

Delaware Code
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TITLE 9, Chapter 3, Subchapter II. County Governments

§ 330 General powers and duties.

(b) The county governments of the several counties shall take care that:

(1) The affairs of the respective counties are administered with efficiency and economy; and

(2) The officers and employees of the counties, chosen and appointed by the county governments, shall faithfully perform the duties imposed upon them.

(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.

(d) Notwithstanding subsection (c) of this section, county governments may adopt ordinances regulating the possession of firearms, ammunition, components of firearms, or explosives in police stations and county buildings which contain all of the provisions contained in this subsection. Any ordinance adopted by a county government regulating possession of firearms, ammunition, components of firearms, or explosives in police stations or county buildings shall require that all areas where possession is restricted are clearly identified by a conspicuous sign posted at each entrance to the restricted areas. The sign may also specify that persons in violation may be denied entrance to the building or be ordered to leave the building. Any ordinance adopted by county governments relating to possession in police stations or county buildings shall also state that any person who immediately foregoes entry or immediately exits such building due to the possession of a firearm, ammunition, components of firearms, or explosives shall not be guilty of violating the ordinance. County governments may establish penalties for any intentional violation of such ordinance as deemed necessary to protect public safety. An ordinance adopted by the county government shall not prevent the following in county buildings or police stations:

- (1) Possession of firearms, components of firearms, and ammunition or explosives by law-enforcement officers;
- (2) Law-enforcement agencies receiving shipments or delivery of firearms, components of firearms, ammunition or explosives;
- (3) Law-enforcement agencies conducting firearms safety and training programs;
- (4) Law-enforcement agencies from conducting firearm or ammunition public safety programs, donation, amnesty, or any other similar programs in police stations or municipal buildings;
- (5) Compliance by persons subject to protection from abuse court orders;
- (6) Carrying firearms and ammunition by persons who hold a valid license pursuant to either § 1441 or § 1441A of Title 11 so long as the firearm remains concealed except for inadvertent display or for self-defense or defense of others;
- (7) Officers or employees of the United States duly authorized to carry a concealed firearm;
- (8) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property and are engaged in the lawful execution of such duties.

(e) For the purposes of this section, "county building" means a building where a county government entity meets in its official capacity or containing the offices of elected officials and of public employees actively engaged in performing governmental business but excluding any parking facility; provided, however, that if such building is not a county-owned or -leased building, such building shall be considered a county building for the purposes of this section only during the time such government entity is meeting in or occupying such a building.

TITLE 11

Crimes and Criminal Procedure - Delaware Criminal Code

Chapter 2. General Provisions Concerning Offenses

§ 222 General definitions [Effective until June 16, 2017] 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

§ 1441 License to carry concealed deadly weapons.

(a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person's property may be licensed to do so when the following conditions have been strictly complied with:

(1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of the person's property, or both, and also stating the person's residence and occupation. The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any person pursuant to this section.

(2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the county in which the applicant resides at the time of filing the application. The certificate shall clearly state that the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property, or both. The certificate shall be signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant's certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below-described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training course shall include the following elements:

- a. Instruction regarding knowledge and safe handling of firearms;
- b. Instruction regarding safe storage of firearms and child safety;
- c. Instruction regarding knowledge and safe handling of ammunition;
- d. Instruction regarding safe storage of ammunition and child safety;
- e. Instruction regarding safe firearms shooting fundamentals;
- f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;
- g. Identification of ways to develop and maintain firearm shooting skills;
- h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;
- i. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense; and
- j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of \$65 to the Prothonotary issuing the same.

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of \$65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the first day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or

who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where the retired police officer resides and present to the Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;

b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and

c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1448(a)(6) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection "reasonably similar" does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be "reasonably similar." The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15 of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for 1 year and any removal of a State from the list shall not occur without 1 year's notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual's employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal, and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a second or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(l) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1448 of this title.

§ 1442 Carrying a concealed deadly weapon; class G felony; class D felony. A person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title.

Carrying a concealed deadly weapon is a class G felony, unless the deadly weapon is a firearm, in which case it is a class D felony.

It shall be a defense that the defendant has been issued an otherwise valid license to carry a concealed deadly weapon pursuant to terms of § 1441 of this title, where:

- (1) The license has expired,
- (2) The person had applied for renewal of said license within the allotted time frame prior to expiration of the license, and
- (3) The offense is alleged to have occurred while the application for renewal of said license was pending before the court.

§ 1443 Carrying a concealed dangerous instrument; class A misdemeanor.

- (a) A person is guilty of carrying a concealed dangerous instrument when the person carries concealed a dangerous instrument upon or about the person.
- (b) It shall be a defense that the defendant was carrying the concealed dangerous instrument for a specific lawful purpose and that the defendant had no intention of causing any physical injury or threatening the same.
- (c) For the purposes of this section, disabling chemical spray, as defined in § 222 of this title, shall not be considered to be a dangerous instrument.
- (d) Carrying a concealed dangerous instrument is a class A misdemeanor.

§ 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 a bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun.
- (b) Possessing a destructive weapon 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.

§ 1447A. Possession of a firearm during commission of a felony; class B felony

- (a) A person who is in possession of a firearm during the commission of a felony is guilty of possession of a firearm during the commission of a felony. Possession of a firearm during the commission of a felony is a class B felony.
- (b) A person convicted under subsection (a) of this section shall receive a minimum sentence of 3 years at Level V, notwithstanding the provisions of § 4205(b)(2) of this title.
- (c) A person convicted under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of 5 years at Level V, notwithstanding the provisions of §§ 4205(b)(2) and 4215 of this title.
- (d) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.
- (e) Any sentence imposed upon conviction for possession of a firearm during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony together with a conviction for the possession of a firearm during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a firearm during such felony.
- (f) Every person charged under this section over the age of 15 years shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law.
- (g) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the firearm is a lesser included felony of the one originally charged.

§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties [Effective Jan. 1, 2017]

- (a) Except as otherwise provided herein, 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 has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A 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.

(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.

(e) (1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

a. Three years at Level V, if the person has previously been convicted of a violent felony;

b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

a. Four years at Level V; or

b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f) (1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

§ 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 wilfully and intentionally requests a criminal history record check from the Federal Bureau of Investigation, NICS for any purpose other than compliance with subsection (a) of this section or § 1448B(a) of this title, or wilfully and intentionally disseminates any criminal history record information to any person other than the subject of such information or discloses to any person the unique identification number shall be guilty of a class A misdemeanor. The Superior Court shall have exclusive jurisdiction for all offenses under this subsection.
- (g) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to subsection (a) of this section or § 1448B(a) of this title, wilfully and intentionally makes any materially false oral or written statement or wilfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee shall be guilty of a class G felony.
- (h) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally sells or delivers a firearm in violation of this section shall be guilty of a class A misdemeanor. Second or subsequent offenses by an individual shall be a class G felony.
- (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 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.

§ 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 active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in § 1441A 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.

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

(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.

§ 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.

§ 1451 Theft of a firearm; class F felony.

(a) A person is guilty of theft of a firearm when the person takes, exercises control over or obtains a firearm of another person intending to deprive the other person of it or appropriate it.

(b) Theft of a firearm is a class F felony.

§ 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.

Giving a firearm to certain persons prohibited is a class F felony.

§ 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. Engaging in a firearms transaction on behalf of another is a class F felony for the first offense, and a class C felony for each subsequent like offense.

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

(a) A person is guilty of unlawfully permitting a minor access to a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a minor and where the minor obtains the firearm and uses it to inflict serious physical injury or death upon the minor or any other person.

(b) It shall be an affirmative defense to a prosecution under this section if:

(1) The firearm was stored in a locked box or container or in a location which a reasonable person would have believed to be secure from access to a minor; or

(2) The minor obtains the firearm as the result of an unlawful entry by any person; or

(3) The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident.

(c) Unlawfully permitting a minor access to a firearm is a class A misdemeanor.

§ 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 security officer as defined in Chapter 13 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.
- (j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:
- (1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;
- (2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;
- (3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the underlying offense.
- (4) If the underlying offense is a class D felony, the crime shall also be a class D felony.
- (5) In the event that an elementary or secondary school student possesses a firearm or other deadly weapon in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

§ 1458. Removing a firearm from the possession of a law-enforcement officer; class C felony

- (a) A person shall not knowingly or recklessly remove or attempt to remove a firearm, disabling chemical spray, baton or other deadly weapon from the possession of another person or deprive the other person of its use if:
- (1) The person has knowledge or reason to know that the other person is employed as:
- a. A law-enforcement officer including, but not limited to, all those defined as "police officer" in § 1911(a) of this title, who is authorized by law to make arrests;
- b. A sheriff, deputy sheriff, constable, judicial assistant, court bailiff or other court security officer or court bailiff;
- c. An employee of the Department of Correction, the Division of Parole and Probation or the Department of Youth Rehabilitative Services;
- d. A special investigator or state detective with the Delaware Department of Justice, Office of the Attorney General; or
- e. An armored car guard licensed pursuant to § 1317 or § 1320 of Title 24; and
- (2) The other person is lawfully acting within the course and scope of that other person's employment.
- (b) A person who violates this section is guilty of a class C felony.

§ 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.

(c) Possessing, transporting, shipping or receiving a firearm with a removed, obliterated or altered serial number pursuant to this section is a class D felony.

§ 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.

(d)(1) Except as provided in paragraph (d)(2) of this section, possession of a firearm while under the influence is a class A misdemeanor.

(2) Possession of a firearm while under the influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for possession of a firearm while under the influence.

§ 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.

(b) Whoever is convicted of a violation of this section shall:

(1) For the first offense, be guilty of a violation and be subject to a civil penalty of not less than \$75 nor more than \$100.

(2) For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than \$100 nor more than \$250.

(3) For a third or subsequent offense committed at any time after the sentencing or adjudication of a second offense, be guilty of a class G felony.

TITLE 24 Professions and Occupations

Chapter 23. Pawnbrokers, Secondhand Dealers & Scrap Metal Processors

Subchapter I. General Provisions

§ 2301 Definitions. As used in this chapter:

(1) "Antique dealer" means a person, company, corporation, or member or members of a partnership or firm who sells exclusively goods that are at least 50 years old.

(2) "Automated kiosk" means an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

a. Monitored remotely by a live representative during all business hours of operation;

- b. Verification of a seller's identity via a government-issued identification card;
- c. Secure storage of goods accepted by the kiosk;
- d. Capture and storage of images during the transaction; and
- e. Electronically report all transactions to law enforcement.

(3) "Consumer" means any person or buyer who purchases a retail product, as defined in paragraph (6) of this section, other than for further purposes of resale or processing.

(4) "Exempted Internet acquisitions" means any property acquired by a business licensed under this chapter from an exclusive Internet sale.

(5) "Pawnbroker" means any person, company, corporation, or member or members of a partnership or firm who:

a. Engages in the business of lending money on the deposit or pledge of personal property or other valuable things, other than causes in action, securities, or written evidences of indebtedness; or

b. Purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price; or

c. Lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.

(6) "Retail" means the sale or purchase for final consumption in contrast to a sale for further sale or processing, or a sale to the final consumer, rather than a sale to a retailer or one who intends to resell.

(8) "Secondhand dealer" means any person, company, corporation, or member or members of a partnership or firm whose storefront business includes any volume of selling or receiving previously owned, used, rented or leased tangible personal property excluding motor vehicles. The term "secondhand dealer" includes any individual engaged in the business of receiving tangible personal property by means of an automated kiosk. The term "secondhand dealer" shall not include auction houses, flea markets, antique dealers or motor vehicle dealers. This chapter, as it relates to secondhand dealers, does not apply to:

a. The sale of secondhand goods at events commonly known as "garage sales," "yard sales," or "estate sales";

c. The sale or receipt of used merchandise donated to recognized nonprofit, religious, or charitable organizations or any school-sponsored association for which no compensation is paid;

f. The sale of goods exclusively via the Internet that meet the definition of "exempted Internet acquisition" set forth in this section;

g. Federal firearms licensed dealers;

i. The taking in trade by a business of an item of a like kind to items which such business sells as new goods as the principal or substantial part of its business.

§ 2302 Reporting requirements.

(a) Every pawnbroker and secondhand dealer shall create a record and provide information regarding merchandise acquired via an electronic format to be determined by the Secretary of Safety and Homeland Security.

(1) Such record shall include, at a minimum, the following information:

a. The date and time of purchase;

b. The make, model, identifying markings, color, size, any listed serial number, International Mobile Station Equipment Identity (IMEI), the Mobile Equipment Identifier (MEID), any unique identifying number assigned by the manufacturer, or any other identifiable characteristics of the purchased item or items;

d. The amount or other consideration paid for the merchandise;

e. The name and address of the individual from whom the merchandise is acquired;

f. The signature of the individual from whom the merchandise is acquired;

g. For each individual from whom the pawn broker or secondhand dealer acquires scrap metal:

1. The date of birth and driver's license; or,

2. Identification information about the individual from a valid state-issued photo identification card that provides a physical description of the individual, including the sex, race, distinguishing features, and approximate age, height and weight of the individual.

(2) Pawnbrokers and secondhand dealers shall collect a photograph of the seller and all information pertaining to the seller, required on the electronic form, for every transaction regardless of value.

(3) Automated kiosks shall collect a right thumbprint image of the seller and all information pertaining to the seller including photograph and valid government issued identification, required on the electronic form, for every transaction regardless of value.

(c) The forms required by subsections (a) and (b) of this section shall be completed immediately after any articles or goods have been purchased or acquired and shall be submitted electronically by the close of business the next business day, in a format to be determined by the Secretary of the Department of Safety and Homeland Security, to the law-enforcement agency having primary jurisdiction over the area in which the business is located. If the article or good's serial number, IMEI, MEID, or other unique identifying number is not available at the time of purchase or receipt from an automated kiosk, the report filed pursuant to this section must be updated with the serial number, IMEI, MEID, or other unique identifying number as soon as possible. The holding requirements in § 2304(a)(1) of this title do not begin until all required reports are complete and submitted to the appropriate law-enforcement agency. Forms submitted under this section shall be kept confidential and are not public records.

(g)(1) Articles purchased or otherwise acquired by a scrap metal processor shall be recorded via an electronic image, in either still or video format, and a copy of said image(s) is to be supplied at the specific request of a law-enforcement agency, within 24 hours of said request.

(2) The images referenced in paragraph (g)(1) of this section above will be kept on file by the scrap metal processor for a minimum of 30 days after the image was recorded.

§ 2304 Holding period.

(e) A pawnbroker, secondhand dealer, or scrap metal processor shall not destroy, disfigure or obliterate identification marks or cause the identity of an article to otherwise be destroyed so long as the article continues to be in that person's possession.

§ 2307 Prohibited transactions.

(a) No pawnbroker, secondhand dealer or scrap metal processor subject to this chapter shall knowingly purchase or acquire any article, ware or merchandise:

(1) From any person or persons under the age of 18 unless that person or person is:

- a.** Recycling aluminum cans; or
- b.** Accompanied by a parent, grandparent or guardian;

(2) From any person under the influence of any intoxicating liquor or drug when such condition is visible or apparent; or

(3) Which has an altered, obliterated or otherwise tampered with serial number or identifying marking.

TITLE 11. Crimes and Criminal Procedure

PART II. Criminal Procedure Generally

Chapter 43. Sentencing, Probation, Parole and Pardons

Subchapter VI. Clemency

§ 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 22. Municipalities

Chapter 1. General Provisions

§ 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.

(b) Subsection (a) of this section notwithstanding, municipal governments may adopt ordinances regulating the possession of firearms, ammunition, components of firearms, or explosives in police stations and municipal buildings which contain all of the provisions contained in this subsection. Any ordinance adopted by a municipal government regulating possession of firearms, ammunition, components of firearms, or explosives in police stations or municipal buildings shall require that all areas where possession is restricted are clearly identified by a conspicuous sign posted at each entrance to the restricted areas. The sign may also specify that persons in violation may be denied entrance to the building or be ordered to leave the building. Any ordinance adopted by municipal governments relating to possession in police stations or municipal buildings shall also state that any person who immediately foregoes entry or immediately exits such building due to the possession of a firearm, ammunition, components of firearms, or explosives shall not be guilty of violating the ordinance. Municipal governments may establish penalties for any intentional violation of such ordinance as deemed necessary to protect public safety. An ordinance adopted by the municipal government shall not prevent the following in municipal buildings or police stations:

(1) Possession of firearms, components of firearms, and ammunition or explosives by law-enforcement officers;

(2) Law-enforcement agencies receiving shipments or delivery of firearms, components of firearms, ammunition or explosives;

(3) Law-enforcement agencies conducting firearms safety and training programs;

- (4) Law-enforcement agencies from conducting firearm or ammunition public safety programs, donation, amnesty, or any other similar programs in police stations or municipal buildings;
 - (5) Compliance by persons subject to protection from abuse court orders;
 - (6) Carrying firearms and ammunition by persons who hold a valid license pursuant to either § 1441 or § 1441A of Title 11 so long as the firearm remains concealed except for inadvertent display or for self-defense or defense of others;
 - (7) Officers or employees of the United States duly authorized to carry a concealed firearm; or
 - (8) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property and are engaged in the lawful execution of such duties.
- (c) For the purposes of this subsection, "municipal building" means a building where a municipal government entity meets in its official capacity or containing the offices of elected officials and of public employees actively engaged in performing governmental business but excluding any parking facility; provided, however, that if such building is not a municipally-owned or -leased building, such building shall be considered a municipal building for the purposes of this section only during the time such government entity is meeting in or occupying such a building.

TITLE 24. Professions and Occupations

Chapter 9. Deadly Weapons Dealers

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 905. Penalties. Whoever violates this chapter shall be fined not more than \$250 or imprisoned not more than 6 months, or both.

City of Wilmington Code of Ordinances
Chapter 5: Businesses
Article II: Business Licenses
Division 2: Specific Businesses & Activities
Current through September 14, 2016

Sec. 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 36. Miscellaneous Offenses and Provisions
Article V. Offenses Involving Public Safety
Division 2. – Weapons and Related Offenses⁽⁵⁾

Sec. 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.

(c) **Penalties.** Any person who violates the provisions of this section shall upon conviction be subject to a minimum fine of \$100 and a maximum fine of \$500, or to imprisonment not exceeding 90 days, or both, for each offense.

Sec. 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.

(f) Any person who violates the provisions of this section shall, upon summary conviction, be subject to a minimum fine of \$100 and a maximum fine of \$500 or to imprisonment not exceeding 90 days, or both, for such offense.

Sec. 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.

(d) A conviction of violation of this section shall be punishable by a fine of not less than \$500 and not more than \$2,500 or by both such fine and imprisonment not exceeding 6 months. The minimum sentence of a \$500 fine shall not be subject to suspension or reduction for any reason.