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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 3

AN ACT TO AMEND TITLE 11 AND TITLE 24 OF THE DELAWARE CODE RELATING TO DEADLY WEAPONS.

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

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

§ 1448D. Handgun qualified purchaser card required to purchase handguns.

(a) For purposes of this section and § 1448E of this title:

(1) “Department” means the Department of Safety and Homeland Security.

(2) “Handgun” means a pistol, revolver, or other firearm designed to be readily capable of being fired when held in 1 hand.

(3) “Secretary” means the Secretary of the Department of Safety and Homeland Security or the Secretary’s designee.

(4) “Transferor” means a licensed dealer, licensed manufacturer, or licensed importer, or employee thereof, or any other person who sells, transfers, or delivers a firearm.

(b) The Secretary shall, upon application, issue to a person qualified under subsection (c) of this section a handgun qualified purchaser card.

(c)(1) A person’s application for a handgun qualified purchaser card must be in the form prescribed by the Secretary and include all of the following information about the person:

a. Name.

b. Residence.

c. Place of business.

d. Age.

e. Date of birth.

f. Sex.

g. Physical description, including distinguishing physical characteristics, if any.

(2) An application must include a sworn, written affirmation that the person is not prohibited from possessing a firearm under § 1448 of this title or any other provision of state or federal law.

(d) Application blanks must be made available by the Department and licensed dealers.

(e) Except as otherwise provided under this chapter, the Secretary may not issue a handgun qualified purchaser card to any of the following:

(1) A person under the age of 21.

(2) A person who is prohibited from purchasing, owning, possessing, or controlling a deadly weapon under § 1448(a) and (d) of this title.

(3) If supported by probable cause, a person who poses a danger of causing physical injury to self or others by owning, purchasing, or possessing firearms.

(4)a. Except as otherwise provided under paragraph (e)(4)b. of this section, a person who, in the 5 years before the date of application, has not completed a firearms training course that 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 must consist of at least all of the following:

1. Instruction regarding knowledge and safe handling of firearms.

2. Instruction regarding safe storage of firearms and child safety.

3. Instruction regarding knowledge and safe handling of ammunition.

4. Instruction regarding safe storage of ammunition and child safety.

5. Instruction regarding safe firearms shooting fundamentals.

6. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition.

7. Identification of ways to develop and maintain firearm shooting skills.

8. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use, and possession of firearms.

9. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense.

10. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

11. Instruction regarding suicide prevention.

b. This paragraph (e)(4) does not apply to a person who holds a valid license to carry a concealed deadly weapon under § 1441, § 1441A, or § 1441B of this title.

(5) A person who is otherwise prohibited from purchasing or possessing firearms under the law of this State or federal law.

(f) A person must submit an application for a handgun qualified purchaser card to the Secretary, who shall investigate the application and, unless grounds exist for the denial thereof, grant the applicable card within 30 days from the date of receipt of the application.

(1) The Secretary shall take the fingerprints of each person who applies for a card and compare the fingerprints with any records of fingerprints in the State. The Secretary shall conduct a search of the Delaware Criminal Justice Information System to determine if the applicant is prohibited under law of this State or federal law from purchasing or possessing a firearm. The Secretary shall also submit the person's fingerprints to the Federal Bureau of Investigation with a request that a search of the National Instant Criminal Background Check System be conducted.

(2) In investigating the application, the Secretary shall contact the local law-enforcement agencies of the county or municipality in which the person resides and inquire as to any facts and circumstances relevant to the person's qualification for a handgun qualified purchaser card.

(g) If the Secretary determines that a person does not qualify for a handgun qualified purchaser card, the Secretary shall deny the application and notify the person in a writing setting forth the specific reasons for the determination.

(h)(1) A handgun qualified purchaser card is valid for a period of 180 days from the date of issuance.

(2) Each card must bear a unique permit number, the full name and address of the person issued the card, the date on which the card expires, and any other information as required by state law and regulation.

(3) The person issued the card may purchase handguns using the card while the card is valid.

(i)(1) If, at any time following the issuance of a handgun qualified purchaser card, a person issued a card becomes disqualified for any of the reasons under subsection (e) of this section, the card is void and must be returned by the person within 5 days to the Secretary.

(2) A person's failure to return the card to the Secretary within the 5 days is a class A misdemeanor. The Superior Court has exclusive jurisdiction of a violation of this paragraph (i)(2).

(j)(1) A handgun qualified purchaser card may be revoked at any time by the Secretary upon a finding that a person issued the card no longer qualifies for the card.

(2) The Secretary shall give written notice of revocation without unnecessary delay to the person issued the card, State Police, and local law-enforcement agencies of the county or municipality in which the person resides.

(3) Within 5 days of notice of revocation, the person must return the card to the Secretary.

(4) A person's failure to return the card to the Secretary within 5 days of notice of revocation is a class A misdemeanor. The Superior Court has exclusive jurisdiction of a violation of this paragraph (j)(4).

(5) If the Secretary has given written notice of revocation and there is probable cause to believe that the person issued the card has firearms in the person's custody, possession, or control, the State Police shall take action to ensure removal of the firearms.

(k)(1) A person aggrieved by the denial or revocation of a handgun qualified purchaser card may request a hearing in the Justice of the Peace Court for the county in which the person resides.

a. The request for a hearing must be made in writing within 30 days of the denial of the application for the card or the revocation of the card.

b. The person shall serve a copy of the person's request for a hearing on the chief of police of the county or municipality in which the person resides and on the Secretary.

c. The hearing must be held and a record made thereof within 15 days of the receipt of the application for a hearing by a Justice of the Peace.

d. A formal pleading or a filing fee is not required to obtain a hearing.

(2) The Justice of the Peace Court's decision may be appealed to the Superior Court for a hearing de novo. The appeal must be filed within 15 days. The Superior Court shall hold the hearing de novo within 15 days of the filing of the appeal.

(l) Not later than [1 year after the implementation date of § 1448D of Title 11 within Section 1 of this Act] and annually thereafter, the Secretary shall submit to the House and Senate committees on the Judiciary a report that includes all of the following, with respect to the preceding year:

(1) The number of applications submitted for a handgun qualified purchaser card, the number of cards issued, and the number of applications denied .

(2) The number of hearings requested by applicants aggrieved by a denial or revocation of a handgun qualified purchaser card and the disposition of those hearings .

(3) The number of handgun qualified purchaser cards revoked by the Secretary .

(4) The number of handgun qualified purchaser cards returned to the Secretary .

(5) The number of cases in which the State Police has taken action to remove firearms from prohibited possessors .

(6) Demographic data on applicants seeking a handgun qualified purchaser card, including race, ethnicity, national origin, sex, gender, age, disability, and English language proficiency.

(7) Demographic data on applicants aggrieved by a denial or revocation for a handgun qualified purchaser card, including race, ethnicity, national origin, sex, gender, age, disability, and English language proficiency.

§ 1448E. Record reporting for sales and transfers of handguns.

(a) A transferor who sells, transfers, or delivers a handgun under § 1448A or § 1448B of this title shall, in addition to the requirements of Chapter 9 of Title 24, submit to the Department a copy of the federal firearms transaction record under Title 27 of the Code of Federal Regulations or, if no such record was completed, the record described in subsection (g) of this section. The transferor shall submit the record within 72 hours of a sale, transfer, or delivery of a handgun. The transferor may scan and submit the record in electronic format.

(b) For all purchases, transfers, and deliveries of handguns, the transferor must include on the record the identification number of the handgun qualified purchaser card presented by the purchaser or transferee at the time of the sale, transfer, or delivery. For all purchases, transfers, and deliveries of handguns, the transferor shall retain a copy of the original handgun qualified purchaser card presented by the purchaser or transferee and attach a copy of the card to the record before submitting the record to the Department.

(c) The transferor shall retain a copy of all records for all handguns sold, transferred, or delivered.

(d) Subject to subsection (h) of this section, the Department shall maintain a searchable database of all records received, which must at all times be open for inspection by any judge, justice of the peace, police officer, constable, or other peace officer of this State.

(e) 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 must be reasonable under the circumstances existing at the time and must only be made under and in furtherance of an open criminal investigation or during the course of a criminal prosecution.

(f) 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 handgun which are required, authorized, or maintained under this section or by Chapter 9 of Title 24, are not subject to disclosure or release under the Freedom of Information Act, Chapter 100 of Title 29.

(g) The Department shall, no later than 30 days before [the implementation date of § 1448D of Title 11 within Section 1 of this Act], develop and make available throughout the State a standard record form for use by transferors who have not completed a federal firearms transaction record, which record must be in substantially similar form to the federal transaction record. The Department may not charge for forms or any other act performed or materials provided by a government employee or agency in connection with reporting of the sale or transfer of a handgun under this section.

(h) Except under and in furtherance of an open criminal investigation or during the course of a criminal prosecution, the Department may not retain a record, data, information, or a report obtained under this section for longer than 2 years.

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

§ 1448A. Criminal history record checks and licenses required for sales of firearms .

(a) (1) No A licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer ~~shall may not~~ sell, ~~transfer~~ 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~~ under 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. This paragraph (a)(1) does not apply to transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license under §§ 1441, 1441A, and 1441B of this title.

(2) A licensed importer, licensed manufacturer, or licensed dealer may not sell, transfer, or deliver from inventory a handgun to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless the purchaser, lessee, or transferee presents to the licensed importer, licensed manufacturer, or licensed dealer a valid handgun qualified purchaser card issued to that person by the Secretary of the Department of Safety and Homeland Security under § 1448D of this title.

(3) For the purposes of this section:

a. "Handgun" means a pistol, revolver, or other firearm designed to be readily capable of being fired when held in 1 hand.

b. "Transferor" means a licensed dealer, licensed manufacturer, or licensed importer, or employee thereof, or any other person who sells, transfers, or delivers a firearm.

(b) No licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer shall sell, ~~transfer~~ 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~~ 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. This subsection does not apply to transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license under §§ 1441, 1441A, and 1441B of this title.

(e) The provisions of this section ~~shall do not apply to~~ to any of the following:

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

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~~ 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~~ trigger.

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

(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~~ A transferor 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.

(h) (1) ~~Any licensed dealer, licensed manufacturer, licensed importer or employee thereof~~ A transferor 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.

(2) A transferor who, in connection with the sale, transfer, or delivery from inventory of a handgun under this section or § 1448B of this title, wilfully and intentionally fails to comply with the recordkeeping requirements under § 1448E of this title is guilty of a class A misdemeanor. A second or subsequent violation of this paragraph (h)(2) is a class G felony.

(3) The Superior Court has exclusive jurisdiction of a violation of this subsection.

Section 3. Amend § 1448B, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1448B. Criminal history record checks and licenses required for sales of firearms — Unlicensed persons.

(a) (1) ~~No~~ An unlicensed person ~~shall~~ may not 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. This paragraph (a)(1) does not apply to 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 under § 1441 of this title.

(2) An unlicensed person may not sell or transfer a handgun to any other unlicensed person unless the potential purchaser or transferee presents to the seller or transferor a valid handgun qualified purchaser card issued to that person by the Secretary of the Department of Safety and Homeland Security under § 1448D of this title.

(b) For purposes of this section:

(1) “Handgun” means a pistol, revolver, or other firearm designed to be readily capable of being fired when held in 1 hand.

~~(1)~~ (2) “Licensed dealer” means any person licensed as a deadly weapons dealer ~~pursuant to~~ under Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

~~(2)~~ (3) “Transfer” means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not ~~include~~; include any of the following:

a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of ~~said the~~ firearm to a person known personally to ~~him or her~~, the owner.

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~~, duration.

c. The transfer of a firearm for repair, ~~service~~ service, or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or ~~business~~, or business.

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)~~ (4) "Unlicensed person" means any person who is not a licensed importer, licensed ~~manufacturer~~ manufacturer, or licensed dealer.

(c) The provisions of this section ~~shall do not apply to~~ to any of the following:

(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~~, transferor.

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

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~~, trade.

(4) Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check ~~pursuant to under~~ law, 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, as defined in § 1441B of this ~~title~~, 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. [Transferred.]~~

(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~~, law.

(8) Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 C.F.R. 478.11, as the same may be amended from time to ~~time~~, 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.

Section 4. Amend § 904A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(c) Nothing in this section, or any other section of the Code, ~~shall authorize or permit~~ authorizes or permits the State or any agency, ~~department~~ department, or instrumentality ~~thereof~~ of the State 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~~ under Chapter 5 of Title 11. Any such system of registration is expressly prohibited. Nothing in this subsection limits the authority granted in this chapter or in Chapter 5 of Title 11 to the State or any agency, department, or instrumentality of the State regarding records kept for the exclusive use of law-enforcement officials in furtherance of an open criminal investigation or during the course of a criminal prosecution.

Section 5. Section 1448D of Title 11 within Section 1 of this Act is effective immediately and is to be implemented the earlier of the following:

(1) Eighteen months from the date of the Act's enactment.

(2) The date of publication in the Register of Regulations of a notice by the Secretary of the Department of Safety and Homeland Security that the necessary processes for implementation have been established for § 1448D of Title 11 within Section 1 of this Act.

Section 6. Section 1448E of Title 11 within Section 1 of this Act and Sections 2 through 4 of this Act take effect on the implementation date of Section 1448D of Title 11 within Section 1 of this Act.

SYNOPSIS

This Substitute amends Senate Bill No. 3 by doing the following:

(1) Prohibiting the Department of Safety and Homeland Security ("Department") from retaining a record, data, information, or a report related to the transfer of a handgun for longer than 2 years, except in furtherance of an open criminal investigation or during the course of a criminal prosecution.

(2) Redrafting § 1448D(e) of Title 11 to cite to the grounds on which a person is a person prohibited under § 1448 of Title 11, rather than repeating them in § 1448D(e) of Title 11 and potentially create unintentional differences.

(3) Making clear that a decision by the Justice of the Peace Court on the denial or revocation of a handgun qualified purchaser card by the Department may be appealed to the Superior Court for a hearing de novo.

(4) Delaying the implementation of the requirement to obtain a handgun qualified purchaser card until the Department is ready to implement § 1448D of Title 11 or 18 months from the date of enactment, whichever comes first.

Like Senate Bill No. 3, this Substitute does all of the following:

(1) Creates an application process to obtain a handgun qualified purchaser card to authorize the purchase of a handgun. While an applicant will incur costs related to fingerprinting and required training, a fee will not be charged to obtain the permit.

(2) Requires licensed importers, manufacturers, or dealers, as well as unlicensed persons, to require an individual to present the individual's handgun qualified purchaser card before selling or transferring a firearm to an individual.

(3) Requires that an applicant complete a firearms training course within 5 years before the date of application, similar to what is required by Delaware's concealed carry permit law. An individual licensed to carry a concealed deadly weapon is exempt from this requirement as they must already complete a firearms training course to be licensed.

(4) Sends to law-enforcement information that is already collected at the time of sale and required under federal law to be made available to law-enforcement. This change assists law-enforcement in the criminal investigations they already conduct.

(5) Makes clear that § 904A of Title 24 is not intended to prohibit law-enforcement officials from keeping records of sales and transfers of firearms for their use during criminal investigations or prosecutions.

(6) Makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Lockman