

No. 1998-70

## AN ACT

SB 543

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for neglect of care-dependent people for control of firearms, for firearms licenses, for firearms sale and transfer, for functions of the Pennsylvania State Police relative to firearms, for the Firearms Instant Records Check Fund and for licensing of firearms dealers; and providing for municipal housing code avoidance and for control of alarm devices and automatic dialing devices.

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

Section 1. Section 2713(d)(2) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2713. Neglect of care-dependent person.

\* \* \*

(d) Enforcement.—

\* \* \*

(2) In addition to the authority conferred upon the Attorney General under the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and institute criminal proceedings for any violation of this section [or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state]. A person charged with a violation of this section by the Attorney General shall not have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

\* \* \*

Section 2. Section 6105(c)(4) of Title 18 is amended and the section is amended by adding a subsection to read:

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

\* \* \*

(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):

\* \* \*

(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 section 302, 303 or 304 of the provisions of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act. ***This paragraph shall not apply to any proceeding under section 302 of the Mental Health Procedures Act unless the examining physician has issued a certification that inpatient care was necessary or that the person was committable.***

\* \* \*

***(j) Copy of order to State Police.—If the court grants relief from the disabilities imposed under this section, a copy of the order shall be sent by the prothonotary within ten days of the entry of the order to the Pennsylvania State Police and shall include the name, date of birth and Social Security number of the individual.***

Section 3. Section 6109(e)(1)(xii) and (i) of Title 18 are amended to read: § 6109. Licenses.

\* \* \*

(e) Issuance of license.—

(1) 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 and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license. A license shall not be issued to any of the following:

\* \* \*

(xii) An individual who is a fugitive from justice. ***This subparagraph does not apply to an individual whose fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles).***

\* \* \*

(i) Revocation.—A license to carry firearms may be revoked by the issuing authority for good cause. ***A license to carry firearms shall be revoked by the issuing authority for any reason stated in subsection (e)(1) which occurs during the term of the permit.*** Notice of revocation shall be in writing and shall state the specific reason for revocation. Notice shall be sent by certified mail, and, at that time, a copy shall be forwarded to the commissioner. An individual whose license is revoked shall surrender the license to the issuing authority within five days of receipt of the notice. ***An individual whose license is revoked may appeal to the court of common pleas for the judicial district in which the individual resides.*** An individual who violates this section commits a summary offense.

\* \* \*

Section 4. Section 6111(b)(1.1) introductory paragraph and (i), (1.4) and (3) and (g)(3) of Title 18 are amended and subsections (b) and (g) are amended by adding paragraphs to read:

§ 6111. 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:

\* \* \*

(1.1) 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] *In the event of an electronic failure under section 6111.1(b)(2) (relating to Pennsylvania State Police)*** 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 provided to the purchaser or transferee.

\* \* \*

(1.4) **[Prior to January 1, 1997, and following]** *Following* implementation of the instantaneous records check by the Pennsylvania State Police on or before **[October 11] *December 31***, 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.

\* \* \*

(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 purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser.*** The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per buyer or transferee.

\* \* \*

(7) ***For purposes of the enforcement of 18 U.S.C. § 922(d)(9), (g)(1) and (s)(1) (relating to unlawful acts), in the event the criminal history or juvenile delinquency background check indicates a conviction for a***

*misdemeanor that the Pennsylvania State Police cannot determine is or is not related to an act of domestic violence, the Pennsylvania State Police shall issue a temporary delay of the approval of the purchase or transfer. During the temporary delay, the Pennsylvania State Police shall conduct a review or investigation of the conviction with courts, local police departments, district attorneys and other law enforcement or related institutions as necessary to determine whether or not the misdemeanor conviction involved an act of domestic violence. The Pennsylvania State Police shall conduct the review or investigation as expeditiously as possible. No firearm may be transferred by the dealer to the purchaser who is the subject of the investigation during the temporary delay. The Pennsylvania State Police shall notify the dealer of the termination of the temporary delay and either deny the sale or provide the unique approval number under paragraph (4).*

\* \* \*

(g) Penalties.—

\* \* \*

(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 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 disseminates any criminal history, juvenile delinquency or mental health record 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.

*(3.1) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree.*

\* \* \*

Section 5. Section 6111.1(b)(3) and (e) of Title 18 are amended and the section is amended by adding a subsection to read:

§ 6111.1. Pennsylvania State Police.

\* \* \*

(b) Duty of Pennsylvania State Police.—

\* \* \*

(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.] as follows:

*(i) The instantaneous background check for firearms as defined in section 6102 (relating to definitions) shall begin on July 1, 1998.*

*(ii) The instantaneous background check for firearms that exceed the barrel lengths set forth in section 6102 shall begin following notice published in the Pennsylvania Bulletin on the date of implementation but no later than December 31, 1999.*

\* \* \*

(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 Chapter 91 (relating to criminal history record information).] pursuant to a denial by the instantaneous records check in accordance with procedures established by the Pennsylvania State Police. The decision resulting from a challenge under this subsection may be appealed to the Attorney General within 30 days of the decision by the Pennsylvania State Police. The decision of the Attorney General may be appealed to the Commonwealth Court in accordance with court rule.

\* \* \*

*(j.3) Immunity.—The Pennsylvania State Police and its employees shall be immune from actions for damages for the use of a firearm by a purchaser or for the unlawful transfer of a firearm by a dealer unless the act of the Pennsylvania State Police or its employees constitutes a crime, actual fraud, actual malice or willful misconduct.*

Section 6. Sections 6111.3 heading and (a) and 6113(a)(5) and (d) of Title 18 are amended to read:

§ 6111.3. Firearm [Instant] Records Check Fund.

(a) Establishment.—The Firearm [Ownership] Records Check Fund is hereby established as a restricted account in the State Treasury, separate and apart from all other public money or funds of the Commonwealth, to be appropriated annually by the General Assembly, for use in carrying out the provisions of section 6111 (relating to firearm ownership). *The moneys in the fund on June 1, 1998, are hereby appropriated to the Pennsylvania State Police.*

\* \* \*

§ 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 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 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:

\* \* \*

(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. *The record shall be maintained by the licensee for a period of 20 years.*

\* \* \*

(d) Definitions.—For the purposes of this section *and section 6112 (relating to retail dealer required to be licensed)* only unless otherwise specifically provided, the term “firearm” shall include any weapon that 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.

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

**§ 7510. Municipal housing code avoidance.**

(a) *Offense defined.*—A person commits the crime of municipal housing code avoidance if:

(1) *the person has been convicted of a fourth or subsequent violation of the same subsection of a municipal housing code for the same property;*

(2) *the violation has been continual and uncorrected;*

(3) *the violation poses a threat to the public’s health, safety or property; and*

(4) *no reasonable attempt has been made by the person to correct the violation.*

(b) *Grading.*—Municipal housing code avoidance shall constitute a:

(1) *Misdemeanor of the second degree when the offense is a fourth conviction of a violation of the same subsection under a municipal housing code relating to the same property.*

(2) *Misdemeanor of the first degree when the offense is based on five or more convictions of violations of the same subsection under a municipal housing code relating to the same property.*

(c) *Definition.*—As used in this section, the term “municipal housing code” means any municipality’s building, housing or property maintenance code or ordinance.

**§ 7511. Control of alarm devices and automatic dialing devices.**

(a) *Automatic dialing devices.*—A person may not attach or use an automatic dialing device without doing all of the following:

(1) *Providing the disclosure under subsection (b).*

(2) *Obtaining prior written approval from a public safety agency to use the automatic dialing device to alert the public safety agency of an alarm condition. The public safety agency shall not be responsible for any costs for the installation and maintenance of any dedicated telephone line or equipment associated with the alarm termination.*

(b) *Disclosure.*—A person seeking approval under subsection (a) shall disclose the telephone number of a person to be contacted if the automatic

*dialing device is activated and all relevant facts concerning the design and layout of the premises to be protected by the automatic dialing device. The person shall inform the public safety agency of any change in the information required by this subsection as soon as practicable.*

*(c) False alarms prohibited.—*

*(1) A person that owns, uses or possesses an alarm device or automatic dialing device may not, after causing or permitting three false alarms to occur in a consecutive 12-month period, cause or permit a subsequent false alarm to occur in the same consecutive 12-month period. A person that violates this paragraph commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$300.*

*(2) Venue for prosecution of an offense under this subsection shall lie at any of the following places:*

*(i) Where the alarm originated.*

*(ii) Where the alarm was received by the:*

*(A) public service agency; or*

*(B) third person designated to notify the public service agency.*

*(3) Notwithstanding 42 Pa.C.S. § 3733 (relating to deposits into account) or any other law, the disposition of fines shall be as follows:*

*(i) The fine shall be paid to the municipality if all of the following apply:*

*(A) The public safety agency which responded to the false alarm serves the municipality.*

*(B) The prosecution is initiated by the public safety agency under clause (A) or by the municipality.*

*(ii) The full amount of the fine shall be paid to the Commonwealth if all of the following apply:*

*(A) The Pennsylvania State Police is the public safety agency which responded to the false alarm.*

*(B) The prosecution is initiated by the Pennsylvania State Police.*

*(c) There is no prosecution under subparagraph (i).*

*(d) Suspension or revocation of approval.—The public safety agency may refuse, revoke or suspend the approval granted under subsection (a) if the public safety agency determines any of the following:*

*(1) The request for approval contains a statement of material fact which is false.*

*(2) The person failed to comply with this section.*

*(3) The person violated subsection (c).*

*(e) Local regulation of installers.—*

*(1) General rule.—Except as set forth in paragraph (2), nothing in this section shall prohibit a municipality from requiring any individual who installs alarms in such municipality to acquire a license, meet educational requirements or pass an examination relating to competence*

*to perform such installations. Nothing in this section shall preclude municipalities from doing any of the following:*

*(i) Denying or revoking local permits for failure to comply with local ordinances.*

*(ii) Levying lawful taxes and fees.*

*(iii) Requiring the purchase of a business privilege license.*

*(2) Limitation.—A municipality may not require a licensed electrical contractor to acquire a separate or additional license or certification to install alarms if the electrical contractor is licensed by the municipality and has passed an examination in the National Electrical Code, a similar code or local electrical code and has at least two years' experience as an electrical contractor.*

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

*“Alarm.” A communication to a public safety agency indicating that a crime, fire or other emergency warranting immediate action by that public safety agency has occurred or is occurring.*

*“Alarm device.” A device designed to automatically transmit an alarm:*

*(1) directly to a public safety agency; or*

*(2) to a person that is instructed to notify the public safety agency of the alarm.*

*“Automatic dialing device.” A device which is interconnected to a telephone line and preprogrammed to transmit the coded signal of an alarm to a dedicated telephone trunk line or to dial a predetermined telephone number to an alarm to a public safety agency.*

*“Dedicated telephone trunk line.” A telephone line or lines which serve a public safety agency which is dedicated to receiving transmissions from an automatic dialing device.*

*“False alarm.” The activation of an alarm device to which a public safety agency responds when a crime, fire or other emergency has not occurred.*

*“Person.” An individual, corporation, partnership, incorporated association or other similar entity.*

*“Public safety agency.” The Pennsylvania State Police or any municipal police or fire department.*

Section 8. This act shall take effect as follows:

(1) The amendment or addition of 18 Pa.C.S. §§ 2713(d)(2), 7510 and 7511 shall take effect in 60 days.

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

APPROVED—The 18th day of June, A.D. 1998.

THOMAS J. RIDGE