
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 928 Session of
2011

INTRODUCED BY SOLOBAY, PIPPY, FONTANA, EARLL, ORIE AND
WASHINGTON, APRIL 4, 2011

REFERRED TO JUDICIARY, APRIL 4, 2011

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in firearms and other dangerous
3 articles, further providing for definitions, for sale or
4 transfer of firearms, for the Pennsylvania State Police, for
5 firearm sales surcharge and for the Firearms Records Check
6 Fund.

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

9 Section 1. Section 6102 of Title 18 of the Pennsylvania
10 Consolidated Statutes is amended by adding definitions to read:
11 § 6102. Definitions.

12 Subject to additional definitions contained in subsequent
13 provisions of this subchapter which are applicable to specific
14 provisions of this subchapter, the following words and phrases,
15 when used in this subchapter shall have, unless the context
16 clearly indicates otherwise, the meanings given to them in this
17 section:

18 * * *

19 "Form 4473." The Bureau of Alcohol, Tobacco, Firearms and
20 Explosives firearms transaction record.

1 * * *

2 "NICS." The National Instant Criminal Background Check
3 System maintained by the Federal Bureau of Investigation in
4 accordance with the Brady Handgun Violence Prevention Act
5 (Public Law 103-159, 107 Stat. 1536).

6 * * *

7 Section 2. Sections 6111(a), (b) and (g) (3), 6111.1(b), (c),
8 (e), (i) and (j.2), 6111.2(c) and 6111.3(b) of Title 18 are
9 amended to read:

10 § 6111. Sale or transfer of firearms.

11 (a) [Time and manner] Manner of delivery.--

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

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

26 (b) Duty of seller.--No licensed importer, licensed
27 manufacturer or licensed dealer shall sell or deliver any
28 firearm to another person, other than a licensed importer,
29 licensed manufacturer, licensed dealer or licensed collector,
30 until the conditions of subsection (a) have been satisfied and

1 until he has:

2 (1) For purposes of a firearm as defined in section 6102
3 (relating to definitions)[, obtained]:

4 (i) Obtained a completed [application/record of
5 sale] and signed Form 4473 from the potential buyer or
6 transferee [to be filled out in triplicate, the original
7 copy to be sent to the Pennsylvania State Police,
8 postmarked via first class mail, within 14 days of the
9 sale, one copy to be retained by the licensed importer,
10 licensed manufacturer or licensed dealer for a period of
11 20 years and one copy to be provided to the purchaser or
12 transferee. The form of this application/record of sale
13 shall be no more than one page in length and shall be
14 promulgated by the Pennsylvania State Police and provided
15 by the licensed importer, licensed manufacturer or
16 licensed dealer. The application/record of sale shall
17 include the name, address, birthdate, gender, race,
18 physical description and Social Security number of the
19 purchaser or transferee, the date of the application and
20 the caliber, length of barrel, make, model and
21 manufacturer's number of the firearm to be purchased or
22 transferred. The application/record of sale shall also
23 contain the following question:
24 Are you the actual buyer of the firearm(s), as defined
25 under 18 Pa.C.S. § 6102 (relating to definitions), listed
26 on this application/record of sale? Warning: You are not
27 the actual buyer if you are acquiring the firearm(s) on
28 behalf of another person, unless you are legitimately
29 acquiring the firearm as a gift for any of the following
30 individuals who are legally eligible to own a firearm:

- 1 (1) spouse;
- 2 (2) parent;
- 3 (3) child;
- 4 (4) grandparent; or
- 5 (5) grandchild.

6 (1.1) On the date of publication in the Pennsylvania
7 Bulletin of a notice by the Pennsylvania State Police that
8 the instantaneous records check has been implemented, all of
9 the following shall apply:

10 (i) In the event of an electronic failure under
11 section 6111.1(b)(2) (relating to Pennsylvania State
12 Police) for purposes of a firearm which exceeds the
13 barrel and related lengths set forth in section 6102,
14 obtained a completed application/record of sale from the
15 potential buyer or transferee to be filled out in
16 triplicate, the original copy to be sent to the
17 Pennsylvania State Police, postmarked via first class
18 mail, within 14 days of sale, one copy to be retained by
19 the licensed importer, licensed manufacturer or licensed
20 dealer for a period of 20 years and one copy to be
21 provided to the purchaser or transferee.

22 (ii) The form of the application/record of sale
23 shall be no more than one page in length and shall be
24 promulgated by the Pennsylvania State Police and provided
25 by the licensed importer, licensed manufacturer or
26 licensed dealer.

27 (iii) For purposes of conducting the criminal
28 history, juvenile delinquency and mental health records
29 background check which shall be completed within ten days
30 of receipt of the information from the dealer, the

1 application/record of sale shall include the name,
2 address, birthdate, gender, race, physical description
3 and Social Security number of the purchaser or transferee
4 and the date of application.

5 (iv) No information regarding the type of firearm
6 need be included other than an indication that the
7 firearm exceeds the barrel lengths set forth in section
8 6102.

9 (v) Unless it has been discovered pursuant to a
10 criminal history, juvenile delinquency and mental health
11 records background check that the potential purchaser or
12 transferee is prohibited from possessing a firearm
13 pursuant to section 6105 (relating to persons not to
14 possess, use, manufacture, control, sell or transfer
15 firearms), no information on the application/record of
16 sale provided pursuant to this subsection shall be
17 retained as precluded by section 6111.4 (relating to
18 registration of firearms) by the Pennsylvania State
19 Police either through retention of the application/record
20 of sale or by entering the information onto a computer,
21 and, further, an application/record of sale received by
22 the Pennsylvania State Police pursuant to this subsection
23 shall be destroyed within 72 hours of the completion of
24 the criminal history, juvenile delinquency and mental
25 health records background check].

26 (ii) Contacted NICS by telephone or electronically
27 to request a background check on a potential buyer or
28 transferee.

29 (iii) Received authorization from NICS to sell or
30 deliver the firearm to the prospective buyer or

1 transferee.

2 (1.1) The dealer shall record the NICS transaction
3 number on Form 4473 and retain Form 4473 for auditing
4 purposes for purchases and transfers of firearms under
5 paragraph (1).

6 (1.2) Fees collected under [paragraph (3) and] section
7 6111.2 (relating to firearm sales surcharge) shall be
8 transmitted to the Pennsylvania State Police within 14 days
9 of collection.

10 (1.3) In addition to the criminal penalty under section
11 6119 (relating to violation penalty), any person who
12 knowingly and intentionally maintains or fails to destroy any
13 information submitted to the Pennsylvania State Police for
14 purposes of a background check pursuant to [paragraphs (1.1)
15 and] paragraph (1.4) or violates section 6111.4 shall be
16 subject to a civil penalty of \$250 per violation, entry or
17 failure to destroy.

18 (1.4) [Following implementation of the instantaneous
19 records check by the Pennsylvania State Police on or before
20 December 1, 1998, no application/record of sale] No Form 4473
21 shall be completed for the purchase or transfer of a firearm
22 which exceeds the barrel lengths set forth in section 6102. A
23 statement shall be submitted by the dealer to the
24 Pennsylvania State Police, postmarked via first class mail,
25 within 14 days of the sale, containing the number of firearms
26 sold which exceed the barrel and related lengths set forth in
27 section 6102, the amount of surcharge and other fees remitted
28 and a list of the unique [approval] transaction numbers given
29 pursuant to paragraph [(4)] (1.1), together with a statement
30 that the background checks have been performed on the

1 firearms contained in the statement. The form of the
2 statement relating to performance of background checks shall
3 be promulgated by the Pennsylvania State Police.

4 (2) Inspected photoidentification of the potential
5 purchaser or transferee, including, but not limited to, a
6 driver's license, official Pennsylvania photoidentification
7 card or official government photoidentification card. In the
8 case of a potential buyer or transferee who is a member of a
9 recognized religious sect or community whose tenets forbid or
10 discourage the taking of photographs of members of that sect
11 or community, a seller shall accept a valid-without-photo
12 driver's license or a combination of documents, as prescribed
13 by the Pennsylvania State Police, containing the applicant's
14 name, address, date of birth and the signature of the
15 applicant.

16 [(3) Requested by means of a telephone call that the
17 Pennsylvania State Police conduct a criminal history,
18 juvenile delinquency history and a mental health record
19 check. The purchaser and the licensed dealer shall provide
20 such information as is necessary to accurately identify the
21 purchaser. The requester shall be charged a fee equivalent to
22 the cost of providing the service but not to exceed \$2 per
23 buyer or transferee.

24 (4) Received a unique approval number for that inquiry
25 from the Pennsylvania State Police and recorded the date and
26 the number on the application/record of sale form.]

27 (5) Issued a receipt containing [the information from
28 paragraph (4), including] the unique [approval] transaction
29 number of the purchaser. This receipt shall be prima facie
30 evidence of the purchaser's or transferee's compliance with

1 the provisions of this section.

2 [(6) Unless it has been discovered pursuant to a
3 criminal history, juvenile delinquency and mental health
4 records background check that the potential purchaser or
5 transferee is prohibited from possessing a firearm pursuant
6 to section 6105, no information received via telephone
7 following the implementation of the instantaneous background
8 check system from a purchaser or transferee who has received
9 a unique approval number shall be retained by the
10 Pennsylvania State Police.

11 (7) For purposes of the enforcement of 18 U.S.C. §
12 922(d)(9), (g)(1) and (s)(1) (relating to unlawful acts), in
13 the event the criminal history or juvenile delinquency
14 background check indicates a conviction for a misdemeanor
15 that the Pennsylvania State Police cannot determine is or is
16 not related to an act of domestic violence, the Pennsylvania
17 State Police shall issue a temporary delay of the approval of
18 the purchase or transfer. During the temporary delay, the
19 Pennsylvania State Police shall conduct a review or
20 investigation of the conviction with courts, local police
21 departments, district attorneys and other law enforcement or
22 related institutions as necessary to determine whether or not
23 the misdemeanor conviction involved an act of domestic
24 violence. The Pennsylvania State Police shall conduct the
25 review or investigation as expeditiously as possible. No
26 firearm may be transferred by the dealer to the purchaser who
27 is the subject of the investigation during the temporary
28 delay. The Pennsylvania State Police shall notify the dealer
29 of the termination of the temporary delay and either deny the
30 sale or provide the unique approval number under paragraph

1 (4).]

2 * * *

3 (g) Penalties.--

4 * * *

5 (3) Any person, licensed dealer, licensed manufacturer
6 or licensed importer who knowingly and intentionally requests
7 [a criminal history, juvenile delinquency or mental health
8 record check or other confidential information from the
9 Pennsylvania State Police] an NICS background check under
10 this chapter for any purpose other than compliance with this
11 chapter or knowingly and intentionally disseminates any
12 criminal history, juvenile delinquency or mental health
13 record or other confidential information to any person other
14 than the subject of the information commits a felony of the
15 third degree.

16 * * *

17 § 6111.1. Pennsylvania State Police.

18 * * *

19 (b) Duty of Pennsylvania State Police.--

20 [(1) Upon receipt of a request for a criminal history,
21 juvenile delinquency history and mental health record check
22 of the potential purchaser or transferee, the Pennsylvania
23 State Police shall immediately during the licensee's call or
24 by return call forthwith:

25 (i) review the Pennsylvania State Police criminal
26 history and fingerprint records to determine if the
27 potential purchaser or transferee is prohibited from
28 receipt or possession of a firearm under Federal or State
29 law;

30 (ii) review the juvenile delinquency and mental

1 health records of the Pennsylvania State Police to
2 determine whether the potential purchaser or transferee
3 is prohibited from receipt or possession of a firearm
4 under Federal or State law; and

5 (iii) inform the licensee making the inquiry either:

6 (A) that the potential purchase or transfer is
7 prohibited; or

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

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

25 (3) The Pennsylvania State Police shall fully comply,
26 execute and enforce the directives of this section as
27 follows:

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

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

4 (A) the date of publication of the notice under
5 section 6111(a)(2); or

6 (B) December 31, 1998.]

7 (4) The Pennsylvania State Police and any local law
8 enforcement agency shall make all reasonable efforts to
9 determine the lawful owner of any firearm confiscated or
10 recovered by the Pennsylvania State Police or any local law
11 enforcement agency and return said firearm to its lawful
12 owner if the owner is not otherwise prohibited from
13 possessing the firearm. When a court of law has determined
14 that the Pennsylvania State Police or any local law
15 enforcement agency have failed to exercise the duty under
16 this subsection, reasonable attorney fees shall be awarded to
17 any lawful owner of said firearm who has sought judicial
18 enforcement of this subsection.

19 [(c) Establish a telephone number.--The Pennsylvania State
20 Police shall establish a telephone number which shall be
21 operational seven days a week between the hours of 8 a.m. and 10
22 p.m. local time for purposes of responding to inquiries as
23 described in this section from licensed manufacturers, licensed
24 importers and licensed dealers. The Pennsylvania State Police
25 shall employ and train such personnel as are necessary to
26 administer expeditiously the provisions of this section.]

27 * * *

28 [(e) Challenge to records.--

29 (1) Any person who is denied the right to receive, sell,
30 transfer, possess, carry, manufacture or purchase a firearm

1 as a result of the procedures established by this section may
2 challenge the accuracy of that person's criminal history,
3 juvenile delinquency history or mental health record pursuant
4 to a denial by the instantaneous records check by submitting
5 a challenge to the Pennsylvania State Police within 30 days
6 from the date of the denial.

7 (2) The Pennsylvania State Police shall conduct a review
8 of the accuracy of the information forming the basis for the
9 denial and shall have the burden of proving the accuracy of
10 the record. Within 20 days after receiving a challenge, the
11 Pennsylvania State Police shall notify the challenger of the
12 basis for the denial, including, but not limited to, the
13 jurisdiction and docket number of any relevant court decision
14 and provide the challenger an opportunity to provide
15 additional information for the purposes of the review. The
16 Pennsylvania State Police shall communicate its final
17 decision to the challenger within 60 days of the receipt of
18 the challenge. The decision of the Pennsylvania State Police
19 shall include all information which formed a basis for the
20 decision.

21 (3) If the challenge is ruled invalid, the person shall
22 have the right to appeal the decision to the Attorney General
23 within 30 days of the decision. The Attorney General shall
24 conduct a hearing de novo in accordance with the
25 Administrative Agency Law. The burden of proof shall be upon
26 the Commonwealth.

27 (4) The decision of the Attorney General may be appealed
28 to the Commonwealth Court by an aggrieved party.]

29 * * *

30 (i) Reports.--The Pennsylvania State Police shall annually

1 compile and report to the General Assembly, on or before
2 December 31, the following information for the previous year:

3 (1) number of firearm sales, including the types of
4 firearms;

5 [(2) number of applications for sale of firearms denied,
6 number of challenges of the denials and number of final
7 reversals of initial denials;

8 (3) summary of the Pennsylvania State Police's
9 activities, including the average time taken to complete a
10 criminal history, juvenile delinquency history or mental
11 health record check;] and

12 (4) uniform crime reporting statistics compiled by the
13 Pennsylvania State Police based on the National Incident-
14 based Reporting System.

15 * * *

16 [(j.2) Records check.--The provisions of this section which
17 relate to the instantaneous records check conducted by telephone
18 shall be applicable 30 days following notice by the Pennsylvania
19 State Police pursuant to section 6111(a)(2).]

20 * * *

21 § 6111.2. Firearm sales surcharge.

22 * * *

23 (c) Revenue sources.--Funds received under the provisions of
24 this section [and section 6111(b)(3) (relating to sale or
25 transfer of firearms)], as estimated and certified by the
26 Secretary of Revenue, shall be deposited within five days of the
27 end of each quarter into the fund.

28 * * *

29 § 6111.3. Firearm Records Check Fund.

30 * * *

1 (b) Source.--The source of the fund shall be moneys
2 collected and transferred under section 6111.2 (relating to
3 firearm sales surcharge) [and moneys collected and transferred
4 under section 6111(b)(3)].

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