

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1205 Session of
2007

INTRODUCED BY HUGHES, WASHINGTON, KITCHEN, FUMO, TARTAGLIONE,
A. WILLIAMS, C. WILLIAMS AND STACK, DECEMBER 7, 2007

REFERRED TO JUDICIARY, DECEMBER 7, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for sale or transfer
3 of firearms, for duties of the Pennsylvania State Police and
4 for altering or obliterating marks of identification; and
5 providing for destruction of confiscated firearms.

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

8 Section 1. Sections 6111(c) and 6111.1(b) of Title 18 of the
9 Pennsylvania Consolidated Statutes are amended to read:

10 § 6111. Sale or transfer of firearms.

11 * * *

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

parent and child or to transfers between grandparent and grandchild. Nothing in this subsection shall be construed to authorize the Pennsylvania State Police or any local law enforcement agency to sell or transfer any confiscated firearm in the possession of the Pennsylvania State Police or local law enforcement agency.

* * *

§ 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 the potential purchase or transfer is prohibited; or

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

1 (2) In the event of electronic failure, scheduled
2 computer downtime or similar event beyond the control of the
3 Pennsylvania State Police, the Pennsylvania State Police
4 shall immediately notify the requesting licensee of the
5 reason for and estimated length of the delay. If the failure
6 or event lasts for a period exceeding 48 hours, the dealer
7 shall not be subject to any penalty for completing a
8 transaction absent the completion of an instantaneous records
9 check for the remainder of the failure or similar event, but
10 the dealer shall obtain a completed application/record of
11 sale following the provisions of section 6111(b)(1) and (1.1)
12 (relating to sale or transfer of firearms) as if an
13 instantaneous records check has not been established for any
14 sale or transfer of a firearm for the purpose of a subsequent
15 background check.

16 (3) The Pennsylvania State Police shall fully comply,
17 execute and enforce the directives of this section as
18 follows:

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

22 (ii) The instantaneous background check for firearms
23 that exceed the barrel lengths set forth in section 6102
24 shall begin on the later of:

25 (A) the date of publication of the notice under
26 section 6111(a)(2); or

27 (B) December 31, 1998.

28 (4) The Pennsylvania State Police and any local law
29 enforcement agency shall make all reasonable efforts to
30 determine the lawful owner of any firearm confiscated by the

1 Pennsylvania State Police or any local law enforcement agency
2 and return said firearm to its lawful owner if the owner is
3 not otherwise prohibited from possessing the firearm. If the
4 reasonable efforts of the Pennsylvania State Police and the
5 local law enforcement agency fail to identify the lawful
6 owner of the confiscated firearm within 120 days after the
7 Pennsylvania State Police or local law enforcement agency
8 comes into possession of the firearm, or if the lawful owner
9 of the firearm is identified but otherwise prohibited from
10 possessing the firearm, the Pennsylvania State Police or
11 local law enforcement agency shall destroy the firearm under
12 section 6117.1 (relating to destruction of confiscated
13 firearms). When a court of law has determined that the
14 Pennsylvania State Police or any local law enforcement agency
15 have failed to exercise the duty under this subsection,
16 reasonable attorney fees shall be awarded to any lawful owner
17 of said firearm who has sought judicial enforcement of this
18 subsection.

19 * * *

20 Section 2. Section 6117 of Title 18 is amended by adding a
21 subsection to read:

22 § 6117. Altering or obliterating marks of identification.

23 * * *

24 (e) Nonapplicability.--This section shall not apply to a
25 firearm destroyed under section 6117.1 (relating to destruction
26 of confiscated firearms).

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

28 § 6117.1. Destruction of confiscated firearms.

29 (a) General rule.--Notwithstanding any other provision of
30 law to the contrary, the Pennsylvania State Police or a local

1 law enforcement agency shall destroy all confiscated firearms in
2 its possession if the reasonable efforts of the Pennsylvania
3 State Police and the local law enforcement agency required under
4 section 6111.1(b)(4) (relating to Pennsylvania State Police)
5 fail to identify the lawful owner of the confiscated firearm or
6 if the lawful owner of the confiscated firearm is identified but
7 otherwise prohibited from possessing the firearm.

8 (b) Exception.--No confiscated firearm shall be destroyed
9 under this section if the confiscated firearm is evidence in an
10 ongoing investigation or in a criminal prosecution or civil
11 litigation. Confiscated firearms under this subsection shall
12 only be destroyed when the investigation is complete or a court
13 of competent jurisdiction issues an order authorizing the
14 destruction of the firearm.

15 (c) Method of destruction.--Confiscated firearms subject to
16 destruction under this section shall be melted at smelting
17 plants located within this Commonwealth.

18 (d) Procedure prior to destruction.--The following shall
19 apply to confiscated firearms subject to destruction under this
20 section:

21 (1) The Pennsylvania State Police and each local law
22 enforcement agency shall place all confiscated firearms in
23 sealed containers and in a secure environment with access
24 limited to individuals directly responsible for maintaining
25 the official registry under paragraph (2).

26 (2) The Pennsylvania State Police or each local law
27 enforcement agency shall establish a registry for purposes of
28 cataloging all confiscated firearms in its possession. The
29 Pennsylvania State Police and each local law enforcement
30 agency shall designate one or more individuals who shall be

1 responsible for maintaining the registry.

2 (3) Each confiscated firearm shall be individually
3 catalogued in the official registry required under paragraph
4 (2). The registry shall contain the following information
5 relating to the confiscated firearm:

6 (i) The serial number of the firearm.

7 (ii) The make and model of the firearm.

8 (iii) The date the firearm came into the possession
9 of the Pennsylvania State Police or the local law
10 enforcement agency.

11 (iv) The earliest date on which the firearm can be
12 destroyed under this section.

13 (v) The date the lawful owner of the confiscated
14 firearm was identified and the date the firearm was
15 returned to the lawful owner, if applicable.

16 (vi) The date the firearm was destroyed.

17 (4) Confiscated firearms subject to destruction shall be
18 transported in sealed containers.

19 (e) Time period for destruction.--Except as otherwise
20 provided in this subsection, confiscated firearms subject to
21 destruction under this section shall be destroyed as promptly as
22 possible but no less than quarterly. The Pennsylvania State
23 Police or each local law enforcement agency may maintain
24 confiscated firearms in its possession until it has accumulated
25 a sufficient number of firearms to defray the costs associated
26 with this section, provided that each confiscated firearm
27 subject to destruction under this section shall be destroyed no
28 later than 180 days after it comes into the possession of the
29 Pennsylvania State Police or a local law enforcement agency.

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