

No. 1997-5

AN ACT

HB 149

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for firearms and for the expungement of certain arrest records relating to sexual offenses.

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

Section 1. Sections 6105(f), 6106(a) and (b), 6109(a), 6111, 6111.1(b)(2) and (k), 6112 and 6122(a) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

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

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(f) Other exemptions and proceedings.—

(1) Upon application to the court of common pleas under this subsection 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.

(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 *unless otherwise requested to be open by the applicant.*

*(4) The owner of any seized or confiscated firearms shall be provided with a signed and dated written receipt by the appropriate law enforcement agency. This receipt shall include, but not limited to, a detailed identifying description indicating the serial number and condition of the firearm. In addition, the appropriate law enforcement agency shall be liable to the lawful owner of said confiscated or seized firearm for any loss, damage or substantial decrease in value of said*

*firearm that is a direct result of a lack of reasonable care by the appropriate law enforcement agency.*<sup>1</sup>

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

(a) Offense defined.—[Any]

(1) *Except as provided in paragraph (2), 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 valid and lawfully issued license under this chapter commits a felony of the third degree.*

(2) *A person who is otherwise eligible to possess a<sup>2</sup> valid license under this chapter but 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 valid and lawfully issued license and has not committed any other criminal violation commits a misdemeanor of the first 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

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<sup>1</sup>"agency" omitted in enrolled bill.

<sup>2</sup>"a" omitted in enrolled bill.

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.

*(12) A person who has a lawfully issued license to carry a firearm pursuant to section 6109 (relating to licenses) and that said license expired within six months prior to the date of arrest and that the individual is otherwise eligible for renewal of the license.*

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#### § 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**] *throughout* this Commonwealth.

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#### § 6111. Sale or transfer of firearms.

(a) Time and manner of delivery.—

(1) Except as provided in paragraph (2), no seller shall deliver a firearm to the purchaser or transferee thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(2) Thirty days after publication in the Pennsylvania Bulletin that the Instantaneous Criminal History Records Check System has been established in accordance with the Brady Handgun Violence Prevention Act (Public Law 103-159, 18 U.S.C. § 921 et seq.), no seller shall deliver a firearm to the purchaser thereof until the provisions of this section have been satisfied, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(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) 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 *for a period of 20 years* and one copy to be [retained by] *provided to* 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) On and after the earlier of the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented or the date of July 1, 1998, all of the following shall apply:*

*(i) 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 for a period of 20 years and one copy to be [retained by] provided to the purchaser or transferee.*

*(ii) 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.*

*(iii) 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.*

*(iv) 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.*

*(v) 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) *or violates section 6111.4* shall be subject to a civil penalty of [up to] \$250 per *violation*, 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.

(c) Duty of other persons.—Any person who is not a licensed importer, manufacturer or dealer and who desires to sell or transfer a firearm to another unlicensed person shall do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office, the latter of whom shall follow the procedure set forth in this section as if he were the seller of the firearm. The provisions of this section shall not apply to transfers between spouses or to transfers between a parent and child or to transfers between grandparent and grandchild.

(d) Defense.—Compliance with the provisions of this section shall be a defense to any criminal complaint under the laws of this Commonwealth *or other claim or cause of action under this chapter* arising from the sale or transfer of any firearm.

(e) Nonapplicability of section.—This section shall not apply to the following:

(1) Any firearm manufactured on or before 1898.

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

(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 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 if the transferee or purchaser 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<sup>1</sup> mental health record check *or other confidential information pursuant to section 6109* from the Pennsylvania State Police *or other law enforcement agency* under this chapter for any purpose other than compliance with this chapter or knowingly and intentionally

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<sup>1</sup>"[or]," in enrolled bill.

disseminates any criminal history, juvenile delinquency or<sup>1</sup> mental health record [**information**] *or other confidential information pursuant to section 6109* 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.

(h) Subsequent violation penalty.—

(1) A second or subsequent violation of this section shall be a felony of the second degree and shall be punishable by a mandatory minimum sentence of imprisonment of five years. A second or subsequent offense shall also result in permanent revocation of any license to sell, import or manufacture a firearm.

(2) Notice of the applicability of this subsection to the defendant [**shall not be required prior to conviction, but**] *and* reasonable notice of the Commonwealth's intention to proceed under this section shall be provided [**after conviction and before sentencing.**] *prior to trial*. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

(3) There shall be no authority for a court to impose on a defendant to which this subsection is applicable a lesser sentence than provided for in paragraph (1), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from

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<sup>1</sup>"[or]," in enrolled bill.



imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(4) If a sentencing court refuses to apply this subsection where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this subsection.

(i) Confidentiality.—**[Information furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure.]** *All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.*

§ 6111.1. Pennsylvania State Police.

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(b) Duty of Pennsylvania State Police.—

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(2) In the event of electronic failure, *scheduled computer downtime* or similar 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] completing a transaction absent the completion of 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.

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(k) **[Definition.—For the purposes of this section only, the term “firearm” shall have the same meaning as in section 6111.2 (relating to firearm sales surcharge).]** *Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

**“Firearm.”** *The term shall have the same meaning as in section 6111.2 (relating to firearm sales surcharge).*

**“Physician.”** *Any licensed psychiatrist or clinical psychologist as defined in the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.*

§ 6112. Retail dealer required to be licensed.

No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm *as defined in section 6113(d) (relating to licensing of dealers)* without being licensed as provided in this [subchapter] chapter.

§ 6122. Proof of license and exception.

(a) General rule.—When carrying a firearm concealed on or about one’s person or in a vehicle, an individual licensed to carry a firearm shall, upon lawful demand of a law enforcement officer, produce the license for inspection. *Failure to produce such license either at the time of arrest or at the preliminary hearing shall create a rebuttable presumption of nonlicensure.*

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Section 2. Section 6141 of Title 18 is repealed.

Section 3. Title 18 is amended by adding a section to read:

§ 6141.1. *Purchase of rifles and shotguns outside this Commonwealth.*

*Nothing in this chapter shall be construed to prohibit a person in this Commonwealth who may lawfully purchase, possess, use, control, sell, transfer or manufacture a firearm which exceeds the barrel and related lengths set forth in section 6102 (relating to definitions) from lawfully purchasing or otherwise obtaining such a firearm in a jurisdiction outside this Commonwealth.*

Section 4. Section 9122 of Title 18 is amended by adding a subsection to read:

§ 9122. Expungement.

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(b.1) *Prohibition.*—A court shall not have the authority to order expungement of the defendant’s arrest record where the defendant was placed on Accelerated Rehabilitative Disposition for a violation of any offense set forth in any of the following where the victim is under 18 years of age:

*Section 3121 (relating to rape).*

*Section 3122.1 (relating to statutory sexual assault).*

*Section 3123 (relating to involuntary deviate sexual intercourse).*

*Section 3124.1 (relating to sexual assault).*

*Section 3125 (relating to aggravated indecent assault).*

*Section 3126 (relating to indecent assault).*

*Section 5902(b) (relating to prostitution and related offenses).*

*Section 5903 (relating to obscene and other sexual materials and performances).*

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**Section 5.** This act shall take effect as follows:

- (1) The amendment of 18 Pa.C.S. § 6111(b)(1.1) shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

**APPROVED—**The 22nd day of April, A.D. 1997.

**THOMAS J. RIDGE**