

Delaware State Law  
DE Code Ann.

Title 11. Crimes and Criminal Procedure

**222. General definitions. When used in this Criminal Code: \* \* \* \***

**(6) "Deadly weapon"** includes a firearm, as defined in a paragraph (9) of this section, a bomb, a knife of any sort (other than an ordinary pocketknife carried in a closed position), switchable 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. \* \* \* \*

**(10) "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. It does not include a B.B. gun. \* \* \* \*

**1444. Possessing a destructive weapon; Class E felony. [Amendment effective with respect to crimes committed June 30, 1990, or thereafter].**

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

**(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 persons possessing machineguns for scientific or experimental research and development purposes, which machineguns have been duly registered under the provisions of 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; Class E felony. [Amendment effective with respect to crimes June 30, 1990, or thereafter].**

A person is guilty of unlawfully dealing with a dangerous weapon when:

**(1)** He 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 a. of this subdivision; or

(2) He sells, gives or otherwise transfers to a child under 16 years of age a firearm or B.B. or air gun or spear gun or B.B. shot; or

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

Unlawfully dealing with a dangerous weapon is an unclassified misdemeanor.

(4) 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. \* \* \* \*

**1448. Possession and purchase deadly weapons by persons prohibited; Class F felony. [Amendment effective with respect to crimes committed June 30, 1990, or thereafter].**

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

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving bodily injury to another, whether or not armed with or having in his 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 sanatorium unless he possesses a certificate of a medical doctor or psychiatrist licensed in this State that he is no longer suffering from a mental disorder which interferes or handicaps him 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 drug as those terms were defined prior to the effective date of the Uniform Controlled Substance Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 46 of Title 16;

(4) Any person who, as 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 his 25th birthday; or

(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 one hand.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchase, owns or controls a deadly weapon by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony.

(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 if 5 years have elapsed from the date of conviction.

(e) Any person who is a prohibited person as described in this section because of a conviction for a felony involving physical injury or violence to another, or because of a conviction for a felony involving conduct as described in subsection (a)(3) of this section, and who knowingly possesses,

purchases, owns or control a firearms while so prohibited shall receive a minimum sentence of 1 year of Level 5. Any sentence pursuant to this subsection shall not be subject to the provisions of 4205(b) and 4215 of this title.

**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 section 222(10) of this title, to another person, other than a licensed importer, 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 or identification which indicates the same name and address of the buyer or transferee as noted on the government issued identification, and has inspected said identification and has determined that they accurately reflect the identity 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 that name, address, birth date, gender, face 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 for 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 SBI 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 sale or transfer; and (b) The number type, descriptions and serial numbers of firearms which the buyer or the transferee attempted to purchase or otherwise acquire. Any information received by the SBI pursuant to this paragraph may be provided to any law enforcement agency for the purpose of investigation and prosecuting any criminal conduct.

(b) Upon receipt of a request for a criminal history and involuntary commitment of an adult 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 section 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) Pro-

vide 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 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 section 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 subsection (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 section of 1448 of this title or federal law shall be confidential and may only be disclosed by and 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 section 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. \* \* \* \*

(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.

[\* \* \* \* **Contact the SBI for complete procedures**].

(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, 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 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)** Transaction in which the potential buyer or transferee holds a valid concealed deadly weapons pursuant to section 1441 of this title; and

**(6)** Transactions involving a law enforcement officer as defined by section 222(13) of this title.

**(k)** Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who willfully and intentionally requests a criminal history check from the SBI for any purpose other than compliance with subsection (a) of this section, or wilfully 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 wilfully and intentionally makes any materially false oral or written statement or wilfully 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 wilfully 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 section 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.

(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 he 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 he 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 he takes, exercises control over or obtains a firearm of another person intending to deprive him 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 section 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 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 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.

**Title 24. Professions and Occupations**

**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 defense of one's person without first having obtained 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 Administrative Services to obtain a license to conduct such business and shall pay an application fee of \$100 to the Department. The license shall entitle the holder thereof to conduct such business until the 1st day of June next succeeding its date. An application for renewal of such license shall be accompanied by a payment of \$100 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 his place of business at all times a record. In such record he shall enter the date of 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.

#### **Publisher's Note:**

It was not rational for Delaware to limit sales of firearms to persons who knew 2 Delaware freeholders and could produce them as witnesses, and that provision of this section requiring such freeholder identification was unconstitutional. Hetherton v. Sears, Roebuck & Co., 652 F.2d 1152 (3rd Cir. 1981).

#### **Publisher's Notes:**

1. The following jurisdictions prohibit the sale, possession, or receipt of any type of firearm to or by any of a particular class of persons (e.g., convicted felons, fugitives from justice, illegal aliens, mental incompetents, unlawful drug users and addicts) [An asterisk (\*) next to a name indicates another listing]

Dover\*

2. The following jurisdictions restrict the sale, possession, or receipt of firearms, such as destructive devices [i.e., (a) grenades (or other explosive or incendiary devices), or (b) fully automatic weapons, or (c) short-barreled rifles, or (d) short-barreled shotguns, or (e) silencers, or (f) other (specified)] [An asterisk (\*) next to a name indicates another listing]

Elsmere (f)= Sale of any firearms/ammunition whatsoever.

Wilmington\* (c), (f)= Armor piercing ammunition; smoothbore shot revolver;

zip gun; taser gun; converted tear gas gun or starter pistol.

3. The following jurisdictions restrict the age at which it is lawful for a person to purchase or receive a firearm [An asterisk (\*) next to a name indicates another listing]

Dover\*

Wilmington\* (Also ammo)

4. The following jurisdictions restrict the sale of firearms [i.e., (a) requirement for a State or local license to sell firearms, or (b) recordkeeping requirements imposed as a condition of lawful sale of firearms, or (c) other (specified)] [An asterisk (\*) next to a name indicates another listing]

Wilmington\* (Also ammo)