

# State Laws and Published Ordinances – Delaware

Current through 82 Del. Laws, ch. 240.

## Office of the Attorney General

102 W. Water Street  
Dover, DE 19904

Voice: 302-739-4211

<https://attorneygeneral.delaware.gov>



## Baltimore Field Division

31 Hopkins Plaza, 5th Floor  
Baltimore, MD 21201

Voice: (443) 965-2000

<https://www.atf.gov/baltimore-field-division>



PROTECTING THE PUBLIC  
SERVING OUR NATION

## Table of Contents

### Title 10 – Courts and Judicial Procedure

#### Part I – Organization, Powers, Jurisdiction and Operation of Courts

##### Chapter 9 – The Family Court of the State of Delaware

###### Subchapter III – Procedure

###### Part D – Protection from Abuse Proceedings

Section 1045. Relief available; duration of orders, modification and termination.

###### Part IV – Special Proceedings

###### Chapter 77 – Lethal Violence Protective Order

Section 7701. Definitions.

Section 7703. Emergency hearings.

Section 7704. Nonemergency hearings.

### Title 11 – Crimes and Criminal Procedure

#### Part 1 – Delaware Criminal Code

##### Chapter 2 – General Provisions Concerning Offenses

Section 222. General definitions.

##### Chapter 5 – Specific Offenses

###### Subchapter VII – Offenses Against Public Health, Order and Decency

###### Subpart E – Offenses Involving Deadly Weapons and Dangerous Instruments

Section 1444. Possessing a destructive weapon; class E felony.

Section 1445. Unlawfully dealing with a dangerous weapon; unclassified misdemeanor.

Section 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

Section 1448A. Criminal history record checks for sales of firearms.

Section 1448B. Criminal history record checks for sales of firearms — Unlicensed persons.

Section 1448C. Civil procedures to relinquish firearms or ammunition.

Section 1450. Receiving a stolen firearm; class F felony.

Section 1454. Giving a firearm to person prohibited; class F felony.

Section 1455. Engaging in a firearms transaction on behalf of another; class F felony; class C felony.

Section 1456. Unlawfully permitting a minor access to a firearm; class A misdemeanor.

Section 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

Section 1459. Possession of a weapon with a removed, obliterated or altered serial number.

Section 1460. Possession of firearm while under the influence.

Section 1461. Report of loss, theft of firearm.

#### Part II – Criminal Procedure Generally

##### Chapter 43 – Sentencing, Probation, Parole and Pardons

###### Subchapter VI – Clemency

Section 4364. Effect of pardon; restoration of civil rights.

**Title 16 – Health and Safety**

**Part V – Mental Health**

**Chapter 50 – Involuntary Commitment of Persons with Mental Conditions; Discharge; Procedure**

Section 5009. Probable cause hearing.

**Title 24 – Professions and Occupations**

**Chapter 9 – Deadly Weapons Dealers**

Section 901. License requirement.

Section 902. Application and fee for license; duration; renewal.

Section 903. Sale to persons under 21 or intoxicated persons.

Section 904. Records.

Section 904A. Criminal history checks for sales between unlicensed persons.

Section 905. Penalties.

**Title 28 – Sports and Amusements**

**Chapter 8 – Purchase of Rifles and Shotguns in States Contiguous to This State**

Section 801. Definitions.

Section 802. Lawful acts.

Section 803. Not applicable to federal licensees.

**Title 9 – Counties**

**Part I – Provisions Affecting All Counties**

**Chapter 3 – County Governments Generally**

**Subchapter II – County Governments**

Section 330. General powers and duties.

**Title 22 – Municipalities**

**Chapter 1 – General Provisions**

Section 111. Limitation on firearm regulations

Dover  
Wilmington

**Title 10 – Courts and Judicial Procedure**  
**Part I – Organization, Powers, Jurisdiction and Operation of Courts**  
**Chapter 9 – The Family Court of the State of Delaware**  
**Subchapter III – Procedure**  
**Part D – Protection from Abuse Proceedings**

**Section 1045. Relief available; duration of orders, modification and termination.**

(a) After consideration of a petition for a protective order, the Court may grant relief as follows:

(8) Order the respondent to temporarily relinquish to a police officer or a federally-licensed firearms dealer located in Delaware the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order. The Court shall inform the respondent that he or she is prohibited from receiving, transporting, or possessing firearms for so long as the protective order is in effect;

**Part IV – Special Proceedings**  
**Chapter 77 – Lethal Violence Protective Order**

**Section 7701. Definitions.**

As used in this section:

(1) “**Firearm**” means as defined in § 222 of Title 11.

(2) “**Law-enforcement officer**” means as defined in § 222 of Title 11.

(3) “**Lethal violence protective order**” means an order issued by the Justice of the Peace Court or Superior Court prohibiting and enjoining a person from controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

(4) “**Petitioner**” means either of the following:

a. A family member of the respondent as defined in § 901 of this title or a member of the class defined in § 1041(2)b. of this title.

b. A law-enforcement officer who files a petition alleging that the respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to or receiving a firearm.

(5) “**Physical injury**” means as defined in § 222 of Title 11.

(6) “**Respondent**” means the individual who is alleged to pose a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to or receiving a firearm.

**Section 7703. Emergency hearings.**

(d) If the Justice of the Peace Court finds by a preponderance of the evidence that the respondent poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm, the Court shall issue an emergency lethal violence protective order requiring the respondent to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possess, or controlled by the respondent. The Court may also do any of the following through its order:

(1) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's order.

(2) Direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent.

**Section 7704. Nonemergency hearings.**

(d) If the Superior Court finds by a clear and convincing evidence that the respondent poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm, the Court shall issue a lethal violence protective order requiring the respondent to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possess, or controlled by the respondent. The Court may also do any of the following through its order:

(1) Allow the respondent to voluntarily relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the respondent.

(2) Allow the respondent to relinquish firearms or ammunition owned, possessed, or controlled by the respondent to a designee of the respondent. A designee of the respondent must not reside with the respondent and must not be a

person prohibited under § 1448 of Title 11. The designee must affirm to the Court and the Court must find that the designee of the respondent will keep firearms or ammunition owned, possessed, or controlled by the respondent out of the possession of the respondent.

(3) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's order.

(4) Direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent.

(5) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's order.

(6) Direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent,

**Title 11 – Crimes and Criminal Procedure**  
**Part 1 – Delaware Criminal Code**  
**Chapter 2 – General Provisions Concerning Offenses**

**Section 222. General definitions**

When used in this Criminal Code:

(5) **"Deadly weapon"** includes a "firearm", as defined in paragraph (12) of this section, a bomb, ... or any "dangerous instrument", as defined in paragraph (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury.

(12) **"Firearm"** includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.

**Chapter 5 – Specific Offenses**  
**Subchapter VII – Offenses Against Public Health, Order and Decency**  
**Subpart E – Offenses Involving Deadly Weapons and Dangerous Instruments**

**Section 1444. Possessing a destructive weapon; class E felony.**

(a) A person is guilty of possessing a destructive weapon when the person sells, transfers, buys, receives or has possession of any of the following:

(1) A bomb.

(2) A bombshell.

(3) A firearm silencer.

(4) A sawed-off shotgun.

(5) A machine gun or any other firearm or weapon which is adaptable for use as a machine gun.

(6) A bump stock or trigger crank device.

a. **"Bump stock"** means an after-market device that increases the rate of fire achievable with a semi-automatic rifle by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

b. **"Trigger crank"** means an after-market device designed and intended to be added to a semi-automatic rifle as a crank operated trigger actuator capable of triggering multiple shots with a single rotation of the crank.

(b)

(1) Possessing a destructive weapon listed in paragraphs (a)(1) through (a)(5) of this section is a class E felony. This section does not apply to members of the military forces or to members of a police force in this State duly authorized to carry a weapon of the type described; nor shall the provisions contained herein apply to authorized and certified (by an accredited state enforcement agency) state and federal wildlife biologists possessing firearm silencers for the

purposes of wildlife disease or wildlife population control, or persons possessing machine guns for scientific or experimental research and development purposes, which machine guns have been duly registered under the National Firearms Act of 1968 (26 U.S.C. § 5801 et seq.).

(c) The term "**shotgun**" as used in this section means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. The term "**sawed-off shotgun**" as used in this section means a shotgun having 1 or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches.

#### **Section 1445. Unlawfully dealing with a dangerous weapon; unclassified misdemeanor.**

A person is guilty of unlawfully dealing with a dangerous weapon when:

- (3) Being a parent, the person permits the person's child under 16 years of age to have possession of a firearm or a BB or air gun or spear gun unless under the direct supervision of an adult; or
- (4) The person sells, gives or otherwise transfers to a child under 18 years of age a firearm or ammunition for a firearm, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or
- (5) The person sells, gives or otherwise transfers a firearm to any person knowing that said person intends to commit any felony, class A misdemeanor or drug related criminal offense while in possession of said firearm.

#### **Section 1448. Possession and purchase of deadly weapons by persons prohibited; penalties**

(a) Except as otherwise provided in this section, the following persons are prohibited from purchasing, owning, possessing, or controlling a deadly weapon or ammunition for a firearm within the State:

- (1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;
- (2) Any person who meets any of the following:
  - a. Has been involuntarily committed for a mental condition under Chapter 50 of Title 16, unless the person can demonstrate that the person is no longer prohibited from possessing a firearm under § 1448A(I) of the title.
  - b. For a crime of violence, has been found not guilty by reason of insanity or guilty but mentally ill, including any juvenile who has been found not guilty by reason of insanity or guilty but mentally ill, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm under § 1448A(I) of this title.
  - c. For a crime of violence, has been found mentally incompetent to stand trial, including any juvenile who has been found mentally incompetent to stand trial, unless there has been a subsequent finding that the person has become competent, or unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm under § 1448A(I) of this title.
  - d. Is the subject of an order of relinquishment issued under § 1448C of this title.
- (3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;
- (4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their twenty-fifth birthday;
- (5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a "handgun" shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in one hand;
- (6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;
- (7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

**a.** Was committed by a member of the victim's family, as "family" is defined in § 901 of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who cohabited with the victim at the time of or within 3 years prior to the offense; by a person with a child in common with the victim; or by a person with whom the victim had a substantive dating relationship, as defined in § 1041 of Title 10, at the time of or within 3 years prior to the offense; and

**b.** Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

**(8)** Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

**(9)** Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

**(10)** Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

**a. "Antique firearm"** means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

**b.** A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

**(11)** Any person who is subject to a lethal violence protection order, issued under § 7704 of Title 10, but only for so long as that order remains in effect or is not vacated or otherwise terminated under Chapter 77 of Title 10.

**(b)** Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

**(c)** Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

**(d)** Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

#### **Section 1448A. Criminal history record checks for sales of firearms.**

**(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 (FBI), NICS Section pursuant to the request for a criminal history record check required by subsection (a) of this section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

**(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 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 (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 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.

**(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.

**(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 (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, 1441A and 1441B of this title; and

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

**(f)** 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, NICS for any purpose other than compliance with subsection (a) of this section or § 1448B(a) 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 this subsection.

**(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, 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.

**(h)** Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who willfully 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.

**(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.

**(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.

**(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.

**(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, except a person subject to an order for relinquishment under § 1448C(d)(1) 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).

**(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 (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 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 § 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 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

**(b)** For purposes of this section:

- (1) "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.

**(2) "Transfer"** means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include:

- a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her;
- b. A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, provided that such temporary transfer shall not exceed 24 hours in duration;
- c. The transfer of a firearm for repair, service or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business; or
- d. A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

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

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

**(1)** Transactions in which the potential purchaser or transferee is a parent, mother-in-law, father-in-law, stepparent, legal guardian, grandparent, child, daughter-in-law, son-in-law, stepchild, grandchild, sibling, sister-in-law, brother-in-law, spouse, or civil union partner 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 (c)(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)** Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check pursuant to federal law;

**(5)** Transactions in which the potential purchaser or transferee is a qualified law-enforcement officer, as defined in §1441A of this title, or a qualified retired law-enforcement officer, defined in § 1441B of this title;

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

**(7)** Transactions in which the prospective buyer or transferee is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification; provided, however, that no unlicensed person shall sell or transfer any firearm to any such person without having conducted a criminal history background check in accordance with subsection (f) of this section hereunder to determine whether the sale or transfer would be in violation of federal or state law;

**(8)** Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 CFR 478.11, as the same may be amended from time to time;

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

**(d)** Notwithstanding anything to the contrary herein, no fee for a criminal history background check may be charged for the return of a firearm to its owner that has been repaired, serviced or modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

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

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

**(2)** The prospective buyer shall be required to submit fingerprints and other necessary information in order to obtain a report of the individual's entire criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). In addition, the prospective buyer shall submit to the Bureau a signed

affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer is a bona fide member.

(3) In the event that said background check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm, the Bureau shall so inform both parties of that fact and the transfer shall not take place.

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

(5) The Bureau is hereby authorized to promulgate such reasonable forms and regulations as may be necessary or desirable to effectuate the provisions of this subsection.

#### **Section 1448C. Civil procedures to relinquish firearms or ammunition.**

(a) For the purposes of this section:

(1) **“Ammunition”** means as defined in § 1448(c) of this title.

(2) **“Dangerous to others”** means that by reason of mental condition there is a substantial likelihood that the person will inflict serious bodily harm upon another person within the reasonably foreseeable future. This determination must take into account a person’s history, recent behavior, and any recent act or threat.

(3) **“Dangerous to others or self”** means as “dangerous to others” and “dangerous to self” are defined in this subsection.

(4) **“Dangerous to self”** means that by reason of mental condition there is a substantial likelihood that the person will sustain serious bodily harm to oneself within the reasonably foreseeable future. This determination must take into account a person’s history, recent behavior, and any recent act or threat.

(5) **“Law-enforcement agency”** means an agency established by this State, or by any county or municipality within this State, to enforce criminal laws or investigate suspected criminal activity.

(d)

(1) If the Justice of the Peace Court , by a preponderance of evidence, that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court’s order any firearms or ammunition owned, possessed, or controlled by the individual.

b. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court’s order of relinquishment.

c. Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the individual.

(2) If the Superior Court finds by clear and convincing evidence that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court’s order any firearms or ammunition owned, possessed, or controlled by the individual.

b. Allow the individual to voluntarily relinquish to a law-enforcement agency receiving the Court’s order any firearms or ammunition owned, possessed, or controlled by the individual.

c. Allow the individual to relinquish firearms or ammunition owned, possessed, or controlled by the individual to a designee of the individual. A designee of the individual must not reside with the individual and must not be a person prohibited under § 1448 of this title. The Court must find that the designee of the individual will keep firearms or ammunition owned, possessed, or controlled by the individual out of the possession of the individual.

d. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court’s order of relinquishment.

e. Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize firearms or ammunition of the individual if the Department of Justice shows that the individual has ownership, possession, or control of a firearm or ammunition.

(e)

(1) An individual subject to the Superior Court's order of relinquishment may petition the Relief from Disabilities Board for an order to return firearms or ammunition under § 1448A(l) of this title.

(2) If the basis for relinquishment under this section is removed by the Relief from Disabilities Board established by § 1448A(l) of this title, any firearms or ammunition taken from the individual must be restored in a timely manner without the additional requirement of petitioning under § 1448A(l) of this title.

(f) Any party in interest aggrieved by a decision of the Superior Court's order of relinquishment under this section may appeal the decision to the Supreme Court.

**Section 1450. Receiving a stolen firearm; class F felony.**

A person is guilty of receiving a stolen firearm if the person intentionally receives, retains or disposes of a firearm of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired. Receiving a stolen firearm is a class F felony. Knowledge that a firearm has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value.

**Section 1454. Giving a firearm to person prohibited; class F felony.**

A person is guilty of giving a firearm to certain persons prohibited when the person sells, transfers, gives, lends or otherwise furnishes a firearm to a person knowing that said person is a person prohibited as is defined in § 1448 of this title.

**Section 1455. Engaging in a firearms transaction on behalf of another; class F felony; class C felony.**

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

**Section 1456. Unsafe storage of a firearm; class A or B misdemeanor.**

(a)

(1) A person is guilty of unsafe storage of a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of an unauthorized person, the unauthorized person obtains the firearm, and all of the following do apply:

a. The firearm was not stored in a locked box or container.

b. The firearm was not disabled with a tamper-resistant trigger lock which was properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully-authorized user.

c. The firearm was not stored in a location that a reasonable person would have believed to be secure from access by an unauthorized person.

d. The unauthorized person did not obtain the firearm as the result of an unlawful entry by any person.

(2) For the purposes of this section:

a. "Stores or leaves" does not mean when the firearm is carried by or under the control of the owner or other lawfully-authorized user.

b. "Unauthorized person" means a child or person prohibited by state or federal law from owning or possessing a firearm.

(e) It is not an offense under this section if the firearm was manufactured in or before the year 1899 or is a replica of such firearm if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

**Section 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.**

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

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

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

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

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

(c) For the purpose of this section, "**Safe School and Recreation Zone**" shall mean:

(1) Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical school or any college or university, within 1,000 feet thereof; or

(2) Any motor vehicle owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university; or

(3) Any building or structure owned, operated, leased or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

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

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

(f) It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed pursuant to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or recreational activity. The affirmative defense established in this section shall be proved by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this chapter.

(g) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, and that no person under the age of 18 was present in such private residence at any time during the commission of the offense. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(h) This section shall not apply to any law-enforcement or police officer, or to any "private security guard" defined in § 1302(20) of Title 24.

(i) For purposes of this section only, "**deadly weapon**" shall include any object described in § 222(5) or (12) of this title or BB guns.

#### **Section 1459. Possession of a weapon with a removed, obliterated or altered serial number.**

(a) No person shall knowingly transport, ship, possess or receive any firearm with the knowledge that the importer's or manufacturer's serial number has been removed, obliterated or altered in a manner that has disguised or concealed the identity or origin of the firearm.

(b) This section shall not apply to a firearm manufactured prior to 1973.

#### **Section 1460. Possession of firearm while under the influence.**

(a) A person is guilty of possession of a firearm while under the influence of alcohol or drugs when the person possesses a firearm in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm was not readily operable, or that the person was not in possession of ammunition for the firearm. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "**Not readily operable**" means that the firearm is disassembled, broken down, or stored in a manner to prevent its immediate use.

(2) "**Possess, "possession" or "possesses"** means that the person has the item under his or her dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

(3) "**Public place**" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, restaurants, bars, taverns, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(4) "**Under the influence of alcohol or drugs**" means:

**a.** Having an amount of alcohol in a sample of the person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per 210 liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm in violation thereof, if such person's alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm; or

**b.** Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in § 4177(c) of Title 21, or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity, provided that no person shall be "under the influence of alcohol or drugs" for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person's blood to contain an amount of alcohol or drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

**(c)** A law-enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

#### **Section 1461. Report of loss, theft of firearm.**

**(a)** Any owner of a firearm, defined in § 222 of this title, shall report the loss or theft of the firearm within 7 days after the discovery of the loss or theft to either:

- (1)** The law-enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred; or
- (2)** Any State Police troop.

### **Part II – Criminal Procedure Generally** **Chapter 43 – Sentencing, Probation, Parole and Pardons** **Subchapter VI – Clemency**

#### **Section 4364. Effect of pardon; restoration of civil rights.**

Except as otherwise provided by the Delaware Constitution, or expressly by any provision of the Delaware Code or any court rule, the granting of an unconditional pardon by the Governor shall have the effect of fully restoring all civil rights to the person pardoned. Such civil rights include, but are not limited to, the right to vote, the right to serve on a jury if selected, the right to purchase or possess deadly weapons and the right to seek and hold public office provided however, that this section shall not limit or affect the Governor's authority to place lawful conditions upon the granting of a pardon. Notwithstanding the granting of a pardon or any provision of this section, no person who shall be convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to a seat in either House of the General Assembly, or capable of holding any office of trust, honor or profit under this State.

### **Title 16 – Health and Safety** **Part V – Mental Health** **Chapter 50 – Involuntary Commitment of Persons with Mental Conditions; Discharge; Procedure**

#### **Section 5009. Probable cause hearing.**

**(b)**

**(2)** If the court determines that probable cause does exist for involuntary inpatient commitment, it shall schedule an involuntary inpatient commitment hearing, pursuant to § 5011 of this title, for the earliest practicable date, and no later than 8 working days after the probable cause hearing; and where necessary, it shall appoint an independent psychiatrist or other qualified medical expert to examine the involuntary patient and act as an expert witness on the involuntary patient's behalf. Notice of the hearing shall be given to the involuntary patient and the patient's counsel.

**(c)** If the court determines that probable cause does not exist for involuntary inpatient commitment, but finds that an individual meets the criteria for outpatient treatment over objection, the court may order that an individual be placed on outpatient treatment over objection, pursuant to § 5013 of this title, and the next hearing shall be scheduled for 3 months after the probable cause hearing. The court may only place an individual on outpatient treatment over objection at a probable cause hearing if the issue has been appropriately noticed.

(f) If the court makes a determination under paragraph (b)(2) of this section or subsection (c) of this section, the court shall order an individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section to relinquish any firearms or ammunition owned, possessed, or controlled by the individual.

(g) The court may do any of the following through an order of relinquishment issued under subsection (f) of this section:

(1) Require the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section to relinquish to a law-enforcement agency receiving the court's order any firearms or ammunition owned, possessed, or controlled by the individual.

(2) Allow the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section to relinquish firearms or ammunition owned, possessed, or controlled by the individual to a designee of the individual. A designee of the individual must not reside with the individual and must not be a person prohibited under § 1448 of this title. The court must find that the designee of the individual will keep firearms or ammunition owned, possessed, or controlled by the individual out of the possession of the individual.

(3) Prohibit the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section not to reside with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the court's order of relinquishment.

(4) Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize firearms or ammunition of the individual subject to a determination under paragraph (b)(2) of this section or subsection (c) of this section if the Department of Justice shows that the individual has ownership, possession, or control of a firearm or ammunition.

(h) An individual subject to an order of relinquishment under subsection (f) of this section may seek relief from the order under § 1448A(l) of Title 11.

## **Title 24 – Professions and Occupations Chapter 9 – Deadly Weapons Dealers**

### **Section 901. License requirement.**

No person shall engage in the business of selling any pistol or revolver, or stiletto, steel or brass knuckles, or other deadly weapon made especially for the defense of one's person without first having obtained a license therefor, which license shall be known as "special license to sell deadly weapons."

This section shall not apply to toy pistols, pocket knives or knives used for sporting purposes and in the domestic household, or surgical instruments or tools of any kind.

### **Section 902. Application and fee for license; duration; renewal.**

Whoever desires to engage in the business of selling any of the articles referred to in the first paragraph of § 901 of this title shall apply to the Department of State to obtain a license to conduct such business and shall pay an application fee of \$50 to the Department. The license shall entitle the holder thereof to conduct such business until June 1 next succeeding its date. An application for renewal of such license shall be accompanied by a payment of \$50 to the Department.

### **Section 903. Sale to persons under 21 or intoxicated persons.**

No person shall sell to a person under the age of 21 or any intoxicated person any of the articles referred to in the first paragraph of § 901 of this title.

### **Section 904. Records.**

(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, the mode of identification bearing a picture (except as provided in § 1448B(f) of Title 11) 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.

(b) Any person engaging in the business described in this chapter shall keep and maintain a list of current employees including their names, former names used, dates of birth, physical descriptions and social security numbers. The required employee list and all attachments thereto shall be considered confidential but shall, nevertheless, be open for inspection

by any police officer of this State or of any political subdivision of this State, within their respective jurisdiction, at any time, at the licensee's primary place of business and during the licensee's regular business hours. No person licensed under this chapter shall knowingly allow any employee who is a person prohibited from possessing a deadly weapon pursuant to § 1448 of Title 11 to facilitate a sale of a deadly weapon. All employers licensed to do business pursuant to this chapter shall, prior to employment and at least once during each calendar year thereafter, perform a telephonic criminal history record check of each employee utilizing the procedures set forth in § 1448A of Title 11 and shall make and maintain a record thereof using the State Bureau of Identification Criminal History Record Information and Mental Health Information Consent Form (Form 544). A copy of each such form shall be attached to the above required employee list for inspection upon the valid request of a police officer of this State or of any political subdivision of this State, within their respective jurisdiction.

(c) Notwithstanding any provision to the contrary, any inspection by a judge, justice of the peace, police officer, constable, or other peace officer of this State shall be reasonable under the circumstances existing at the time and shall only be made pursuant to and in furtherance of an open criminal investigation or during the course of a criminal prosecution.

#### **Section 904A. Criminal history checks for sales between unlicensed persons.**

(a) For purposes of this section, "licensed firearm 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.

(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 as that term is defined in § 1448B of Title 11, upon the request of said unlicensed 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 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 title.

(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 \$30 per criminal history check performed pursuant to this procedure. Notwithstanding the foregoing, no fee may be charged for the return of a firearm to its owner in the event that the proposed transaction may not be immediately and legally completed as the result, or lack thereof, of a criminal history background check hereunder.

(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.

(7) Subject to subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked until a license holder has been given notice, and an opportunity to be heard in accordance with the Administrative Procedures Act (Chapter 101 of Title 29).

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

### **Title 28 – Sports and Amusements**

#### **Chapter 8 – Purchase of Rifles and Shotguns in States Contiguous to This State**

##### **Section 801. Definitions.**

(a) As used in this chapter, the term “**a state contiguous to this State**” shall mean any state having a common border with this State.

(b) As used in this chapter, all other terms shall be given the meaning prescribed in 18 U.S.C. § 921 (the Gun Control Act of 1968), and the regulations duly promulgated thereunder as presently enacted or promulgated and as hereafter modified.

## **Section 802. Lawful acts.**

It shall be lawful for a person residing in this State, including a corporation or other business entity maintaining a place of business in this State, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this State and to receive or transport such rifle or shotgun into this State, subject, however, to such other laws of the State or its political subdivision as may be applicable and subject to § 102 of the Gun Control Act of 1968, 18 U.S.C. § 922.

## **Section 803. Not applicable to federal licensees.**

This chapter shall not apply or be construed to affect in any way the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

### **Title 9 – Counties Part I – Provisions Affecting All Counties Chapter 3 – County Governments Generally Subchapter II – County Governments**

## **Section 330. General powers and duties.**

(c) The county governments shall enact no law or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11 of the Delaware Code.

### **Title 22 – Municipalities Chapter 1 – General Provisions**

## **Section 111. Limitation on firearm regulations**

(a) The municipal governments shall enact no law, ordinance or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate municipal ordinances existing before July 4, 1985, and any ordinance enacted after July 4, 1985, is hereby repealed. Notwithstanding the provisions of this section to the contrary, the City of Wilmington may, in addition to the nature and extent of regulation permitted by this section, enact any law or ordinance governing the possession or concealment of a paintball gun within its corporate limits as it deems necessary to protect the public safety.

### **Dover Code of Ordinances**

Current through Ordinance Number 2019-02, enacted February 25, 2019. (Supplement Number 30, Update 1)

### **Chapter 70 – Offenses and Miscellaneous Provisions**

## **Section 70-2. Weapons generally.**

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Weapon** shall mean any firearm from which a shot, projectile or other object may be discharged, or any air gun, BB gun, or any instrument, toy or weapon commonly known as a "peashooter," "slingshot" or "beany," or any bow made for the purpose of throwing or projecting missiles of any kind, or any knife, brass or metal knuckles, or any club loaded with lead or other weight, or any blackjack or billyclub.

(d) Prohibited.

(1) Business display. It shall be unlawful for any pawnbroker, secondhand dealer or other person who engages in business in the city to display, or to place on exhibition in any show window or other window facing upon any street, any pistol, revolver or other firearm with a barrel of less than 12 inches in length, or any switchblade knife, or any brass or metal knuckles, or any club loaded with lead or other weight, or any blackjack or billyclub.

(2) Furnishing to certain persons. It shall be unlawful for any person to purchase from, or sell, loan or furnish any weapon to any person under the influence of any alcoholic beverage or any illegal narcotic drug, stimulant or depressant, any person in a condition of agitation and excitability or a minor under the age of 18 years. Nothing in this ordinance shall be construed to prohibit the furnishing of weapons pursuant to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or recreational activity.

### **Appendix B – Zoning Article 3 – District Regulations**

**Section 11. Neighborhood commercial zone (C-1).**

11.2 Uses prohibited. The following uses are prohibited:

- (d) Fire arm sales

**Wilmington Code of Ordinances**

Current through Ordinance Number 20-019 (sub 1), enacted May 7, 2020. (Supplement Number 60, Update 1)

**Chapter 5 – Businesses  
Article II – Business Licenses  
Division 2 – Specific Businesses and Activities**

**Section 5-78. Retailers generally.**

(a) All persons working at or engaged in a business relating to retailing shall pay per year the license fee as required by section 5-101.

(b) As used in this section, the classification retailer shall mean, apply to and include the selling within the city of any goods, wares, merchandise and personal property of every kind and nature to the ultimate consumer, or the taking of an order therein for delivery therein of any goods, wares, merchandise and personal property of every kind and nature. A retailer licensed under the provisions of this section may service and repair any goods, wares and merchandise sold by him without being required to obtain a license under section 5-101.

(c) All businesses coming under this section shall be licensed as one of the following categories:

Retailers, Firearms.

**Section 5-79. Retailers of firearms.**

No person shall receive a license as a retailer of firearms unless he complies with the provisions of all applicable ordinances and laws.

**Chapter 12 – Fire Prevention and Protection  
Article II – Fire Code, Rules and Regulations  
Division 2 – Hazardous, Explosive and Flammable Materials**

**Section 12-93. Manufacture of explosives, blasting agents, ammunition; prohibited.**

(b) No person shall manufacture within the limit of the city any small arms ammunition.

**Chapter 36 – Miscellaneous Offenses and Provisions  
Article V – Offenses Involving Public Safety  
Division 2 – Weapons and Related Offenses**

**Section 36-156. Armor-piercing bullets.**

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) **Armor-piercing bullet** means any bullet which is coated with a nonstick fluoropolymer finish, such as the registered trademark finishes, Teflon, Halon, Halar, Flvon, Soreflon or Algoflon.

(2) **Bullet** means a round or elongated missile designed to be fired from a firearm.

(b) Offenses. It shall be unlawful for any person to bring into the city or to manufacture, sell, distribute, possess or use armor-piercing bullets or any other bullets similarly coated with a nonstick fluoropolymer finish. It shall further be unlawful for any person which is in the business of manufacturing firearms to possess the component parts of any armor-piercing bullet.

**Section 36-157. Firearms dealers; storage, display.**

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) **Dealer** means any individual, firm, association, partnership or corporation engaged in the business of selling firearms, purchasing firearms for resale or conducting a gunsmith or firearms repair business. Whenever used in any cause prescribing and imposing a penalty, the term "dealer," as applied to any partnership or association, shall mean the partners or members thereof, and as applied to any corporation, shall include the officers thereof.

(2) **Firearms** means any rifle, revolver, pistol or shotgun capable of propelling a projectile by means of an explosive material or charge.

(b) During the hours they are not regularly open for business, dealers shall store all firearms in accordance with the following requirements:

(1) No firearms shall be displayed in windows.

(2) All firearms must be placed in an approved safe, vault or properly secured storeroom. Any dealer may comply with the requirements of this section by providing an approved steel safe wherein any firearms may be stored and locked during nonbusiness hours.

(c) Before promulgating any regulations designed to carry out the intent and purpose of this section, the department of licenses and inspections shall consult with the police department.

(d) No dealer shall receive a permit to store firearms unless he complies with the provisions of this section and regulations issued pursuant thereto.

(e) Any dealer who violates the provisions of this section shall be advised in writing by the department of licenses and inspections of the nature of the violation, and shall be required to comply with the provisions of this section within the period indicated in such notice; provided, that in no case shall the time permitted for such compliance exceed 60 days. Each day that any dealer fails to comply with the requirements of this section or to make the changes indicated in any notice of violation, after the period allowed for such compliance has expired, shall constitute a separate violation of this section.

### **Section 36-158. Certain firearms prohibited.**

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) **Converted starter pistol** means a starter pistol which has been altered to fire a projectile with sufficient force to cause death or physical injury.

(2) **Short-barreled rifle** means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle, whether by alteration, modification or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

(3) **Smooth-bore shot revolver** means a revolver with a smooth-bore having been reamed out so that it can be used to fire shot-shell.

(4) **Zip gun** means any weapon or instrument not originally designed to be a firearm which has been made or altered to discharge a projectile with sufficient force to cause death or physical injury.

(b) It shall be unlawful for any person to manufacture, make, deliver, transport, trade, give, sell or possess a smooth-bore shot revolver, short-barreled rifle, zip gun, or converted starter pistol.

(c) Any law enforcement officer while performing his lawful duties within the city shall be exempted from the effect of this section. For purposes of this section, the term "**law enforcement officer**" includes police officers, the attorney general, the attorney general's deputies and investigators, the sheriff, and the sheriff's deputies, prison guards, constables and bailiffs.

## **Chapter 48 – Zoning Article IV – Residence Districts Division 2 – Use Requirements**

### **Section 48-134. R-3 districts.**

(d) Uses permitted under zoning board of adjustments approval.

(9) Ground floor corner property used for neighborhood retail stores or shops for the performance of personal services; except for ...weapons/guns/ammunition stores, grocery stores, gasoline service stations, tap rooms, bars, cafes, offices or stores for the care, keeping or grooming of animals, health and exercise facilities, or any operation to provide for automobile sales or services;