

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 293 Session of 2009

INTRODUCED BY HUGHES, STACK, KITCHEN, WASHINGTON AND FONTANA,
FEBRUARY 20, 2009

REFERRED TO JUDICIARY, FEBRUARY 20, 2009

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 or recovered
6 firearms.

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

9 Section 1. Section 6111(c) of Title 18 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 6111. Sale or transfer of firearms.

12 * * *

13 (c) Duty of other persons.--Any person who is not a licensed
14 importer, manufacturer or dealer and who desires to sell or
15 transfer a firearm to another unlicensed person shall do so only
16 upon the place of business of a licensed importer, manufacturer,
17 dealer or county sheriff's office, the latter of whom shall
18 follow the procedure set forth in this section as if he were the
19 seller of the firearm. The provisions of this section shall not
20 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.

* * *

Section 2. Section 6111.1(b) of Title 18, amended October 17, 2008 (P.L.1682, No.131), is amended 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 the potential purchase or transfer is prohibited; or

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

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

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

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

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

27 (A) the date of publication of the notice under
28 section 6111(a)(2); or

29 (B) December 31, 1998.

30 (4) The Pennsylvania State Police and any local law

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

22 * * *

23 Section 3. Section 6117 of Title 18 is amended by adding a
24 subsection to read:

25 § 6117. Altering or obliterating marks of identification.

26 * * *

27 (e) Nonapplicability.--This section shall not apply to a
28 firearm destroyed under section 6117.1 (relating to destruction
29 of confiscated or recovered firearms).

30 Section 4. Title 18 is amended by adding a section to read:

1 § 6117.1. Destruction of confiscated or recovered firearms.

2 (a) General rule.--Notwithstanding any other provision of
3 law to the contrary, the Pennsylvania State Police or a local
4 law enforcement agency shall destroy all confiscated or
5 recovered firearms in its possession if the reasonable efforts
6 of the Pennsylvania State Police and the local law enforcement
7 agency required under section 6111.1(b)(4) (relating to
8 Pennsylvania State Police) fail to identify the lawful owner of
9 the firearm or if the lawful owner of the firearm is identified
10 but otherwise prohibited from possessing the firearm.

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

18 (c) Method of destruction.--Confiscated or recovered
19 firearms subject to destruction under this section shall be
20 melted at smelting plants located within this Commonwealth.

21 (d) Procedure prior to destruction.--The following shall
22 apply to confiscated or recovered firearms subject to
23 destruction under this section:

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

29 (2) The Pennsylvania State Police or each local law
30 enforcement agency shall establish a registry for purposes of

1 cataloging all confiscated or recovered firearms in its
2 possession. The Pennsylvania State Police and each local law
3 enforcement agency shall designate one or more individuals
4 who shall be responsible for maintaining the registry.

5 (3) Each firearm shall be individually cataloged in the
6 official registry required under paragraph (2). The registry
7 shall contain the following information relating to the
8 firearm:

9 (i) The serial number of the firearm.

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

11 (iii) The date the firearm came into the possession
12 of the Pennsylvania State Police or the local law
13 enforcement agency.

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

16 (v) The date the lawful owner of the confiscated
17 firearm was identified and the date the firearm was
18 returned to the lawful owner, if applicable.

19 (vi) The date the firearm was destroyed.

20 (4) Firearms subject to destruction shall be transported
21 in sealed containers.

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

1 180 days after it comes into the possession of the Pennsylvania
2 State Police or a local law enforcement agency.

3 Section 5. This act shall take effect in 60 days.