

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 741 Session of
2001

INTRODUCED BY FRANKEL, BISHOP, L. I. COHEN, CORRIGAN, COSTA,
JOSEPHS, KENNEY, KIRKLAND, MANDERINO, MICHLOVIC, PISTELLA,
ROBINSON, ROONEY, SOLOBAY, THOMAS, C. WILLIAMS, YOUNGBLOOD,
CURRY AND ROEBUCK, FEBRUARY 14, 2001

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 14, 2001

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, providing for unlawful transfers of firearms.

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

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 6115.1. Making straw purchases.

9 (a) Offense defined.--No person, other than a licensed
10 dealer, licensed manufacturer or licensed importer, may purchase
11 a firearm knowing or intending that it will thereafter be
12 transferred to another individual.

13 (b) Presumption.--In the absence of any report by the
14 purchaser to law enforcement authorities that the firearm has
15 been stolen and in the absence of any record of lawful sale of
16 the firearm, possession of a firearm, on or after the date of
17 its purchase, by a person other than the purchaser of the

firearm gives rise to a rebuttable presumption that the purchaser, at the time of purchase, knew or intended that the firearm would thereafter be transferred to another person.

(c) Defense.--It is a defense that the defendant purchased the firearm knowing or intending that it would be transferred as a bona fide gift to another individual.

(d) Penalties.--Except as provided in 42 Pa.C.S. § 9720.2 (relating to sentences for straw purchases of firearms involving violence), a person that violates subsection (a) commits a felony of the third degree.

Section 2. Title 42 is amended by adding a section to read:
§ 9720.2. Sentences for straw purchases of firearms involving violence.

(a) Mandatory sentence.--If a person is convicted of an offense under 18 Pa.C.S. § 6115.1(a) (relating to making straw purchases) and if the firearm is used, subsequent to purchase, in the commission of a crime of violence as defined in section 9714(g) (relating to sentences for second and subsequent offenses), the person commits a felony of the second degree and shall be sentenced to a minimum sentence of at least five years of total confinement notwithstanding any other provision of this title or other statute to the contrary.

(b) Proof at sentencing.--Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court shall consider evidence presented at trial and shall afford the Commonwealth

1 and the defendant an opportunity to present necessary additional
2 evidence and shall determine, by a preponderance of the
3 evidence, if this section is applicable.

4 (c) Authority of court in sentencing.--There shall be no
5 authority in any court to impose on an offender to which this
6 section is applicable any lesser sentence than provided for in
7 subsection (a) or to place such offender on probation or to
8 suspend sentence. Nothing in this section shall prevent the
9 sentencing court from imposing a sentence greater than that
10 provided in this section. Sentencing guidelines promulgated by
11 the Pennsylvania Commission on Sentencing shall not supersede
12 the mandatory sentences provided in this section.

13 (d) Appeal by Commonwealth.--If a sentencing court refuses
14 to apply this section where applicable, the Commonwealth shall
15 have the right to appellate review of the action of the
16 sentencing court. The appellate court shall vacate the sentence
17 and remand the case to the sentencing court for imposition of a
18 sentence in accordance with this section if it finds that the
19 sentence was imposed in violation of this section.

20 Section 3. The addition of 42 Pa.C.S. § 9720.2 shall apply
21 to offenses committed on or after the effective date of this
22 act.

23 Section 4. This act shall take effect in 60 days.