

No. 1995-66

AN ACT

SB 282

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining "police officer"; defining "law enforcement officer" and "loaded" for purposes of the Uniform Firearms Act of 1995; further providing for certain prohibited criminal conduct, for administration, for fees and for notification; prohibiting the provision of butane to minors; further providing for buying or exchanging Federal food order coupons, stamps, authorization cards or access devices and for fraudulent traffic in food orders; prohibiting the operation of certain establishments; providing for local option; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 103 of Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a definition to read:

§ 103. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this part, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Police officer." The term shall include the sheriff of a county of the second class and deputy sheriffs of a county of the second class who have successfully completed the requirements under the act of June 18, 1974 (P.L.359, No.120), referred to as the Municipal Police Education and Training Law.

* * *

Section 2. Section 913(c) and (e) of Title 18 are amended to read:

§ 913. Possession of firearm or other dangerous weapon in court facility.

* * *

(c) Exceptions.—Subsection (a) shall not apply to:

(1) The lawful performance of official duties by an officer, agent or employee of the United States, the Commonwealth or a political subdivision who is authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of any violation of law.

(2) The lawful performance of official duties by a court official.

(3) The carrying of rifles and shotguns by instructors and participants in a course of instruction provided by the Pennsylvania Game Commission under 34 Pa.C.S. § 2704 (relating to eligibility for license).

(4) Associations of veteran soldiers and their auxiliaries or members of organized armed forces of the United States or the Commonwealth,

including reserve components, when engaged in the performance of ceremonial duties with county approval.

(5) The carrying of a dangerous weapon or firearm unloaded and in a secure wrapper by an attorney who seeks to employ the dangerous weapon or firearm as an exhibit or as a demonstration and who possesses written authorization from the court to bring the dangerous weapon or firearm into the court facility.

* * *

(e) Facilities for checking firearms.—Each county shall make available[, at or near the main entrance to the courthouse] by July 1, 1996, lockers or similar facilities *at no charge or cost* for the temporary checking of firearms by persons carrying firearms under section 6106(b) or 6109. *Notice of the location of the facility shall be posted as required under subsection (d).*

* * *

Section 3. Section 6102 of Title 18 is amended by adding definitions to read:

§ 6102. Definitions.

Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

“Law enforcement officer.” Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person’s duties.

“Loaded.” A firearm is loaded if the firing chamber, the nondetachable magazine or, in the case of a revolver, any of the chambers of the cylinder contain ammunition capable of being fired. In the case of a firearm which utilizes a detachable magazine, the term shall mean a magazine suitable for use in said firearm which magazine contains such ammunition and has been inserted in the firearm or is in the same container or, where the container has multiple compartments, the same compartment thereof as the firearm.

* * *

Section 4. Sections 6105(a), (b), (c), (d) and (f), 6106(a) and (b), 6109(a), (f) and (h), 6110.1(b) and 6111 heading, (b), (e), (f) and (g) of Title 18 are amended to read:

§ 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.

(a) Offense defined.—

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or [any of the offenses enumerated in subsection (b) or] *whose conduct meets the criteria in subsection (c)* shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

(2) *A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.*

(b) Enumerated offenses.—The following offenses shall apply to subsection (a):

Section 908 (relating to prohibited offensive weapons).

Section 911 (relating to corrupt organizations).

Section 912 (relating to possession of weapon on school property).

Section 2502 (relating to murder).

Section 2503 (relating to voluntary manslaughter).

Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.

Section 2702 (relating to aggravated assault).

Section 2703 (relating to assault by prisoner).

Section 2704 (relating to assault by life prisoner).

Section 2709 (relating to harassment and stalking) if the offense relates to stalking.

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 2910 (relating to luring a child into a motor vehicle).

Section 3121 (relating to rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3125 (relating to aggravated indecent assault).

Section 3301 (relating to arson and related offenses).

Section 3302 (relating to causing or risking catastrophe).

Section 3502 (relating to burglary).

Section 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.

Section 3701 (relating to robbery).

Section 3702 (relating to robbery of motor vehicle).

Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.

Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.

Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.

Section 4912 (relating to impersonating a public servant) if the person is impersonating a law enforcement officer.

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness or victim).

Section 5121 (relating to escape).

Section 5122 (relating to weapons or implements for escape).

Section 5501(3) (relating to riot).

Section 5515 (relating to prohibiting of paramilitary training).

Section 6110.1 (relating to possession of firearm by minor).

Section 6301 (relating to corruption of minors).

Section 6302 (relating to sale or lease of weapons and explosives).

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

(c) Other persons.—In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):

(1) A person who is a fugitive from justice.

(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, that may be punishable by a term of imprisonment exceeding two years.

(3) A person who has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of subsection (a) shall only apply to transfers or purchases of firearms after the third conviction.

(4) A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under [sections] *section* 302, 303 [and] or 304 of the provisions of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.

(5) A person who, being an alien, is illegally or unlawfully in the United States.

(6) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provided for the confiscation of firearms during the period of time the order is in effect. ***This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the confiscation of firearms.***

(7) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under sections 2502, 2503, 2702, 2703 (relating to assault by prisoner), 2704, 2901, 3121, 3123, 3301, 3502, 3701 and 3923.

(8) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in subsection (b) with the exception of those crimes set forth in paragraph (7). This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.

(d) Exemption.—A person who has been convicted of a crime specified in subsection (a)[,] or (b) or *a person whose conduct meets the criteria in subsection (c)(1), (2), (5) or (7)* may make application to the court of common pleas of the county where the principal residence of the applicant is situated for relief from the disability imposed by this section upon the [ownership,] possession, *transfer* or control of a firearm. The court [may] *shall* grant such relief if it determines that any of the following apply:

(1) The conviction has been vacated under circumstances where all appeals have been exhausted or where the right to appeal has expired.

(2) The conviction has been the subject of a full pardon by the Governor.

(3) Each of the following conditions is met:

(i) The Secretary of the Treasury of the United States has relieved the applicant of an applicable disability imposed by Federal law upon the possession, ownership or control of a firearm as a result of the applicant's prior conviction, except that the court may waive this condition if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to applicants eligible for the relief.

(ii) A period of ten years, not including any time spent in incarceration, has elapsed since the most recent conviction of the applicant of a crime enumerated in subsection (b) or a felony violation of The Controlled Substance, Drug, Device and Cosmetic Act.

* * *

(f) Other exemptions and proceedings.—

(1) Upon application to the court of common pleas under *this* subsection [(e)] by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person [and that a period of five years has elapsed since the applicant's most recent adjudication or commitment under subsection (c)(4)].

(2) If application is made under this subsection for relief from the disability imposed under subsection (c)(6), notice of such application shall be given to the person who had petitioned for the protection from abuse order, and such person shall be a party to the proceedings. *Notice of any court order or amendment to a court order restoring firearms possession or control shall be given to the person who had petitioned for the protection from abuse order.*

(3) All hearings conducted under this subsection shall be closed.

* * *

§ 6106. Firearms not to be carried without a license.

(a) Offense defined.—~~[No person shall carry]~~ *Any person who carries* a firearm in any vehicle or *any person who carries a firearm* concealed on or about his person, except in his place of abode or fixed place of business, without a ~~[license therefor as provided in this subchapter.]~~ *valid and lawfully issued license under this chapter commits a felony of the third degree.*

(b) Exceptions.—The provisions of subsection (a) shall not apply to:

(1) Constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

(2) Members of the army, navy or marine corps of the United States or of the National Guard or organized reserves when on duty.

(3) The regularly enrolled members of any organization duly organized to purchase or receive such weapons from the United States or from this Commonwealth.

(4) Any persons engaged in target shooting with rifle, pistol, or revolver, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the cartridges or shells are carried in a separate container and the rifle, pistol or revolver is unloaded.

(5) Officers or employees of the United States duly authorized to carry a concealed firearm.

(6) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property in the discharge of such duties.

(7) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person, having in his possession, using or carrying a firearm in the usual or ordinary course of such business.

(8) Any person while carrying a firearm unloaded and in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair or back to his home or place of business, or in moving from one place of abode or business to another *or from his home to a vacation or recreational home or dwelling or back, or to recover stolen property under section 6111.1(b)(4) (relating to Pennsylvania State*

Police) or to a location to which the person has been directed to surrender firearms under 23 Pa.C.S. § 6108 (relating to relief) or back upon return of the surrendered firearm.

(9) Persons licensed to hunt, take furbearers or fish in this Commonwealth, if such persons are actually hunting, taking furbearers or fishing or are going to the places where they desire to hunt, take furbearers or fish or returning from such places.

(10) Persons training dogs, if such persons are actually training dogs during the regular training season.

(11) Any person while carrying a firearm in any vehicle, which person possesses a valid and lawfully issued license for that firearm which has been issued under the laws of the United States or any other state.

* * *

§ 6109. Licenses.

(a) Purpose of license.—A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle within this Commonwealth. **[Any person who carries a firearm concealed on or about his person or in a vehicle within this Commonwealth without a valid and lawfully issued license under this section commits a felony of the third degree.]**

* * *

(f) Term of license.—

(1) A license to carry a firearm issued under subsection (e) shall be valid throughout this Commonwealth for a period of five years unless sooner revoked.

(2) At least 60 days prior to the expiration of each license, the issuing sheriff shall send to the licensee an application for renewal of license. Failure to receive a renewal application shall not relieve a licensee from the responsibility to renew the license.

* * *

(h) Fee.—The fee for a license to carry a firearm is **[\$17.50.] \$19. This includes a renewal notice processing fee of \$1.50.** This includes an administrative fee of \$5 under section 14(2) of the act of July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act. **No fee other than that provided by this paragraph or the Sheriff Fee Act may be assessed by the sheriff for the performance of any background check made pursuant to this act.** The fee is payable to the sheriff to whom the application is submitted and is payable at the time of application for the license. Except for the administrative fee of \$5 under section 14(2) of the Sheriff Fee Act, all other fees shall be refunded if the application is denied but shall not be refunded if a license is issued and subsequently revoked. A person who sells or attempts to sell a license to carry a firearm for a fee in excess of the amounts fixed under this subsection commits a summary offense.

* * *

§ 6110.1. Possession of firearm by minor.

* * *

(b) Exception.—Subsection (a) shall not apply to a person under 18 years of age [who is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and]:

(1) *who is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and the minor is engaged in lawful activity, including [lawfully hunting or trapping,] safety training, lawful target shooting [at an established range or], engaging in an organized competition involving the use of a firearm or the firearm is unloaded and the minor is transporting it for a lawful purpose; or*

[(2) the firearm is unloaded and the minor is transporting it for a lawful purpose.]

(2) who is lawfully hunting or trapping in accordance with 34 Pa.C.S. (relating to game).

* * *

§ 6111. [Firearm ownership] Sale or transfer of firearms.

* * *

(b) Duty of seller.—No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

(1) Obtained a completed application/record of sale from the potential buyer or transferee to be filled out in quadruplicate, the original copy to be sent to the Pennsylvania State Police, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer, one copy to be retained by the purchaser or transferee and one copy to be sent to the chief of police or sheriff of the county or head of the police force or police department of the city in which the purchaser or transferee resides. The form of this application/record of sale shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and, in the case of a firearm as defined in section 6102 (relating to definitions), the caliber, length of barrel, make, model, manufacturer's number and the firearm to be purchased or transferred. When delivered to the purchaser or transferee, the firearm shall be securely wrapped and shall be unloaded.]

(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer and one copy to be retained by the purchaser or transferee. The form of this application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased or transferred.

(1.1) For purposes of a firearm which exceeds the barrel and related lengths set forth in section 6102, obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer and one copy to be retained by the purchaser or transferee. The form of the application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. For purposes of conducting the criminal history, juvenile delinquency and mental health records background check which shall be completed within ten days of receipt of the information from the dealer, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee and the date of application. No information regarding the type of firearm need be included other than an indication that the firearm exceeds the barrel lengths set forth in section 6102. Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed

within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

(1.2) Fees collected under paragraph (3) and section 6111.2 (relating to firearm sales surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.

(1.3) In addition to the criminal penalty under section 6119 (relating to violation penalty), any person who knowingly and intentionally maintains or fails to destroy any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to paragraphs (1.1) and (1.4) shall be subject to a civil penalty of up to \$250 per entry or failure to destroy.

(1.4) Prior to January 1, 1997, and following implementation of the instantaneous records check by the Pennsylvania State Police on or before October 11, 1999, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police.

(2) Inspected photoidentification of the potential purchaser or transferee, including, but not limited to, a driver's license, official Pennsylvania photoidentification card or official government photoidentification card. In the case of a potential buyer or transferee who is a member of a recognized religious sect or community whose tenets forbid or discourage the taking of photographs of members of that sect or community, a seller shall accept a valid-without-photo driver's license or a combination of documents, as prescribed by the Pennsylvania State Police, containing the applicant's name, address, date of birth and the signature of the applicant.

(3) Requested by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health record check. The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per buyer or transferee.

(4) Received a unique approval number for that inquiry from the Pennsylvania State Police and recorded the date and the number on the application/record of sale form.

(5) Issued a receipt containing the information from paragraph (4), including the unique approval number of the purchaser. This receipt shall

be prima facie evidence of the purchaser's or transferee's compliance with the provisions of this section.

(6) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105, no information received via telephone following the implementation of the instantaneous background check system from a purchaser or transferee who has received a unique approval number shall be retained by the Pennsylvania State Police.

* * *

(e) Nonapplicability of section.—[As provided by section 6118 (relating to antique firearms), this] This section shall not apply to the following:

(1) Any firearm manufactured on or before 1898[, included any].

(2) Any firearm with a matchlock, flintlock[, or percussion cap [or similar] type of ignition system.

[(2)] (3) Any replica of any firearm described in paragraph (1) if the replica:

(i) is not designed or redesigned to use rimfire or conventional center fire fixed ammunition; or

(ii) uses rimfire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(f) Application of section.—

(1) For the purposes of this section only, except as provided by paragraph (2), "firearm" shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(2) The provisions contained in subsections (a) and (c) shall only apply to pistols or revolvers with a barrel length of less than 15 inches, any shotgun with a barrel length of less than 18 inches, any rifle with a barrel length of less than 16 inches or any firearm with an overall length of less than 26 inches.

(3) The provisions contained in subsection (a) shall not apply to any law enforcement officer [as defined in section 5515 (relating to prohibiting of paramilitary training)] whose current identification as a law enforcement officer shall be construed as a valid license to carry a firearm or any person who possesses a valid license to carry a firearm under section 6109 (relating to licenses).

(4) (i) The provisions of subsection (a) shall not apply to any person who presents to the seller or transferor a written statement issued by the official described in subparagraph (iii) during the ten-day period ending on the date of the most recent proposal of such transfer or sale by the transferee or purchaser stating that the transferee or purchaser requires access to a firearm because of a threat to the life of the transferee or

purchaser or any member of the household of that transferee or purchaser.

(ii) The issuing official shall notify the applicant's local police authority that such a statement has been issued. In counties of the first class the chief of police shall notify the police station or substation closest to the applicant's residence.

(iii) The statement issued under subparagraph (ii) shall be issued by the district attorney, or his designee, of the county of residence [of] *if the transferee or purchaser. If such county of residence is a county of the first class, the issuing official shall be the chief of police, or his designee, having jurisdiction in that county.* *resides in a municipality where there is no chief of police. Otherwise, the statement shall be issued by the chief of police in the municipality in which the purchaser or transferee resides.*

(g) Penalties.—

(1) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm in violation of this section commits a misdemeanor of the second degree.

(2) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm under circumstances intended to provide a firearm to any person, purchaser or transferee who is unqualified or ineligible to control, possess or use a firearm under this chapter commits a felony of the third degree and shall in addition be subject to revocation of the license to sell firearms for a period of three years.

(3) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally requests a criminal history, juvenile delinquency or mental health record check from the Pennsylvania State Police *under this chapter* for any purpose other than compliance with this chapter or knowingly and intentionally disseminates any criminal history, juvenile delinquency or mental health record information to any person other than the subject of the information commits a felony of the third degree.

(4) Any person, purchaser or transferee who in connection with the purchase, delivery or transfer of a firearm under this chapter knowingly and intentionally makes any materially false oral or written statement or willfully furnishes or exhibits any false identification intended or likely to deceive the seller, licensed dealer or licensed manufacturer commits a felony of the third degree.

(5) Notwithstanding section 306 (relating to liability for conduct of another; complicity) or any other statute to the contrary, any person, licensed importer, licensed dealer or licensed manufacturer who knowingly and intentionally sells, delivers or transfers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used

in the commission of a crime or attempt to commit a crime shall be criminally liable for such crime or attempted crime.

(6) Notwithstanding any act or statute to the contrary, any person, licensed importer, licensed manufacturer or licensed dealer who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by any person so injured by such crime or attempted crime.

* * *

Section 5. Section 6111.1(b), (d), (e), (f), (g), (h) and (i) of Title 18 are amended and the section is amended by adding subsections to read:

§ 6111.1. Pennsylvania State Police.

* * *

(b) Duty of Pennsylvania State Police.—

(1) Upon receipt of a request for a criminal history, juvenile delinquency history and mental health record check of the potential purchaser or transferee, the Pennsylvania State Police shall immediately during the licensee's call or by return call forthwith:

(i) review the Pennsylvania State Police criminal history and fingerprint records to determine if the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law;

(ii) review the juvenile delinquency and mental health records of the Pennsylvania State Police to determine whether the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law; and

(iii) inform the licensee making the inquiry either:

(A) that **[its criminal history records demonstrate that the potential purchaser or transferee is so] *the potential purchase or transfer is prohibited***; or

(B) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar **[emergency] event** beyond the control of the Pennsylvania State Police, the Pennsylvania State Police shall immediately notify the requesting licensee of the reason for and estimated length of the delay. ***If the failure or event lasts for a period exceeding 48 hours, the dealer shall not be subject to any penalty for failure to complete an instantaneous records check for the remainder of the failure or similar event, but the dealer shall obtain a completed application/record of sale following the provisions of section 6111(b)(1) and (1.1) (relating to sale or transfer of firearms) as if an instantaneous records check has not been established for any sale or transfer of a firearm for the purpose of a subsequent background check.***

(3) The Pennsylvania State Police shall fully comply, execute and enforce the directives of this section within four years of the enactment of this subsection.

(4) The Pennsylvania State Police and any local law enforcement agency shall make all reasonable efforts to determine the lawful owner of any firearm confiscated by the Pennsylvania State Police or any local law enforcement agency and return said firearm to its lawful owner *if the owner is not otherwise prohibited from possessing the firearm*. When a court of law has determined that the Pennsylvania State Police or any local law enforcement agency have failed to exercise the duty under this subsection, reasonable attorney fees shall be awarded to any lawful owner of said firearm who has sought judicial enforcement of this subsection.

* * *

(d) Distribution.—The Pennsylvania State Police shall **[distribute copies] provide, without charge, summaries** of uniform firearm laws and firearm safety brochures pursuant to section 6125 (relating to distribution of uniform firearm laws and firearm safety brochures).

(e) Challenge to records.—Any person who is denied the right to receive, sell, transfer, possess, carry, manufacture or purchase a firearm as a result of the procedures established by this section may challenge the accuracy of that person's criminal history, juvenile delinquency history or mental health record under the procedures of [2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies)] *Chapter 91 (relating to criminal history record information)*.

(f) Notification of mental health commitment.—Notwithstanding any statute to the contrary, judges of the courts of common pleas shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who has been adjudicated incompetent or who has been involuntarily **[treated as described in section 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).]** *committed to a mental institution for inpatient care and treatment under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or who has been involuntarily treated as described in section 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms)*. *The notification shall be transmitted by the judge to the Pennsylvania State Police within seven days of the adjudication, commitment or treatment.*

(g) **[Mental health treatment professionals.—**Notwithstanding any statute to the contrary, any mental health treatment professional who has been licensed to provide mental health services to the general public pursuant to the laws of this Commonwealth may in the exercise of that professional's professional judgment notify any law enforcement official of any individual under that professional's care who that professional reasonably believes to be a danger to that individual or others. Mental health professionals who make such a report in good faith shall be

immune from any civil or criminal liability that may arise from their decision to report an individual under their care.] *Review by court.*—

(1) *Upon receipt of a copy of the order of a court of competent jurisdiction which vacates a final order or an involuntary certification issued by a mental health review officer, the Pennsylvania State Police shall expunge all records of the involuntary treatment received under subsection (f).*

(2) *A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged. A petition filed under this subsection shall toll the 60-day period set forth under section 6105(a)(2).*

(3) *The Pennsylvania State Police shall expunge all records of an involuntary commitment of an individual who is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under section 302(b) of the Mental Health Procedures Act and the physician's determination that no severe mental disability existed pursuant to section 302(b) of the Mental Health Procedures Act. The physician shall provide signed confirmation of the determination of the lack of severe mental disability following the initial examination under section 302(b) of the Mental Health Procedures Act to the Pennsylvania State Police.*

(h) *Juvenile registry.*—

(1) The contents of law enforcement records and files compiled under 42 Pa.C.S. § 6308 (relating to law enforcement records) concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts which constitute any offense enumerated in section 6105.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts which constitute an offense enumerated in section 6105 and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

[(iii) The child is a dangerous juvenile offender.]

(2) Notwithstanding any provision of this subsection, the contents of law enforcement records and files concerning any child adjudicated delinquent for the commission of any criminal activity described in paragraph (1) shall be recorded in the registry of the Pennsylvania State Police for the limited purposes of this chapter.

(i) Reports.—The Pennsylvania State Police shall annually compile and report to the General Assembly, on or before December 31, the following information for the previous year:

- (1) number of firearm sales, *including the types of firearms*;
- (2) number of applications for sale of firearms denied, *number of challenges of the denials and number of final reversals of initial denials*;
- (3) summary of the Pennsylvania State Police's activities, including the average time taken to complete a criminal history, juvenile delinquency history or mental health record check; and
- (4) uniform crime reporting statistics compiled by the Pennsylvania State Police based on the National Incident-based Reporting System.

* * *

(j.1) Delinquency and mental health records.—The provisions of this section which relate to juvenile delinquency and mental health records checks shall be applicable when the data has been made available to the Pennsylvania State Police but not later than October 11, 1999.

(j.2) Records check.—The provisions of this section which relate to the instantaneous records check conducted by telephone shall be applicable 30 days following notice by the Pennsylvania State Police pursuant to section 6111(a)(2)¹.

* * *

Section 6. Sections 6111.2, 6111.3 heading, 6113(a), 6117(a), 6118, 6123 and 6125 of Title 18 are amended to read:

§ 6111.2. Firearm sales surcharge.

(a) Surcharge imposed.—There is hereby imposed on each sale of a firearm subject to tax under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, an additional surcharge of \$3. This shall be referred to as the Firearm [Ownership] Sale Surcharge. All moneys received from this surcharge shall be deposited in the Firearm [Ownership] Instant Records Check Fund.

(b) Increases or decreases.—Five years from the effective date of this subsection, and every five years thereafter, the Pennsylvania State Police shall provide such information as necessary to the Legislative Budget and Finance Committee for the purpose of reviewing the need to increase or decrease the instant check fee. The committee shall issue a report of its findings and recommendations to the General Assembly for a statutory change in the fee.

(c) Revenue sources.—Funds received under the provisions of this section and section 6111(b)(3) (relating to [firearm ownership] sale or transfer of firearms), as estimated and certified by the Secretary of Revenue, shall be deposited within five days of the end of each quarter into the fund. [The provisions of Article II of the Tax Reform Code of 1971 shall apply to the surcharge imposed by subsection (a).]

¹subsection (a)(2)" in enrolled bill.

(d) Definition.—As used in this section only, the term “firearm” shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosion or the frame or receiver of any such weapon.

§ 6111.3. Firearm [Ownership] *Instant Records Check Fund*.

* * *

§ 6113. Licensing of dealers.

(a) General rule.—The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Pennsylvania State Police, effective for [not more than] three years from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in section 6111 (relating to [firearm ownership] *sale or transfer of firearms*), for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this subchapter.

(1) The business shall be carried on only upon the premises designated in the license or at a lawful gun show or meet.

(2) The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No firearm shall be sold in violation of any provision of this subchapter.

(4) No firearm shall be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of the purchaser's identity.

(5) A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the information required by section 6111.

(6) No firearm as defined in section 6102 (relating to definitions) shall be displayed in any part of any premises where it can readily be seen from the outside. In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police by the licensee during the hours when the licensee is closed for business.

(7) The dealer shall possess all applicable current revenue licenses.

* * *

§ 6117. Altering or obliterating marks of identification.

(a) Offense defined.—No person shall change, alter, remove, or obliterate the manufacturer's number [or other mark of identification] integral to the frame or receiver of any firearm which shall have the same meaning as

provided in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

* * *

§ 6118. Antique firearms.

(a) *General rule.*—This subchapter shall not apply to antique firearms.

(b) *Exception.*—Subsection (a) shall not apply to the extent that such antique firearms, reproductions or replicas of firearms are concealed weapons as provided in section 6106 (relating to firearms not to be carried without a license), nor shall it apply to the provisions of section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) if such antique firearms, reproductions or replicas of firearms are suitable for use.

(c) *Definition.*—As used in this section, the term “antique firearm” means:

(1) **[any firearm, including any] Any** firearm with a matchlock, flintlock[,], **or** percussion cap [or similar] type of ignition system[,], **manufactured on or before 1898; and**.

(2) *Any firearm manufactured on or before 1898.*

[(2) any] (3) Any replica of any firearm described in paragraph **[(1)] (2)** if such replica:

(i) is not designed or redesigned for using rimfire or conventional center fire fixed ammunition; or

(ii) uses rimfire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

§ 6123. Waiver of disability or pardons.

A waiver of disability from Federal authorities as provided for in 18 U.S.C. § 925 (relating to exceptions; relief from disabilities), a full pardon from the Governor or an overturning of a conviction shall remove any corresponding disability under this subchapter except the disability under section 6105 (relating to **[former convict not to own a firearm, etc.] persons not to possess, use, manufacture, control, sell or transfer firearms**).

§ 6125. Distribution of uniform firearm laws and firearm safety brochures.

[(a) General rule.—It shall be the duty of the Pennsylvania State Police to distribute to every licensed firearm dealer in this Commonwealth copies of this subchapter. A copy of this subchapter shall be provided without charge by every licensed firearm dealer to every firearm, shotgun or rifle purchaser.

(b) Safety brochures.—It shall be the duty of the Pennsylvania State Police to distribute to every licensed firearm dealer in this Commonwealth copies of firearm safety brochures. The brochures shall be written by the Pennsylvania State Police with the cooperation of the Pennsylvania Game Commission and written to provide for the safe use and operation of firearms, shotguns or rifles. The brochures shall be provided, without charge, by every licensed firearm dealer to every

firearm, shotgun or rifle purchaser.] *It shall be the duty of the Pennsylvania State Police beginning January 1, 1996, to distribute to every licensed firearm dealer in this Commonwealth firearms safety brochures at no cost to the dealer. The brochures shall be written by the Pennsylvania State Police, with the cooperation of the Pennsylvania Game Commission, and shall include a summary of the major provisions of this subchapter, including, but not limited to, the duties of the sellers and purchasers and the transferees of firearms. The brochure or a copy thereof shall be provided without charge to each purchaser.*

Section 7. Title 18 is amended by adding sections to read:

§ 6126. Firearms Background Check Advisory Committee.

(a) Establishment.—There is hereby established the Firearms Background Check Advisory Committee which shall consist of six members as follows:

- (1) The Governor or a designee.*
- (2) The Attorney General or a designee.*
- (3) The Majority Leader of the Senate or a designee.*
- (4) The Minority Leader of the Senate or a designee.*
- (5) The Majority Leader of the House of Representatives or a designee.*
- (6) The Minority Leader of the House of Representatives or a designee.*

(b) Duties.—To facilitate compliance with this chapter and the intent thereof, the Firearms Background Check Advisory Committee shall, as follows:

(1) Review the operations and procedures of the Pennsylvania State Police relating to the implementation and administration of the criminal history, juvenile delinquency and mental health records background checks.

(2) Advise the Pennsylvania State Police relating to the development and maintenance of the instantaneous records check system.

(3) Provide annual reports to the Governor and the General Assembly on the advisory committee’s findings and recommendations, including discussions concerning conformance with the preamble of the act of June 13, 1995 (1st Sp.Sess., P.L.1024, No.17), entitled, “An act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the possession of firearms; establishing a selected Statewide juvenile offender registry; and making an appropriation.”

(c) Terms.—Members or their designees shall serve a term of office concurrent with the term of office for which the member was elected. Any vacancy shall be filled by the appointing authority.

(d) Chairperson.—The Governor shall appoint the chairperson of the advisory committee.

(e) Expiration.—This section shall expire July 1, 2001, or at the end of two years following the implementation of the instant records check, whichever is sooner.

§ 6315. Selling or furnishing butane to minors.

(a) Offense defined.—A person commits a summary offense if he knowingly sells or knowingly furnishes or purchases with the intent to sell or furnish butane to a person who is less than 18 years of age, except where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the person who is less than 18 years of age.

(b) Penalty.—A person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not less than \$250 for the first violation and a fine of \$500 for each subsequent violation.

(c) Definition.—As used in this section, the term “butane” means any product which contains 90% by weight or more of n-butane, isobutane or both. It does not include products which contain n-butane, isobutane or both as a secondary component, or within the formulation as a solvent or propellant.

Section 8. Sections 7313 and 7314 of Title 18 are amended to read:

§ 7313. Buying or exchanging Federal food order coupons, stamps, authorization cards or access devices.

(a) Offense defined.—A person [is guilty of a misdemeanor of the third degree] commits the offense of buying or exchanging Federal food order coupons, stamps, authorization cards or access devices if he, not being authorized to do so by the United States Department of Agriculture, [shall buy or exchange] buys or exchanges Federal food order coupons, stamps, authorization cards or access devices for currency, or if he [shall accept or cause] accepts or causes to be accepted Federal food order coupons, stamps, authorization cards or access devices in exchange for any merchandise or article except food, as defined by the United States Department of Agriculture, or Federal food order coupons, stamps, authorization cards or access devices in exchange for merchandise or articles, not defined by the United States Department of Agriculture to be surplus foods.

(b) Grading.—A person who violates this section commits a felony of the third degree if the amount involved is \$1,000 or more. If the amount involved is less than \$1,000, the person commits a misdemeanor of the first degree. Amounts involved in buying or exchanging Federal food order coupons, stamps, authorization cards or access devices committed pursuant to one scheme or course of conduct, whether from the same person or several persons, shall be aggregated in determining the grade of the offense.

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Access device.” The Pennsylvania ACCESS card or electronic benefit transfer card.

“Authorization card.” *The paper authorization to participate that a person signs and then exchanges for the designated amount of food coupons at a bank.*

§ 7314. Fraudulent traffic in food orders.

(a) **Offense defined.**—A person [is guilty of a summary offense] *commits the offense of fraudulent traffic in food orders* if he, whether acting for himself or for another, directly or indirectly, furnishes or delivers to any person money, merchandise, or anything other than food, on or in exchange for a food order, or furnishes or delivers food on or in exchange for a food order to any person, other than the original recipient of the order, or in quantities or for prices other than those itemized on the food order at the time the food is furnished or delivered.

(a.1) **Grading.**—*A person who violates this section commits a felony of the third degree if the amount involved is \$1,000 or more. If the amount involved is less than \$1,000, the person commits a misdemeanor of the first degree. Amounts involved in fraudulent traffic in food orders committed pursuant to one scheme or course of conduct, whether from the same person or several persons, shall be aggregated in determining the grade of the offense.*

(b) **Additional penalty.**—In addition to the penalties otherwise prescribed, the defendant shall also be [adjudged] *ordered* to pay to the agency which shall have issued such food order, the face amount thereof.

(c) **Exception.**—Subsection (a) of this section shall not apply to the negotiation of a food order after food to the full amount of the order shall have been furnished thereon to the original recipient of the order.

(d) **Definition.**—As used in this section, the term “food order” means any order issued by or under the authority of any public relief or assistance agency, authorizing the furnishing and delivery of food to any person therein named or described.

Section 9. Title 18 is amended by adding a section to read:

§ 7328. ***Operation of certain establishments prohibited without local option.***

(a) **Offense defined.**—*A person commits a misdemeanor of the third degree if that person operates an establishment commonly referred to as a bottle club in a municipality or part of a split municipality where the operation of such establishments has been disapproved by the voters in accordance with subsection (b). The provisions of this subsection shall not apply to the first 30-day time period following the adoption of the disapproval referendum under subsection (b).*

(b) **Local option; election to be held.**—

(1) *In any municipality or any part of a municipality where such municipality is split so that each part is separated by another municipality, an election may be held on the date of the primary election immediately preceding any general or municipal election, but not more than once in four years, to determine the will of the electors with respect*

to prohibiting the operation, within the limits of the municipality or part of a split municipality, of establishments commonly referred to as bottle clubs. Where an election shall have been held at the primary election preceding a general or municipal election in any year, another election may be held under the provisions of this subsection at the primary election occurring the fourth year after such prior election. Whenever electors equal to at least 25% of the highest vote cast for any office in the municipality or part of a split municipality at the last preceding general election shall file a petition with the county board of elections of the county, or the governing body of the municipality adopts by majority vote a resolution to place the question on the ballot and a copy of the resolution is filed with the board of elections of the county, for a referendum on the question of prohibiting the operation of establishments commonly referred to as bottle clubs, the said county board of elections shall cause a question to be placed on the ballot or on the voting machine board and submitted at the primary election immediately preceding the general or municipal election. The question shall be in the following form:

Do you favor the prohibition of the operation of establishments, commonly referred to as bottle clubs in _____ of _____ ?

(2) In the case of a tie vote, the status quo shall obtain. If a majority of the electors voting on the question votes "yes," then an establishment commonly referred to as a bottle club shall not be operated in the municipality or part of a split municipality after 30 days from the certification of the vote on the question, but, if a majority of the electors voting on the question votes "no," then the operation of these establishments shall be permitted in the municipality or part of a split municipality unless and until at a later election a majority of the voting electors votes "yes" on the question.

(3) Proceedings under this subsection shall be in accordance with the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(c) Definition.—As used in this section, the term "bottle club" means an establishment operated for profit or pecuniary gain, which admits patrons upon the payment of a fee, has a capacity for the assemblage of 20 or more persons, and in which alcoholic liquors, alcohol or malt or brewed beverages are not legally sold but where alcoholic liquors, alcohol or malt or brewed beverages are either provided by the operator or agents or employees of the operator for consumption on the premises or are brought into or kept at the establishment by the patrons or persons assembling there for use and consumption. The term shall not include a licensee under the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, or any organization as set forth in section 6 of the act of December 19, 1990 (P.L.1200, No.202), known as the Solicitation of Funds for Charitable Purposes Act.

Section 10. As much of 42 Pa.C.S. § 6308(d)(1)(i) and (ii) as reads “an act or acts which constitute a crime of violence as defined in 18 Pa.C.S. § 6102 (relating to definitions) or” and (d)(2) are repealed.

Section 11. Until such time as the amendatory provisions of 18 Pa.C.S. § 6111(b) which are set forth in this act take effect, the Pennsylvania State Police shall only apply the provision of 18 Pa.C.S. § 6111(b)(1) as it existed on the day prior to the effective date of this act to any firearm which meets the standards in the definition of “firearm” set forth in 18 Pa.C.S. § 6102.

Section 12. Any license which was previously issued under 18 U.S.C. § 923 to sell firearms which has not been revoked or suspended shall serve as a valid authorization to sell any firearm as defined in 18 Pa.C.S. § 6113. The provisions of this section shall no longer be applicable after January 1, 1996, or the expiration date for any license issued under 18 U.S.C. § 923, whichever is later in time.

Section 13. This act shall take effect as follows:

(1) The addition of the definition of “police officer” in 18 Pa.C.S. § 103 shall take effect in 60 days.

(2) The addition of 18 Pa.C.S. § 6111(b)(1.1) shall take effect January 1, 1997.

(3) The addition of 18 Pa.C.S. § 6126 shall take effect July 1, 1996.

(4) The amendment or addition of 18 Pa.C.S. §§ 6315, 7313 and 7314 shall take effect in 60 days.

(5) The addition of 18 Pa.C.S. § 7328 shall take effect immediately.

(6) The remainder of this act shall take effect immediately.

APPROVED—The 22nd day of November, A.D. 1995.

THOMAS J. RIDGE