

DELAWARE
DEL. CODE

Title 9. Counties

Part I. Provisions Affecting All Counties

Chapter 3. County Governments Generally

330. General powers and duties

(c) The county governments shall enact no law or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11 of the Delaware Code.

Title 11. Crimes and Criminal Procedure

Part I. Delaware Criminal Code

Chapter 2. General Provisions Concerning Offenses

222. General definitions When used in this Criminal Code:

(5) "Deadly weapon" includes a "firearm", as defined in paragraph (12) of this section, a bomb, a knife of any sort (other than an ordinary pocketknife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain or ice pick or any "dangerous instrument", as defined in paragraph (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocketknife shall be a folding knife having a blade not more than 3 inches in length.

(12) "Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.

Chapter 5. Specific Offenses

Subchapter VII. Offenses Against Public Health, Order and Decency

Subpart E. Offenses Involving Deadly Weapons and Dangerous Instruments

1444. Possessing a destructive weapon; class E felony

(a) A person is guilty of possessing a destructive weapon when the person sells, transfers, buys, receives or has possession of a bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun.

(b) Possessing a destructive weapon is a class E felony. This section does not apply to members of the military forces or to members of a police force in this State duly authorized to carry a weapon of the type described; nor shall the provisions contained herein apply to authorized and certified (by an accredited state enforcement agency) state and federal wildlife biologists possessing firearm silencers for the purposes of wildlife disease or wildlife population control, or persons possessing machine guns

for scientific or experimental research and development purposes, which machine guns have been duly registered under the National Firearms Act of 1968 (26 U.S.C. §5801 et seq.).

(c) The term "shotgun" as used in this section means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. The term "sawed-off shotgun" as used in this section means a shotgun having 1 or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches.

1445. Unlawfully dealing with a dangerous weapon; unclassified misdemeanor A person is guilty of unlawfully dealing with a dangerous weapon when:

(1) The person possesses, sells or in any manner has control of:

a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a B.B. or air gun which does not discharge or project a pellet or slug larger than a B.B. shot; or

b. A pellet, slug or bullet, intending that it be used in any weapon prohibited by paragraph (1)a. of this section; or

(2) The person sells, gives or otherwise transfers to a child under 16 years of age a B.B. or air gun or spear gun or B.B. shot, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or

(3) Being a parent, the person permits the person's child under 16 years of age to have possession of a firearm or a B.B. or air gun or spear gun unless under the direct supervision of an adult; or

(4) The person sells, gives or otherwise transfers to a child under 18 years of age a firearm or ammunition for a firearm, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or

(5) The person sells, gives or otherwise transfers a firearm to any person knowing that said person intends to commit any felony, class A misdemeanor or drug related criminal offense while in possession of said firearm.

Unlawfully dealing with a firearm or dangerous weapon is an unclassified misdemeanor, unless the person is convicted under paragraph (4) of this section, in which case it is a class G felony, or unless the person is convicted under paragraph (5) of this section, in which case it is a class E felony.

1448. Possession and purchase of deadly weapons by persons prohibited; penalties

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, wheth-

er or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a handgun shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901(12) of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who co-habitated with the victim at the time of the offense; or by a person with a child in common with the victim; and

b. Is an offense as defined under §601, §602, §603, §611, §614, §621, §625, §628, §763, §765, §766, §767, §781, §785 or §791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Except for "antique firearms", and validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under paragraph (a)(1) or (a)(3) of this section, or validly seized under paragraph (a)(8) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, after the exhaustion of any right of direct appeal, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rimfire or conventional centerfire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(9)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, in which case it is a class D felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this Section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns, or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

a. one year at Level V, if the person has previously been convicted of a violent felony;

b. three years at Level V, if the person does so within ten (10) years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. five years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

a. Four years at Level V; or

b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or

confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Office of the Chief Medical Examiner and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

1448A. Criminal history record checks for sales of firearms

(a) No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver from inventory any firearm, as defined in § 222 of this title, to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the licensee has:

(1) Obtained from the potential buyer or transferee a nonexpired identification issued by a governmental agency indicating the address, sex and date of birth of the buyer or transferee and bearing a photograph of the transferee, obtained from the potential buyer or transferee, a secondary form of identification which indicates

the same name and address of the buyer or transferee as noted on the government issued identification, and has inspected said identifications and has determined that they accurately reflect the identify of the buyer or transferee. For purposes of this section, an original gas, electric, telephone or other utility bill may qualify as a secondary form of identification, if it contains the requisite information; and

(2) Obtained a completed consent form from the potential buyer or transferee, which form shall have been promulgated by the State Bureau of Identification (SBI) and provided by the licensed importer, licensed manufacturer or licensed dealer, which shall include the name, address, birth date, gender, race, and Social Security number, driver's license number or other identification number of such potential buyer or transferee; and

(3) Requested, by means of a toll-free telephone call pursuant to subsection (e) of this section, the SBI to conduct a criminal history and involuntary commitment of an adult record check; and

(4) Received a unique approval number for that inquiry from the SBI, and has recorded the date and approval number on the consent form; and

(5) In the event that the potential buyer or transferee is prohibited from purchasing a firearm, within 7 days of the notification of said prohibition, the licensee shall deliver to the State Bureau of Identification a copy of all consent forms executed by the potential buyer, along with the following information:

a. The name, address and telephone number of the licensee, and of any agent or employee of the licensee who witnessed the prohibited attempted sale or transfer; and

b. The number, type, descriptions and serial numbers of any firearms which the buyer or the transferee attempted to purchase or otherwise acquire.

Any information received by the State Bureau of Identification pursuant to this paragraph may be provided to any law-enforcement agency for the purpose of investigating and prosecuting any criminal conduct.

(b) Upon receipt of a request for a criminal history and involuntary commitment of an adult's record check, the SBI during the licensee's call or by return call, shall:

(1) Review its criminal history and involuntary commitment of an adult records to determine if the potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to § 1448 of this title or federal law; and

(2) Inform the licensee making the inquiry either:

a. That its records demonstrate that the potential buyer or transferee is so prohibited; or

b. Provide the licensee with a unique approval number.

(c) In the event of electronic failure or similar emergency beyond the control of the SBI, the SBI shall immediately notify the requesting licensee of the reason for, and estimated length of, such delay. After such notification, the SBI shall no later than the end of the 3rd business day following a request for a criminal history and involuntary commitment of an adult record check of the licensee, either:

(1) Inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to § 1448 of this title or federal law; or

(2) Provide the licensee with a unique approval number.

Unless notified by the end of the 3rd business day following a request for a records check that the potential buyer or transferee is so prohibited, and without regard to whether the licensee has received a unique approval number, the licensee may complete the sale or delivery and shall not be deemed in violation of this section with respect to such sale or delivery.

(d)(1) Any records containing any of the information set forth in paragraph (a)(1) pertaining to a potential buyer or transferee who is not found to be prohibited from receipt or possession of a firearm by reason of § 1448 of this title or federal law shall be confidential and may only be disclosed by any officer or employee of the SBI to other law enforcement agencies. The SBI and any other law enforcement agencies shall destroy any such records after it communicates the corresponding approval number to the licensee and such records shall be destroyed within 60 days after the day of receipt of the licensee's request.

(2) Notwithstanding contrary provisions of this subsection, the SBI shall maintain a log of dates of requests for criminal history record checks and unique approval numbers corresponding to such dates for a period of not longer than 1 year.

(3) Nothing in this section shall be construed to allow the State to maintain records containing the names of licensees who receive unique approval numbers or to maintain records of firearm transactions, including the names or other identification of licensees and potential buyers or transferees, involving persons not prohibited by § 1448 of this title and federal law from the receipt or possession of firearms. However, the SBI may retain whatever information it receives including, but not limited to, the identifying information of potential buyers or transferees, if the SBI has probable cause to believe the potential buyer or transferee is committing a crime.

(e) The SBI shall establish a toll-free telephone number which shall be operational between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday, and 9:00 a.m. to 5:00 p.m. Sunday for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers and licensed dealers. The foregoing notwithstanding, the telephone number need not be operational on Christmas Day, Thanksgiving Day or on Easter Sunday. The SBI shall employ and maintain such personnel as are necessary to administer the provisions of this section.

(f) Any person who is denied the right to receive or purchase a firearm as a result of the procedures established by this section may request an amendment of any errors in the record pertaining to the person by petitioning the SBI. If the SBI fails to amend the record within 30 days, the person requesting the amendment may petition the Superior Court in the county of residence for a writ of mandamus directing the SBI to amend the record. The Court shall award the petitioner all reasonable attorney fees and other costs, if it determines that SBI willfully refused to amend the record. If the record as corrected demonstrates that such person is not prohibited from receipt or possession of a firearm by § 1448 of this title or federal law, the SBI shall destroy any records it maintains which contain any information derived from the criminal history and involuntary commitment of an adult records check set forth in paragraphs (a)(3) and (a)(4) of this section.

(g) The SBI shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided pursuant to this section.

(h) A licensed importer, licensed manufacturer or licensed dealer is not required to comply with the provisions of this section in the event of:

(1) Unavailability of telephone service at the licensed premises due to:

a. The failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located; or

b. The interruption of telephone service by reason of hurricane, tornado, flood, natural disaster, or other act of God, or war, invasion, insurrection, riot, or other bona fide emergency, or other reason beyond the control of the licensee; or

(2) Failure of the SBI reasonably to comply with the requirements of subsections (b) and (c) of this section.

Within 72 hours of the normalization of telephone service, the licensed importer, licensed manufacturer or licensed dealer shall communicate to SBI the identifying data as set forth in subsection (a)(4) of this section for each sale or delivery of a firearm during the unavailability of telephone service.

(i) Compliance with the provisions of this section shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year, of any firearm which has been shipped or transported in interstate or foreign commerce.

(j) The provisions of this section shall not apply to:

(1) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

(2) Any replica of any firearm described in paragraph (1) of this subsection if such replica:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(3) Any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(4) The return, by a licensed pawnbroker, of a firearm to the person from whom it was received;

(5) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license pursuant to § 1441 of this title; and

(6) Transactions involving a "law enforcement officer" as defined by § 222 of this title.

(k) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who willfully and intentionally requests a criminal history record check from the SBI for any purpose other than compliance with subsection (a) of this section, or willfully and intentionally disseminates any criminal history record information to any person other than the subject of such information or discloses to any person the unique

identification number shall be guilty of a class A misdemeanor.

(l) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to subsection (a) of this section, willfully and intentionally makes any materially false oral or written statement or willfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee shall be guilty of a class G felony.

(m) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who willfully and intentionally sells or delivers a firearm in violation of this section shall be guilty of a class A misdemeanor. Second or subsequent offenses by an individual shall be a class G felony.

(n) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report including the number of inquiries made pursuant to this section for the prior calendar year. Such report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to § 1448 of this title or federal law, and the estimated costs of administering this section.

(o) This section shall become effective 6 months from July 20, 1990 or at such time as the SBI has notified all licensed importers, licensed manufacturers and licensed dealers in writing that the procedures and toll-free number described in this section are operational, whichever shall occur first.

(p) Violations of this section shall be in the exclusive jurisdiction of the Superior Court. Notwithstanding the foregoing, an individual aggrieved by a violation of subsection (d) of this section, shall have a cause of action in Chancery Court to seek an injunction addressing any such violation. A party successfully bringing an action for such a violation shall recover costs and reasonable attorney's fees.

(q) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other Delaware laws, the SBI is authorized and directed to release records and data required by this section. The SBI shall not release or disclose criminal records or data except as specified in subsections (b) and (c) of this section.

1450. Receiving a stolen firearm; class F felony A person is guilty of receiving a stolen firearm if the person intentionally receives, retains or disposes of a firearm of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired. Receiving a stolen firearm is a class F felony. Knowledge that a firearm has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value.

1451. Theft of a firearm; class F felony

(a) A person is guilty of theft of a firearm when the person takes, exercises control over or obtains a firearm of another person intending to deprive the other person of it or appropriate it.

(b) Theft of a firearm is a class F felony.

1454. Giving a firearm to person prohibited; class F felony A person is guilty of giving a firearm to certain persons prohibited when the person sells, transfers, gives, lends or otherwise furnishes a firearm to a person knowing that said

person is a person prohibited as is defined in § 1448 of this title.

Giving a firearm to certain persons prohibited is a class F felony.

1455. Engaging in a firearms transaction on behalf of another; class F felony; class C felony A person is guilty of engaging in a firearms transaction on behalf of another when the person purchases or obtains a firearm on behalf of a person not qualified to legally purchase, own or possess a firearm in this State or for the purpose of selling, giving or otherwise transferring a firearm to a person not legally qualified to purchase, own or possess a firearm in this State.

Engaging in a firearms transaction on behalf of another is a class F felony for the first offense, and a class C felony for each subsequent like offense.

1456. Unlawfully permitting a minor access to a firearm; class A misdemeanor

(a) A person is guilty of unlawfully permitting a minor access to a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a minor and where the minor obtains the firearm and uses it to inflict serious physical injury or death upon the minor or any other person.

(b) It shall be an affirmative defense to a prosecution under this section if:

(1) The firearm was stored in a locked box or container or in a location which a reasonable person would have believed to be secure from access to a minor; or

(2) The minor obtains the firearm as the result of an unlawful entry by any person; or

(3) The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident.

(c) Unlawfully permitting a minor access to a firearm is a class A misdemeanor.

1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F: class A or B misdemeanor

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone" shall be guilty of the crime of possession of a weapon in a Safe School and Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

(1) Section 1442. Carrying a concealed deadly weapon; class G felony; class D felony.

(2) Section 1444. Possessing a destructive weapon; class E felony.

(3) Section 1446. Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

(4) Section 1448. Possession and purchase of deadly weapons by persons prohibited; class F felony.

(5) Section 1452. Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

(6) Section 1453. Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(c) For the purpose of this section, "Safe School and Recreation Zone" shall mean:

(1) Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical school or any college or university, within 1,000 feet thereof; or

(2) Any motor vehicle owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university; or

(3) Any building or structure owned, operated, leased or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

(d) Nothing in this section shall be construed to preclude or otherwise limit a prosecution or conviction for a violation of this chapter or any other provision of law. A person may be convicted both of the crime of possession of a weapon in a Safe School and Recreation Zone and of the underlying offense as defined elsewhere by the laws of the State.

(e) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or in a Safe School and Recreation Zone.

(f) It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed pursuant to an authorized course of school instruction, or for the purpose of engaging in any school authorized sporting or recreational activity. The affirmative defense established in this section shall be proved by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this chapter.

(g) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, and that no person under the age of 18 was present in such private residence at any time during the commission of the offense. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(h) This section shall not apply to any law enforcement or police officer, or to any security officer as defined in Chapter 13 of Title 24.

(i) For purposes of this section only, "deadly weapon" shall include any object described in § 222(5) or § 222(12) of this title or BB guns.

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

(1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;

(2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;

(3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the underlying offense.

(4) If the underlying offense is a class D felony, the crime shall also be a class D felony.

(5) In the event that an elementary or secondary school student possesses a firearm or other deadly weapon in a Safe School and Recreation Zone, in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

1459. Possession of a weapon with a removed, obliterated or altered serial number

(a) No person shall knowingly transport, ship, possess or receive any firearm with the knowledge that the importer's or manufacturer's serial number has been removed, obliterated or altered in a manner that has disguised or concealed the identity or origin of the firearm.

(b) This section shall apply to a firearm manufactured prior to 1973.

(c) Possessing, transporting, shipping or receiving a firearm with a removed, obliterated or altered serial number pursuant to this section is a class D felony.

Part II. Criminal Procedure Generally

Chapter 43. Sentencing, Probation, Parole and Pardons

Subchapter VI. Clemency

4364. Effect of Pardon; Restoration of Civil Rights Except as otherwise provided by the Delaware Constitution, or expressly by any provision of the Delaware Code or any court rule, the granting of an unconditional pardon by the Governor shall have the effect of fully restoring all civil rights to the person pardoned. Such civil rights include, but are not limited to, the right to vote, the right to serve on a jury if selected, the right to purchase or possess deadly weapons and the right to seek and hold public office provided however, that this section shall not limit or affect the Governor's authority to place lawful conditions upon the granting of a pardon. Notwithstanding the granting of a pardon or any provision of this section, no person who shall be convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to a seat in either House of the General Assembly, or capable of holding any office of trust, honor or profit under this State.

Title 22. Municipalities

Chapter 1. General Provisions

111. Limitation on firearm regulations The municipal governments shall enact no law, ordinance or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate municipal ordinances existing before July 4, 1985, and any ordinance enacted after July 4, 1985, is hereby repealed. Notwithstanding the provisions of this section to the contrary, the City of Wilmington may, in addition to the nature and extent of regulation permitted by this section, enact any law or ordinance governing the possession or concealment of a paintball gun within its corporate limits as it deems necessary to protect the public safety.

Title 24. Professions and Occupations

Chapter 9. Deadly Weapons Dealers

901. License requirement No person shall engage in the business of selling any pistol or revolver, or stiletto, steel or brass knuckles, or other deadly weapon made especially for the defense of one's person without first having ob-

tained a license therefor, which license shall be known as "special license to sell deadly weapons." No person licensed or unlicensed shall possess, sell or offer for sale any switchblade knife.

This section shall not apply to toy pistols, pocket knives or knives used for sporting purposes and in the domestic household, or surgical instruments or tools of any kind.

902. Application and fee for license; duration; renewal Whoever desires to engage in the business of selling any of the articles referred to in the first paragraph of § 901 of this title shall apply to the Department of State to obtain a license to conduct such business and shall pay an application fee of \$50 to the Department. The license shall entitle the holder thereof to conduct such business until June 1 next succeeding its date. An application for renewal of such license shall be accompanied by a payment of \$50 to the Department.

903. Sale to persons under 21 or intoxicated persons No person shall sell to a person under the age of 21 or any intoxicated person any of the articles referred to in the first paragraph of § 901 of this title.

904. Records

(a) Any person desiring to engage in the business described in this chapter shall keep and maintain in the place of business at all times a record. In such record the businessperson shall enter the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly weapon so purchased, the age of the purchaser, and the mode of identification bearing a picture which shall include but it is not limited to a driver's license. The record shall at all times be open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of this State.

(b) Any person engaging in the business described in this chapter shall keep and maintain a list of current employees including their names, former names used, dates of birth, physical descriptions and social security numbers. The required employee list and all attachments thereto shall be considered confidential but shall, nevertheless, be open for inspection by any police officer of this State or of any political subdivision of this State, within their respective jurisdiction, at any time, at the licensee's primary place of business and during the licensee's regular business hours. No person licensed under this chapter shall knowingly allow any employee who is a person prohibited from possessing a deadly weapon pursuant to § 1448 of Title 11 to facilitate a sale of a deadly weapon. All employers licensed to do business pursuant to this chapter shall, prior to employment and at least once during each calendar year thereafter, perform a telephonic criminal history record check of each employee utilizing the procedures set forth in § 1448A of Title 11 and shall make and maintain a record thereof using the State Bureau of Identification Criminal History Record Information and Mental Health Information Consent Form (Form 544). A copy of each such form shall be attached to the above required employee list for inspection upon the valid request of a police officer of this State or of any political subdivision of this State, within their respective jurisdiction.

904A. Criminal history checks for sales between unlicensed persons

(a) For purposes of this section, "licensed firearm dealer" means any person licensed as a deadly weapons dealer pursuant to Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in § 222 of Title 11, from any person who is not so licensed, upon the request of said unlicensed seller pursuant to the following procedure:

(1) The prospective buyer and seller shall jointly appear at the place of business of the dealer, during said dealer's regular hours of business, and shall inform the dealer of their desire to avail themselves of the advantages of the procedure set forth herein.

(2) The dealer shall then subject the prospective buyer to a criminal history record check pursuant to the terms of § 1448A of Title 11.

(3) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to § 1448 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

(4) Any dealer who is asked to facilitate the transfer of a firearm pursuant to the terms of this section, may charge a reasonable fee for said service, said fee not to exceed \$20 per criminal history check performed pursuant to this procedure.

(5) Failure or refusal on the part of the dealer to facilitate the transfer of a firearm pursuant to the procedures set forth herein shall be adequate cause to suspend the license of said dealer for a period not to exceed 30 days per occurrence.

Title 28 Sports and Amusements

Chapter 8. Purchase of Rifles and Shotguns in States Contiguous to this State

801. Definitions

(a) As used in this chapter, the term "a state contiguous to this State" shall mean any state having a common border with this State.

(b) As used in this chapter, all other terms shall be given the meaning prescribed in 18 U.S.C. § 921 (the Gun Control Act of 1968), and the regulations duly promulgated thereunder as presently enacted or promulgated and as hereafter modified.

802. Lawful acts

It shall be lawful for a person residing in this State, including a corporation or other business entity maintaining a place of business in this State, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this State and to receive or transport such rifle or shotgun into this State, subject, however, to such other laws of the State or its political subdivision as may be applicable and subject to § 102 of the Gun Control Act of 1968, 18 U.S.C. § 922.

803. Not applicable to federal licensees

This chapter shall not apply or be construed to affect in any way the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

[Current through 77 Del. Laws 2010, Chapters 1-476 and technical corrections received from the Delaware Code Revisors for 2010 Acts]

Code of Ordinances, City of Dover

Chapter 70. Offenses and Miscellaneous Provisions

Sec. 70-2. Weapons generally.

(a) *Prohibited.* It shall be unlawful for any person to have in his possession, carry or use a revolver or pistol of any description, a shotgun or rifle which may be used for the explosion of bullets and cartridges, or any air gun, BB gun, gas-operated gun or spring-operated gun, or any instrument, toy or weapon commonly known as a "peashooter," "slingshot" or "beany," or any bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever, or any knife, whether that instrument is called by any name set forth above or by any other name.

(b) *License.* The weapons prohibited in subsection (a) of this section shall be permitted upon the grant of a license therefor, if required, in the following situations:

(1) *On owner's property.* Possession within the possessor's own domicile or business.

(2) *Other license or permit.* Possession, carrying or use in conformity with a license issued by the state for that weapon or a permit issued by the chief of police.

(3) *Shooting ranges.* Possession or use at licensed shooting galleries or ranges when the instrument can be fired, discharged or operated in a manner that shall not endanger persons or property, and also in a manner that shall prevent the projectile from traversing any grounds or space outside the limits of the gallery or range.

(4) *Unloaded and cased.* Carrying of any type of gun whatsoever, when unloaded and properly cased, to or from any licensed gallery or range or to or from an area where hunting is allowed by law. This subsection shall not limit the permitted carrying of guns allowed by subsection (b)(5) of this section.

(5) *Officers.* Carrying, wearing, possessing and using, by United States marshals, sheriffs, constables and their deputies, and any regular, special or ex officio police officer, or any other law enforcement officer while on duty, or as shall be necessary in the proper discharge of their duties.

(6) *State license.* Possession, carrying or use in conformity with a license issued by the state for that purpose in areas approved by the chief of police, and only then when used in such a manner that shall not endanger persons or property.

(7) *Defense.* Persons exercising their legal right of self-defense or defense of property or others.

(c) *Discharge.* It shall be unlawful for any person to discharge any gun, pistol, revolver or other firearm within the city, except lawfully pursuant to subsections (b)(2), (3) and (5)--(7) of this section, and those persons excepted by law.

(d) *Business display.* It shall be unlawful for any pawnbroker, secondhand dealer or other person who engages in business in the city to display, or to place on exhibition in any show window or other window facing upon any street, any pistol, revolver or other firearm with a barrel of less than 12 inches in length, or any switchblade knife, or any brass or metal knuckles, or any club loaded with lead or other weight, or any blackjack or billyclub.

(e) *Furnishing to certain persons.* It shall be unlawful for any person to purchase from, or sell, loan or furnish any weapon to, any person under the influence of any alcoholic beverage or any narcotic drug, stimulant or depressant, to any person in a condition of agitation and excitability or to a minor under the age of 18 years.

(f) *Forfeiture.* Every person convicted of a violation of this section or section 70-3, or any state law relating to weapons shall forfeit to the city the dangerous or deadly weapon concealed or displayed. Upon a finding of guilt, it shall then be the duty of the court, after the expiration of a reasonable time, to declare by written order that the chief of police shall either dispose of the weapon or retain the weapon for official police department use.

(g) *Definition.* As used in subsection (e) and (f) of this section, the term "weapon" shall mean any revolver or pistol, shotgun or rifle which may be used for the explosion of bullets and cartridges, or any air gun, BB gun, or any instrument, toy or weapon commonly known as a "peashooter," "slingshot" or "beany," or any bow made for the purpose of throwing or projecting missiles of any kind, or any knife.

[Dover Code codified through Ordinance No. 2009-10, enacted May 11, 2009]

New Castle County Code

Chapter 22. Offenses and Miscellaneous Provisions

Article 3. Weapons

22.03.001. Possession by persons under sixteen (16) years of age. Possession of firearms, air pressure guns, including BB guns, bows and metal tipped arrows, by anyone sixteen (16) years of age or younger is prohibited, unless under direct supervision of a person twenty-one (21) years of age or over.

Sec. 22.03.009. Stun guns and taser guns.

A. It shall be unlawful for any person to manufacture, make, deliver, transport, trade, give, sell, purchase or possess a stun gun or taser gun.

B. The term "stun gun," as used in this Section, means any battery-powered, pulsed electrical device of high voltage and low or no amperage which, when pressed against a person, can disrupt the central nervous system and cause temporary loss of voluntary muscle control of such person.

C. The term "taser gun," as used in this Section, means any device contained in a package which permits it to be hand held, containing an electrical supply unit, and into which an expendable plastic cassette may be inserted and which operates by shooting or projecting a ball, net or dart carrying fine wires from the package to the target and which, upon hitting a person, can send out current capable of disrupting the person's nervous system in such a manner as to render the person incapable of functioning normally.

D. Exempt from this Section shall be any law enforcement officer while performing his or her lawful duties within this County and those selling to any law enforcement officer while performing his or her lawful duties within this County.

E. A conviction of violation of this Section shall be punishable as provided in Section 1.01.009 of this Code.

[New Castle County Code codified through Ordinance No. 09-057, enacted July 14, 2009]

Wilmington City Code

Chapter 5. Businesses

Article II. Business Licenses

Division 2. Specific Businesses and Activities

5-79. Retailers of firearms. No person shall receive a license as a retailer of firearms unless he complies with the provisions of all applicable ordinances and laws.

Chapter 36. Miscellaneous Offenses and Provisions

Article V. Offenses Involving Public Safety

Division 2. Weapons and Related Offenses

36-156. Armor-piercing bullets.

(a) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) *Armor-piercing bullet* means any bullet which is coated with a nonstick fluoropolymer finish, such as the registered trademark finishes, Teflon, Halon, Halar, Flvon, Soreflon or Algoflon.

(2) *Bullet* means a round or elongated missile designed to be fired from a firearm.

(3) *Bulletproof vest* means any commercially available, soft, lightweight body armor, usually consisting of several layers of a polyaramid fiber tradenamed "Kevlar."

(b) **Offenses.** It shall be unlawful for any person to bring into the city or to manufacture, sell, distribute, possess or use armor-piercing bullets or any other bullets similarly coated with a nonstick fluoropolymer finish. It shall further be unlawful for any person which is in the business of manufacturing firearms to possess the component parts of any armor-piercing bullet.

(c) **Penalties.** Any person who violates the provisions of this section shall upon conviction be subject to a minimum fine of \$100.00 and a maximum fine of \$500.00, or to imprisonment not exceeding 90 days, or both, for each offense.

36-157. Firearms dealers; storage, display.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) *Dealer* means any individual, firm, association, partnership or corporation engaged in the business of selling firearms, purchasing firearms for resale or conducting a gunsmith or firearms repair business. Whenever used in any cause prescribing and imposing a penalty, the term "dealer," as applied to any partnership or association, shall mean the partners or members thereof, and as applied to any corporation, shall include the officers thereof.

(2) *Firearms* means any rifle, revolver, pistol or shotgun capable of propelling a projectile by means of an explosive material or charge.

(b) During the hours they are not regularly open for business, dealers shall store all firearms in accordance with the following requirements:

(1) No firearms shall be displayed in windows.

(2) All firearms must be placed in an approved safe, vault or properly secured storeroom. Any dealer may comply with the requirements of this section by providing an approved steel safe wherein any firearms may be stored and locked during nonbusiness hours.

(c) Before promulgating any regulations designed to carry out the intent and purpose of this section, the department of licenses and inspections shall consult with the police department.

(d) No dealer shall receive a permit to store firearms unless he complies with the provisions of this section and regulations issued pursuant thereto.

(e) Any dealer who violates the provisions of this section shall be advised in writing by the department of licenses and inspections of the nature of the violation, and shall be required to comply with the provisions of this section within the period indicated in such notice; provided, that in no case shall the time permitted for such compliance exceed 60 days. Each day that any dealer fails to comply with the requirements of this section or to make the changes indicated in any notice of violation, after the period allowed for such compliance has expired, shall constitute a separate violation of this section.

(f) Any person who violates the provisions of this section shall, upon summary conviction, be subject to a minimum fine of \$100.00 and a maximum fine of \$500.00 or to imprisonment not exceeding 90 days, or both, for such offense.

36-158. Certain firearms prohibited.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) *Converted starter pistol* means a starter pistol which has been altered to fire a projectile with sufficient force to cause death or physical injury.

(2) *Short-barreled rifle* means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle, whether by alteration, modification or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

(3) *Smooth-bore shot revolver* means a revolver with a smooth-bore having been reamed out so that it can be used to fire shot-shell.

(4) *Zip gun* means any weapon or instrument not originally designed to be a firearm which has been made or altered to discharge a projectile with sufficient force to cause death or physical injury.

(b) It shall be unlawful for any person to manufacture, make, deliver, transport, trade, give, sell or possess a smooth-bore shot revolver, short-barreled rifle, zip gun, or converted starter pistol.

(c) Any law enforcement officer while performing his lawful duties within the city shall be exempted from the effect of this section. For purposes of this section, the term "law enforcement officer" includes police officers, the attorney general, the attorney general's deputies and investigators, the sheriff, and the sheriff's deputies, prison guards, constables and bailiffs.

(d) A conviction of violation of this section shall be punishable by a fine of not less than \$500.00 and not more than \$2,500.00 or by both such fine and imprisonment not exceeding six months. The minimum sentence of a \$500.00 fine shall not be subject to suspension or reduction for any reason.

36-161. Stun guns, etc.

(a) It shall be unlawful for any person to manufacture, make, deliver, transport, trade, give, sell, or possess a converted tear gas gun, stun gun or taser gun.

(b) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except

where the context clearly indicates a different meaning:

(1) *Converted tear gas gun* means a tear gas gun which has been altered to fire a projectile with sufficient force to cause death or physical injury.

(2) *Stun gun* means any battery-powered, pulsed electrical device of high voltage and low or no amperage which, when pressed against a person, can disrupt the central nervous system and cause temporary loss of voluntary muscle control of such person.

(3) *Taser gun* means any device contained in a package which permits it to be handheld, containing an electrical supply unit, and into which an expendable plastic cassette may be inserted and which operates by shooting or projecting a ball, net, or dart carrying fine wires from the package to the target and which, upon hitting a person can send out current capable of disrupting the person's nervous system in such a manner as to render the person incapable of functioning normally.

(c) Any law enforcement officer while performing his lawful duties within the city shall be ex-

empted from the effect of this section. For purposes of this section, the term "law enforcement officer" shall include police officers, the attorney general, the attorney general's deputies and investigators, the sheriff, and the sheriff's deputies, prison guards, constables and bailiffs.

(d) A conviction of violation of this section shall be punishable by a fine of not less than \$500.00 and not more than \$2,500.00 or by both such fine and imprisonment not exceeding six months. The minimum sentence of \$500.00 fine shall not be subject to suspension or reduction for any reason.

Sec. 36-165. Paint pellet guns.

(a) It shall be unlawful for any person to use or discharge a paint pellet gun in the city, usually used in connection with the game known as "paint ball" which is similar to the childhood game of "capture the flag," unless said discharge occurs in a licensed, supervised recreational facility during the facility's hours of operation. For purposes of this sub-section, a paint pellet gun or paint ball gun is defined to include any instrument which releases a projectile, including but not limited to paint balls,

which consist of a thin plastic shell or capsule filled with a water-soluble paint, propelled by spring mechanism, compressed gas, explosive charge, or any combination thereof, regardless of speed or distance at which the projectile is capable of being released. While they may not be lethal, they can cause serious injury.

(b) It shall be unlawful for any person to conceal a paint pellet gun or paint ball gun in the city, without regard to whether the gun is discharged or contains any projectiles.

(c) It shall be unlawful for any minor to possess a paint pellet gun or paint ball gun in the city, without regard to whether the gun is discharged or contains any projectiles. For purposes of this subsection a minor is defined as any person who has not reached the age of 18 as of the date of the offense.

(d) A conviction of violation of this section shall be punishable by a fine of not less than \$500.00.

[Wilmington City Code codified through Ordinance No. 08-053, enacted July 10, 2008]