 of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school
63 board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

SYNOPSIS

This Act will increase the protections against criminal firearms violence afforded to our children by creating a new crime called Possession of a Firearm or Destructive Weapon in a Safe School Zone. The Act will ban the possession of firearms in schools, on school property and in public places that are located within 300 feet of school property. Firearms or destructive weapons that are possessed on private property or in private residences, businesses or motor vehicles on public roadways are exempt from the ban, as are firearms in motor vehicles that are on school property to facilitate attendance at a legitimate school function. Possession of a Firearm or Destructive Weapon in a Safe School Zone will be a Class D felony.

Author: Rep. Scott