

170043

TITL: Compendium of State Privacy and Security Legislation: 1997  
Overview - DELAWARE; TITLE 11 Revised Statutes Annotated

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SALE: US Department of Justice, Bureau of Justice Statistics  
National Institute of Justice/NCJRS Paper Reproduction Sales  
Box 6000, Dept. F  
Rockville, MD 20849

DOCUMENT #: 170043

DATE: 1997

PAGE: 42 p

ORIG: United States

LANG: English

SUBJECT: Legislation/policy descriptions

ANNOTATION: This is a 1997 overview of State law pertinent to the  
privacy and security of criminal justice information.

# DELAWARE

## Delaware Code Annotated

### Title 11

#### PART V

#### LAW-ENFORCEMENT ADMINISTRATION

- 83. State Police, §§ 8301 to 8393.
- 85. State Bureau of Identification, §§ 8501 to 8525.
- 86. Delaware Criminal Justice Information System, §§ 8601 to 8608.

#### CHAPTER 85. STATE BUREAU OF IDENTIFICATION

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Revision of chapter. — 63 Del. Laws, c. 188, effective Oct. 21, 1981, amended and reenacted this chapter, substituting present §§ 8501 to 8525 for former §§ 8501 to 8522. No detailed explanation of the changes made by the 1981

Act has been attempted, but, where appropriate, the historical citations to the former sections have been added to the corresponding sections in the amended chapter.

#### § 8501. Purpose of chapter.

(a) The purpose of this chapter is to create and maintain an accurate and efficient criminal justice information system in Delaware consistent with this chapter and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

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(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To designate the State Bureau of Identification as the central state repository for criminal history record information;

(2) To require the rapid identification, classification and filing of fingerprints;

(3) To require the reporting of accurate, relevant and current information to the central repository by all criminal justice agencies;

(4) To insure that criminal history record information is kept accurate and current; and

(5) To prohibit the improper dissemination of such information.

(c) This chapter is intended to provide a basic statutory framework within which these objectives can be attained. (63 Del. Laws, c. 188, § 1.)

### § 8502. Definitions.

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

(1) "Administration of criminal justice" shall mean performance of any of the following activities: Detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correction supervision, or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage and dissemination of criminal history record information.

(2) "Criminal history record information" shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

b. Original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long-standing custom to be made public, if such records are organized on a chronological basis;

c. Court records of public judicial proceedings;

d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;

e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;

f. Announcements of executive clemency.

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(3) "Criminal justice agency" shall mean:

a. Every court of this State and of every political subdivision thereof;

b. A government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police;
2. All law-enforcement agencies and police departments of any political subdivision of this state;
3. The State Department of Justice;
4. The Office of the Solicitor of the City of Wilmington; and
5. The Department of Correction.

(4) "Disposition" shall include, but not be limited to, trial verdicts of guilty or not guilty, nolle prosequis, Attorney General probations, pleas of guilty or nolo contendere, dismissals, incompetence to stand trial, findings of delinquency or nondelinquency and initiation and completion of appellate proceeding.

(5) "Dissemination" shall mean the transmission of criminal history record information, or the confirmation of the existence or nonexistence of such information. The term shall not include:

a. Internal use of information by an officer or employee of the agency which maintains such information;

b. Transmission of information to the State Bureau of Identification;

c. Transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;

d. Transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies provide and/or maintain the information through those terminals.

(6) "Law-enforcement officer" shall include police officers, the Attorney General and his deputies, sheriffs and their regular deputies, prison guards and constables.

(7) "Release status" shall mean information concerning whether or not an individual is incarcerated and the reason therefor, which shall include but is not limited to information concerning releases on bail, or on own recognizance, commitments in default of bail, referrals to other agencies, decision of prosecutors not to commence or to postpone criminal proceedings, release from institutions and any conditions imposed concerning those released.

(8) "Conviction data" means any criminal history record information relating to an arrest which has led to a conviction or other disposition adverse to the subject. "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal or acquittal; provided, however, that a dismissal entered

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after a period of probation, suspension or deferral of sentence shall be considered a disposition adverse to the subject.

(9) "Nonconviction data" means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending, or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals. (63 Del. Laws, c. 188, § 1.)

### **§ 8503. Function; administration; appointment of Director.**

(a) The State Bureau of Identification, hereinafter referred to as the "Bureau," is continued within the Division of State Police. The Bureau shall be the central state repository for criminal history record information (CHRI) and such additional information as specified in this chapter.

(b) Subject to this chapter, the Bureau shall be administered by the Superintendent of State Police. It shall be equipped and maintained by the State Police as a separate budget unit within the Department of Public Safety.

(c) The Superintendent of State Police shall appoint, subject to the approval of the Department of Public Safety, a Director of the Bureau. The Director shall be a regularly appointed member of State Police, who shall be trained and experienced in the classification and filing of fingerprints, and he and all other employees of the Bureau shall be subject to the same rules and regulations governing the State Police.

(d) A representative of the Bureau to be designated by the Superintendent shall be a member of any board or regulatory body established for the collection, retention and dissemination of criminal history information. (42 Del. Laws, c. 181, § 1; 11 Del. C. 1953, § 8501; 57 Del. Laws, c. 670, §§ 4A, 4B; 63 Del. Laws, c. 188, § 1.)

### **§ 8504. Personnel.**

The Bureau personnel shall consist of regular appointed members of the State Police, and such other personnel as may be deemed necessary to carry out this chapter. The personnel so appointed shall each be experienced in the work to be performed by them. (42 Del. Laws, c. 181, § 2; 11 Del. C. 1953, § 8502; 63 Del. Laws, c. 188, § 1.)

### **§ 8505. Duty to provide security of criminal history record information.**

The Director shall provide for the security of criminal history record information and other information pertaining to crimes and offenders by insuring that the Bureau and all other criminal justice agencies, and agencies providing computer support services to criminal justice agencies which collect, store or disseminate such information, comply with the following provisions:

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(1) Where computerized data processing is employed, effective and technologically adequate software and hardware designs shall be instituted to prevent unauthorized access to and/or unauthorized additions, changes or deletions to such information;

(2) Access to computer system facilities, systems operating environments, data file contents, whether while in use or stored in a media library, and system documentation shall be restricted to specifically authorized organizations and personnel;

(3) Procedures shall be instituted to assure that the facilities of the Bureau provide safe and secure storage of all records;

(4) Procedures shall be instituted to assure that an individual agency authorized to access to either computerized records or data maintained in manual files by the Bureau is responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure or dissemination;

(5) Direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency, as necessary, to other authorized personnel essential to the proper operation of the criminal history record information system;

(6) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of this chapter. (63 Del. Laws, c. 188, § 1.)

### **§ 8506. Duty to maintain complete and accurate records; performance of annual audit.**

(a) The Bureau shall maintain in a complete and accurate manner information received pursuant to this chapter to the maximum extent feasible.

(b) Any and all criminal history records and other information which is transmitted directly by computer terminal by a criminal justice agency shall be deemed to have been transmitted to the Bureau within the meaning of this chapter.

(c) The Bureau shall file all information received by it and shall make a systematic record and index thereof, to the end of providing a method of convenient reference and consultation. No information identifying a person received by the Bureau may be destroyed by it until 10 years after the person identified is known or reasonably believed to be dead, or until that person reaches age 80 or reaches age 75 with no criminal activity listed on his or her record in the past 40 years, whichever shall first occur, except as otherwise provided by statute.

(d) A criminal justice agency shall, upon finding inaccurate criminal history record information of a material nature, notify all criminal justice agencies, and all other persons and agencies, known to have received such information.

(e) When a criminal justice agency receives notification that an inaccuracy appears in criminal history record information having originated with that agency, such agency shall take appropriate steps to correct the inaccuracy.

(f) The Bureau shall assure that an annual audit is conducted of a representative sample of agencies accessing or maintaining data files as provided

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in this chapter. This audit shall encompass both manual and computerized data systems, and shall be conducted at such time and according to procedures as the Bureau shall prescribe. A full report of the findings of each audit made pursuant to this subsection shall be communicated to the individual agency so audited. (42 Del. Laws, c. 181, § 9; 11 Del. C. 1953, § 8509; 63 Del. Laws, c. 188, § 1.)

### **§ 8507. Information to be supplied by law-enforcement officers.**

(a) Every law-enforcement officer of the State and of any political subdivision thereof shall transmit to the Bureau:

(1) Within 48 hours after the arrest of any individual, the names, fingerprints if taken and such other data as the Director may from time to time prescribe of all individuals arrested for a criminal offense, including, but not limited to:

a. An indictable offense, or such nonindictable offense as is, or may hereafter be, included in the compilations of the United States Department of Justice;

b. Being a fugitive from justice;

(2) The fingerprints, photographs and other data prescribed by the Director concerning unidentified dead persons;

(3) The fingerprints, photographs and other data prescribed by the Director of all individuals making application for a permit to buy or possess illegal weapons or firearms or to carry concealed a deadly weapon;

(4) A record of the indictable offenses and such nonindictable offenses as are committed within the jurisdiction of the reporting officer, including a statement of the facts of the offense and a description of the offender, so far as known, the offender's method of operation, changes in release status and such other information as the Director may require;

(5) Copies of such reports as are required by law to be made, and as shall be prescribed by the Director, to be made by pawnshops, second-hand dealers and dealers in weapons.

(b) All photographs submitted of individuals described in this section shall be of a recent date, taken while such individuals are attired in civilian clothes. (42 Del. Laws, c. 181, §§ 3, 6; 11 Del. C. 1953, §§ 8503, 8506; 61 Del. Laws, c. 321, § 1; 63 Del. Laws, c. 188, § 1.)

### **§ 8508. Information to be supplied by court officials.**

Every court of this State or of any political subdivision thereof other than Family Court having original or appellate jurisdiction over indictable offenses, or over such nonindictable offenses as are herein mentioned, shall transmit to the Bureau in such manner as the Director shall designate such information regarding every indictment, information or other formal criminal charge, and every change in release status, disposition and sentencing made thereof within 90 days of said action. The Family Court shall be required to transmit to the Bureau information regarding those proceedings charging a juvenile with



delinquency which were initiated by petition of the Attorney General. Such information shall likewise be transmitted in such a manner as the Director shall designate within 90 days of said action. (42 Del. Laws, c. 181, § 4; 11 Del. C. 1953, § 8504; 63 Del. Laws, c. 188, § 1.)

**§ 8509. Information to be supplied by heads of institutions.**

Every person in responsible charge of an institution to which there are committed individuals convicted of crime, or persons declared to be not guilty by reason of mental illness or declared incompetent to stand trial for criminal offenses, shall transmit to the Bureau the names, fingerprints, photographs and such other data prescribed by the Director, of all individuals so committed and shall report any subsequent change in release status. Every person in responsible charge of such institutions shall also forward to the Bureau the names and photographs of all individuals who are to be discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such individuals, and he or she shall be attired in civilian clothes. (42 Del. Laws, c. 181, § 5; 11 Del. C. 1953, § 8505; 63 Del. Laws, c. 188, § 1.)

**§ 8510. Information to be supplied by Department of Correction.**

The Department of Correction shall, within 48 hours, transmit to the Bureau:

(1) The names, fingerprints, photographs and other data prescribed by the Director, concerning all persons who are received or committed to such penal institution, or who are placed on parole or probation for any offense. Such photographs shall be of a recent date, and taken while such individuals are attired in civilian clothes;

(2) The names and photographs of all prisoners who are to be released or discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such persons, and he or she shall be attired in civilian clothes;

(3) Notice of all paroles granted, revoked or completed, changes in release status, conditional releases, commutations of sentence, pardons and deaths of all persons described in subdivisions (1) and (2) of this section. (63 Del. Laws, c. 188, § 1.)

**§ 8511. Time period for submission of required information.**

If no time period is prescribed in this chapter for the submission of information to the Bureau, the information required shall be submitted within such time period and in such manner as the Director shall designate. (42 Del. Laws, c. 181, § 7; 11 Del. C. 1953, § 8507; 63 Del. Laws, c. 188, § 1.)

**§ 8512. Access to institutions and public records.**

Any employee of the Bureau, upon written authorization by the Director, may enter any correctional center or mental institution to take or cause to be taken fingerprints or photographs or to conduct investigations relative to any person confined therein, for the purpose of obtaining information which may lead to the identification of criminals; and every person who has charge or custody of public records or documents from which it may reasonably be supposed that information described in this chapter can be obtained, shall grant access thereto to any employee of the Bureau upon written authorization by the Director or shall produce such records or documents for the inspection and examination of such employee. (42 Del. Laws, c. 181, § 8; 11 Del. C. 1953, § 8508; 63 Del. Laws, c. 188, § 1.)

**§ 8513. Dissemination of criminal history record information.**

(a) Upon application, the Bureau shall furnish a copy of all information available pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record to:

(1) Criminal justice agencies and/or courts of the State or of any political subdivision thereof or to any similar agency and/or court in any State or of the United States or of any foreign country for purposes of the administration of criminal justice and/or criminal justice employment;

(2) Any person or his attorney of record who requests a copy of his or her own Delaware criminal history record, provided that such person:

a. Submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify one's self as the person whose record this individual seeks; and

b. Pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police;

(3) The State Public Defender when he requests information about an individual for whom he is attorney of record.

(b) Upon application, the Bureau shall, based on the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record, provided that the requesting agency or individual submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of criminal history record information to:

(1) Individuals and public bodies for any purpose authorized by Delaware state statute or executive order, court rule or decision or order;

(2) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. Said agreement shall embody a user agreement as prescribed in § 8514 of this title;

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(3) Individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to a specific agreement with a criminal justice agency. Said agency shall embody a user agreement as prescribed in § 8514 of this title;

(4) Individuals and agencies for purposes of international travel;

(5) Individuals and agencies required to provide a security clearance for matters of national security.

(c) Upon application the Bureau may, based upon the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and conviction data of any person or persons of whom the Bureau has record, provided that the requesting agency or individual submits to a reasonable procedure established by standard set forth by the Superintendent of State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of conviction data to:

(1) Individuals and agencies for the purpose of employment of the person whose record is sought, provided:

a. The requesting individual or agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police; and

b. The use of the conviction data shall be limited to the purpose for which it was given;

(2) Members of the news media, provided that the use of conviction data shall be limited to the purpose for which it was given, and the requesting media or news agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police.

(d) Dissemination of criminal history record information by any person or agency other than the Bureau or its designee is prohibited. This provision shall not prohibit dissemination by any criminal justice agency in those cases in which time is of the essence and the Bureau is technologically incapable of responding within the necessary time period. Under such circumstances the foregoing rules concerning dissemination are to be adhered to.

(e) Appropriate records of dissemination shall be retained by the Bureau and criminal justice agencies storing, collecting and disseminating criminal history record information to facilitate audits. Such records shall include, but not be limited to, the names of persons and agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) Unless otherwise specified by the court order directing that a record be sealed, such sealing shall not preclude dissemination of the arrest or conviction information concerning the subject of the court order, nor shall it preclude dissemination of the fact a sealed record exists, providing any dissemination made is pursuant to this chapter and Chapter 43 of this title. (42 Del. Laws, c. 181, § 11; 11 Del. C. 1953, § 8511; 59 Del. Laws, c. 551; 63 Del. Laws, c. 188, § 1.)

**§ 8514. User agreements.**

(a) Use of criminal history record information disseminated to noncriminal justice agencies shall be restricted to the purpose for which it was given.

(b) No criminal justice agency shall disseminate criminal history record information to any person or agency pursuant to § 8513(a)(3) and (b)(1), (2) and (3) of this title unless said person or agency enters into a user agreement with the Bureau, which agreement shall:

(1) Specifically authorize access to the data or information;

(2) Limit the use of the data or information to purpose for which it was given;

(3) Insure the security and confidentiality of the data or information consistent with this chapter.

(c) An individual or agency which has entered into a user agreement as prescribed by subsection (b) of this section, and which knowingly or recklessly violates the terms of that agreement, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. Upon such violation, the user agreement shall be terminable at the option of the Bureau. (63 Del. Laws, c. 188, § 1.)

**§ 8515. Furnishing information of injured or deceased persons.**

If a law-enforcement officer or the Office of the Chief Medical Examiner transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the Bureau shall furnish to such officer or Office any information available pertaining to the identification of such person. (42 Del. Laws, c. 181, § 12; 11 Del. C. 1953, § 8512; 63 Del. Laws, c. 188, § 1.)

**§ 8516. Furnishing information without application.**

Although no application for information has been made to the Bureau as provided in § 8513 of this title, the Bureau may transmit such information as the Director, in his discretion, designates to such persons as are authorized by § 8513 of this title to make application for it and as are designated by the Director. (42 Del. Laws, c. 181, § 13; 11 Del. C. 1953, § 8513; 63 Del. Laws, c. 188, § 1.)

**§ 8517. Local assistance.**

(a) At the request of any officer or official described in §§ 8507, 8509 and 8510 of this Title, the Superintendent of State Police may direct the Director to assist such officer:

(1) In the establishment of local identification and record system;

(2) In investigating the circumstances of any crime and in the identification, apprehension and conviction of the perpetrator or perpetrators thereof, and for this purpose may detail such employee or employees of the Bureau, for such length of time as the Director deems fit; and

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(3) Without such request the Director shall, at the direction of the Governor, detail such employee or employees, for such time as the Governor deems fit, to investigate any crime within this State, for the purpose of identifying, apprehending and convicting the perpetrator or perpetrators thereof.

(b) The Governor may, in his discretion, delegate to the Secretary of Public Safety the powers, duties or functions set forth in this section. (42 Del. Laws, c. 181, § 14; 11 Del. C. 1953, § 8514; 57 Del. Laws, c. 670, § 4C; 63 Del. Laws, c. 188, § 1.)

### **§ 8518. Scientific crime detection laboratory.**

To the end that the Bureau may be able to furnish the assistance and aid specified in § 8517 of this title, the Superintendent of the State Police may direct the Director to organize in the Bureau and maintain therein scientific crime detection laboratory facilities. (42 Del. Laws, c. 181, § 15; 11 Del. C. 1953, § 8515; 63 Del. Laws, c. 188, § 1.)

### **§ 8519. Certified copies of records.**

Any copy of a record, picture, photograph, fingerprint or other paper or document in the files of the Bureau certified by the Director or his designee to be a true copy of the original shall be admissible in evidence in any court of this State in the same manner as the original might be. (42 Del. Laws, c. 181, § 16; 11 Del. C. 1953, § 8516; 63 Del. Laws, c. 188, § 1.)

### **§ 8520. Annual report.**

The Director shall submit to the Superintendent of State Police an annual report of the conduct of his office. This report shall present summary statistics of the information collected by the Bureau. (42 Del. Laws, c. 181, § 17; 11 Del. C. 1953, § 8517; 63 Del. Laws, c. 188, § 1.)

### **§ 8521. Access to files.**

Only employees of the Bureau and persons specifically authorized by the Director shall have access to the files or records of the Bureau. No such file or record or information shall be disclosed by any person so authorized except to officials as in this chapter provided. (42 Del. Laws, c. 181, § 18; 11 Del. C. 1953, § 8518; 63 Del. Laws, c. 188, § 1.)

### **§ 8522. Authority to take fingerprints, photographs and other data.**

(a) To the end that the officers and officials described in §§ 8507, 8509, 8510 and 8525 of this title may be enabled to transmit the reports required of them, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs and other data of persons described in such section. A like authority shall be had by employees of the Bureau who are authorized to enter any institution under § 8512 of this title, as to persons confined in such institutions.

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(b) Every person arrested for a crime or crimes enumerated in § 8507 of this title shall submit to being fingerprinted, photographed and shall supply such information as required by the Superintendent. Whoever shall fail to comply with this section shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. (42 Del. Laws, c. 181, § 19; 11 Del. C. 1953, § 8519; 63 Del. Laws, c. 188, § 1.)

### **§ 8523. Penalties.**

(a) Whoever intentionally neglects or refuses to make any report lawfully required of him under this chapter, or to do or perform any other act so required to be done or performed by him, or hinders or prevents another from doing an act so required to be done by such person, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(b) Any person who knowingly and wrongfully destroys or falsifies by addition or deletion any computerized or manual record of the Bureau or of a criminal justice agency, which contains criminal history record information, or who knowingly permits another to do so, shall be guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(c) Any person who knowingly provides CHRI to another for profit is guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(d) Any person who knowingly provides criminal history record information to a person or agency not authorized by this chapter to receive such information or who knowingly and wrongfully obtains or uses such information shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(e) Conviction of a violation of this section shall be prima facie grounds for removal from employment by the State or any political subdivision thereof, in addition to any fine or other sentence imposed. (42 Del. Laws, c. 181, §§ 20, 21; 11 Del. C. 1953, §§ 8520; 8521; 63 Del. Laws, c. 188, § 1.)

### **§ 8524. Admissible evidence.**

Nothing in this chapter, or amendments adopted pursuant thereto, shall provide the basis for exclusion or suppression of otherwise admissible evidence in any proceeding before a court, or other official body empowered to subpoena such evidence. (63 Del. Laws, c. 188, § 1.)

### **§ 8525. Information voluntarily supplied by individuals.**

Whenever a person appears before any of the officers mentioned in § 8507 of this title, and requests an impression of his fingerprints, such mentioned officer shall comply with the request, and make at least 2 copies of the impressions on forms supplied by the Bureau. One copy shall be forwarded to the Federal Bureau of Investigation at Washington, D.C., and 1 copy shall be forwarded promptly to the Bureau, subject to § 8513 of this title, together with any personal identification data obtainable. The Bureau shall accept and file such fingerprints and personal identification data submitted voluntarily by such resident in a separate filing system, for the purpose of securing a more

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11 § 8601

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11 § 8602

certain and easy identification in case of death, injury, loss of memory or change of appearance. (42 Del. Laws, c. 181, § 10; 11 Del. C. 1953, § 8510; 63 Del. Laws, c. 188, § 1.)

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"Subchapter IV. Child Sex Abuse Information Repository

§8550. Definitions

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

(1) 'child' shall mean any person who is less than 18 years old;

(2) 'child sex abuse' means any sexual offense or child exploitation in violation of Chapter 5, Subchapter II, Subpart D and Subchapter V of Title 11 of the Delaware Code committed against a child by an adult;

(2) The Child Sex Abuse Information Repository works closely with schools, daycare centers, and the Department of Services for Children, Youth and Their Families in providing child sex abuser information;

(3) The Child Sex Abuse Information Repository reports child sex abuser information to the National Crime Information Center; and

(4) The Child Sex Abuse Information Repository maintains close liaison with the National Center on Child Abuse and Neglect and the National Center for Missing and Exploited Children for exchange of information.

Subchapter V. Criminal Background Check for Child Care Providers

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\*\*\* THIS SECTION IS CURRENT THROUGH THE 1994 SUPPLEMENT  
\*\*\* (1994 REGULAR SESSION OF THE 137TH GENERAL ASSEMBLY) \*\*\*

TITLE 11. CRIMES AND CRIMINAL PROCEDURE  
PART V. LAW-ENFORCEMENT ADMINISTRATION  
CHAPTER 85. STATE BUREAU OF IDENTIFICATION  
SUBCHAPTER V. CRIMINAL BACKGROUND CHECK FOR CHILD CARE PROVIDERS

11 Del. C. @ 8560 (1994)

@ 8560. Definitions

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

(1) "Children" means persons who are less than 18 years old;

(2) "Child care provider" means any child care facility which by law is required to be licensed or any facility registered and eligible for Federal Child Care Development Block Grant funds.

(3) "Child sex abuser information" shall have the meaning prescribed by @ 8550(3) of this title;

(4) "Criminal conviction data" shall have the meaning prescribed by @ 8502(8) of this title;

(5) "Person seeking employment with a child care provider" means any person seeking employment for compensation with a child care provider or any person who for any reason has regular direct access to children at any facility referred to in subdivision (2) of this section.

HISTORY: 68 Del. Laws, c. 441, @ 1; 69 Del. Laws, c. 144, @@ 1, 2.

NOTES:

REVISOR'S NOTE. --Section 2 of 69 Del. Laws, c. 64, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent



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\*\*\* THIS SECTION IS CURRENT THROUGH THE 1994 SUPPLEMENT  
\*\*\* (1994 REGULAR SESSION OF THE 137TH GENERAL ASSEMBLY) \*\*\*

TITLE 11. CRIMES AND CRIMINAL PROCEDURE  
PART V. LAW-ENFORCEMENT ADMINISTRATION  
CHAPTER 85. STATE BUREAU OF IDENTIFICATION  
SUBCHAPTER V. CRIMINAL BACKGROUND CHECK FOR CHILD CARE PROVIDERS

11 Del. C. § 8561 (1994)

§ 8561. Information to be provided to child care providers

(a) Anything contained in subchapter I of this chapter to the contrary notwithstanding, the State Bureau of Identification, hereinafter referred to as the "Bureau" shall furnish information pertaining to the identification and conviction data of any person seeking employment with a child care provider,

provided that the person seeking employment with a child care provider submits to a reasonable procedure established by standards set forth by the Superintendent of State Police to identify the person whose record is sought. Such procedure shall include the fingerprinting of the person seeking employment with a child care provider, and the provision of such other information as may be necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(b) The provisions of subsection (a) of this section shall apply to the dissemination of the identification and criminal conviction data to:

(1) Any person seeking employment with a child care provider; and/or

(2) Child care providers for the purpose of obtaining such background information relating to the employment requirements for the person whose record is sought; and/or

(3) Upon request from the Department of Services for Children, Youth and Their Families for the purpose of determining the suitability for child care facility licensing.

(c) Any person seeking employment with a child care provider shall as a condition of employment provide to such child care provider prior to employment, his or her identification and conviction data, if any, as the same appears on file with the State Bureau of Identification.

(d) Notwithstanding any provision to the contrary, the information to be furnished by the Bureau shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.

(e) Costs associated with obtaining said information and child sex abuser information shall be borne by the State.

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(f) No person seeking employment with a child care provider shall be hired by the child care provider if such person seeking employment has been convicted of having committed a crime of child sex abuse as defined in @ 8550(2) of this title.

(1) Child care providers which are subject to this subchapter may provisionally hire a person seeking employment, pending the furnishing by the Bureau of the information required by this subchapter.

(2) Any person seeking employment with a child care provider who has been the subject of a background check by the State Bureau of Identification pursuant to the terms of this subchapter within the previous 5 years shall be exempt from the provisions of this subsection.

(g) Any person or organization whose primary concern is that of child welfare and care and which is not otherwise required to do so under the provisions of this subchapter may voluntarily submit to the provisions of this subchapter at such person's or organization's expense pursuant to procedures established by the Superintendent of State Police. The provisions of @ 8562 of this title shall not apply to such persons or organizations.

@ 8562. Penalties

(a) Any child care provider or designated agent for a child care provider who fails to obtain the information required by @ 8561 of this title from a person seeking employment with such child care provider or otherwise violates the provisions of @ 8561 of this title, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(b) Any person seeking employment with a child care provider who knowingly provides false, incomplete or inaccurate child sex abuser information shall be guilty of a class G felony and shall be punished according to Chapter 42 of this title.

(c) The Superior Court shall have exclusive jurisdiction of offenses under this subchapter.

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TITLE 11. CRIMES AND CRIMINAL PROCEDURE  
PART V. LAW-ENFORCEMENT ADMINISTRATION  
CHAPTER 85. STATE BUREAU OF IDENTIFICATION  
SUBCHAPTER VI. CRIMINAL BACKGROUND CHECK FOR PUBLIC SCHOOL RELATED EMPLOYMENT

11 Del. C. @ 8570 (1994)

@ 8570. Definitions

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

(1) "Children" means persons who are enrolled in public schools in this State.

(2) "Child sex abuse" shall have the meaning prescribed by @ 8550(2) of this title.

(3) "Person seeking employment with a public school" means any person seeking employment for compensation with a public school or agency that supplies contracted services directly to students of a public school or any person who for any reason has regular direct access to children at any facility referred to in subsection (4) of this section, including substitute teachers; provided, however, that any person who has been continuously employed in a public school district or by an agency that supplies contracted services directly to students in Delaware shall be exempt from the screening provisions of @ 8571 of this title while employed in the same district.

(4) "Public school" means any public school and includes any board of education, school district, reorganized school district, special school district, and any person acting as an agent thereof.

@ 8571. Screening procedure required

(a) Any person seeking employment with a public school shall be required to submit his or her fingerprints and other necessary information in order to obtain the following:

(1) Report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 [28 U.S.C. @ 534]. The State Bureau of Identification shall be the intermediary for the purposes of this section and the public school shall be the screening point for the receipt of said federal criminal history records.

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(b) All information obtained pursuant to subsection (a) of this section shall be forwarded to the public school which will assess the information and make a determination of suitability for employment. The person seeking employment shall be provided with a copy of all information forwarded to the public school pursuant to this subsection. Information obtained under this subsection is confidential and may only be disclosed to the chief school officer and the chief personnel officer of the public school. The State Bureau of Identification may release any subsequent criminal history to the public school.

(c) Costs associated with obtaining criminal history information and child sex abuse repository information shall be paid by the person seeking

employment; provided, however, that subject to a specific annual appropriation in the Annual Appropriations Act, costs associated with obtaining criminal history information and child sex abuse repository information may be paid by the State.

(d) A person seeking employment shall have an opportunity to respond to the public school regarding any information obtained pursuant to subsection (b) of this section prior to a determination of suitability for employment being made. The determination of suitability for employment shall be based upon the type of offenses, if any; the length of time since any offenses; record since any offenses; and responsibilities of the position which the person is seeking; provided that a person seeking employment with a public school may be disqualified from employment for any of the following reasons:

(1) Conviction of manufacture, delivery or possession, or possession with intent to deliver a controlled substance, or a counterfeit controlled substance classified in Chapter 47 of Title 16 or in similar laws of any other jurisdiction;

(2) Conviction of any felony in this State or any other jurisdiction in the last 5 years; or

(3) Conviction of any crime against a child in this State or any other jurisdiction.

(e) Upon making its determination of suitability, the public school shall forward the determination to the person seeking employment. If a determination is made to deny the person from employment based upon the criminal history of the person, the person shall have an opportunity to appeal to the chief school officer or designee for reconsideration.

(f) A public school may conditionally hire a person seeking employment, pending the determination of suitability for employment. If the information obtained from the criminal background check reveals that the person is disqualified from employment pursuant to subsection (d) of this section, the person may not continue in employment and is subject to termination.

(g) Any person seeking employment with a public school who has submitted to a criminal background check in this or any other state within the previous 12 months shall not be required to submit to another criminal background check; provided, however, that the person submits (1) the results of such previous background check, including any previous federal criminal background check, and (2) a reference from the most recent employer, if any, covering the previous 12 months.

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(h) The State Board of Education shall, in the manner provided by law, promulgate regulations necessary to implement this subchapter. These regulations shall include:

(1) Establishment, in conjunction with the State Bureau of Identification, of a procedure for fingerprinting persons seeking employment with a public school and providing the reports and certificate obtained pursuant to subsection (a) of this section;

(2) Establishment of a procedure for reconsideration of a determination to deny employment based upon a person's criminal history; and

(3) Establishment of a procedure to provide confidentiality of information obtained pursuant to subsection (a) of this section and of the determination of suitability for employment.

@ 8572. Penalties

Any person seeking employment with a public school who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of @ 8571 of this title shall be guilty of a class G felony and shall be punished according to Chapter 42 of this title.

## CHAPTER 86. DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

Sec.		Sec.	
8601.	Purpose.	8605.	Personnel.
8602.	Definitions.	8606.	Rules and regulations.
8603.	Board of Managers — Established; purpose; composition; term of office; staff; powers.	8607.	Duties of Executive Director.
8604.	Same — Duty to insure compliance with statute.	8608.	Denial of appointment, etc., to position allowing access to criminal history record information.

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### § 8601. Purpose.

The purpose of this chapter is to maintain an accurate and efficient criminal justice information system in Delaware consistent with Chapter 85 of this title and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy. (63 Del. Laws, c. 352, § 1.)

### § 8602. Definitions.

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

(1) "Administration of criminal justice" shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correction supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage and dissemination of criminal history record information.

(2) "Criminal history record information" shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprint records to the

extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

- a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;
- b. Original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long-standing custom to be made public, if such records are organized on a chronological basis;
- c. Court records of public judicial proceedings;
- d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;
- e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;
- f. Announcements of executive clemency.

(3) "Criminal justice agency" shall mean:

- a. Every court of this State and of every political subdivision thereof;
- b. A government agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:
  1. The Delaware State Police;
  2. All law enforcement agencies and police departments of any political subdivision of this State;
  3. The State Department of Justice;
  4. The Office of the Solicitor of the City of Wilmington; and
  5. The Department of Correction.

(4) "Disposition" shall include, but not be limited to, trial verdicts of guilty or not guilty, nolle prosequis, Attorney General probations, pleas of guilty or nolo contendere, dismissals, incompetence to stand trial, findings of delinquency or nondelinquency and initiation and completion of appellate proceeding.

(5) "Dissemination" shall mean the transmission of criminal history record information, or the confirmation of the existence or nonexistence of such information. The term shall not include:

- a. Internal use of information by an officer or employee of the agency which maintains such information;
- b. Transmission of information to the State Bureau of Identification;
- c. Transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;
- d. Transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies

provide and/or maintain the information through those terminals. (63 Del. Laws, c. 352, § 1.)

**§ 8603. Board of Managers — Established; purpose; composition; term of office; staff; powers.**

(a) The Delaware Justice Information System Board of Managers, hereinafter referred to as the "Board," is hereby established.

(b) The Board shall establish policy for the development, implementation and operation of comprehensive data systems in support of the agencies and courts of the criminal justice system of the State. Said data systems shall include, but not be limited to, criminal history record information with respect to individuals who are arrested, or against whom formal criminal charges are preferred within this State, or against whom proceedings relating to the adjudication of a juvenile as delinquent are instituted.

(c) The Board shall be composed of 13 members, 8 of whom shall be voting members as follows:

(1) One member of the Delaware State Police, to be designated by the Superintendent of the Delaware State Police;

(2) One member of a county or municipal police department, to be designated by the Delaware Police Chiefs' Council;

(3) Two members to be designated by the Commissioner of the Department of Correction, 1 of whom shall represent the Bureau of Adult Correction and 1, the Bureau of Juvenile Correction;

(4) Two members to be designated by the Chief Justice of the Supreme Court, 1 of whom shall represent the Family Court and 1, all other courts of this State;

(5) One member-at-large to be designated by the Governor; and

(6) One member to be designated by the Attorney General.

(d) In addition, there shall be 5 nonvoting members:

(1) Two members of the General Assembly, 1 Senator to be designated by the President Pro Tempore of the Senate, and 1 Representative to be designated by the Speaker of the House of Representatives;

(2) One member of the Delaware State Bureau of Identification, to be designated by the Superintendent of the Delaware State Police;

(3) One member of the State Division of Central Data Processing, to be designated by the Director of that Division; and

(4) One member of the Delaware Criminal Justice Planning Commission to be designated by the Director of that agency.

(e) Each Board member shall serve at the pleasure of, and for the term prescribed by, the officer or individual by whom such member was appointed.

(f) The agencies represented on the Board shall provide the Board with adequate staff support to assure that applicable provisions of this chapter are effectively carried out, not inconsistent with state law.

(g) The Board shall have the power and authority to:

(1) Designate an Executive Committee which may act between meetings of the Board, subject to confirmation of its decisions by a quorum of the Board, which Executive Committee shall consist of not less than 3 members of the Board and shall be chaired by the Board Chairman.



(2) Employ, supervise and evaluate an Executive Director and other personnel to implement and administer this chapter.

(3) Approve the Executive Director's annual budget request and other applications for funds from any sources.

(4) Recommend any legislation necessary for the implementation, operation and maintenance of the criminal justice information system.

(5) Establish and implement policy for providing management and administrative statistics and for coordinating technical assistance to serve the information needs of criminal justice agencies, planners, administrators, legislators and the general public.

(6) Perform all functions necessary to carry out the duties of this chapter. (63 Del. Laws, c. 352, § 1.)

#### **§ 8604. Same — Duty to insure compliance with statute.**

The Board shall insure that the State Bureau of Identification and all other criminal justice agencies collecting, storing or disseminating criminal history record information and other information concerning crimes and offenders comply with this chapter and Chapter 85 of this title. (63 Del. Laws, c. 352, § 1.)

#### **§ 8605. Personnel.**

(a) No person shall be appointed, promoted or transferred to any position with an agency which has or allows access to criminal history record information facilities, systems operating environments or data file contents, whether while in use or stored in a media library, without a criminal history record check by the employing agency. No person shall be appointed, promoted or transferred to such a position by an agency if promotion or transfer could endanger the security, privacy or integrity of such information.

(b) The Board shall initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have access to such information, where such personnel violated Chapter 85 of this title.

(c) The Board shall provide for the establishment of a plan for resolving employee grievances, complaints and appeals. (63 Del. Laws, c. 352, § 1.)

#### **§ 8606. Rules and regulations.**

The Board shall have the power and authority to promulgate rules and regulations to insure compliance with this chapter not inconsistent with Chapter 85 of this title. (63 Del. Laws, c. 352, § 1.)

#### **§ 8607. Duties of Executive Director.**

Under the direction of the Board, the Director's duties shall include but not be limited to:

(1) The employment and supervision of required employees.

(2) The preparation and control of an annual budget.

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(3) The preparation of an annual report on the justice system's computerization status for presentation to the Governor, the Chief Justice of the Supreme Court and the General Assembly, which shall be made available to the general public upon request.

(4) The preparation of policy and procedure for implementing the audit, security and other provisions of this chapter and Chapter 85 of this title. (63 Del. Laws, c. 352, § 1.)

### **§ 8608. Denial of appointment, etc., to position allowing access to criminal history record information.**

(a) Nothing in this chapter or in any rule promulgated hereunder shall limit the authority of a criminal justice agency or of the Board under § 8605 of this title to deny the appointment, promotion or transfer of any person to any position which has or allows access to criminal history record information.

(b) The Board shall have authority under the rules to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel of a criminal justice agency who are authorized to have or allow access to criminal history record information where such personnel violate Chapter 85 of this title.

(c) Any person who is otherwise qualified for a position under this chapter who is denied appointment, promotion or transfer to such position or who is transferred or removed from such position under § 8605 of this title shall be given a written statement of the reason or reasons therefor by the agency responsible for such action, and the agency shall promptly give written notice of its action to the Board. (63 Del. Laws, c. 352, § 1.)

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## **Title 11**

### ***Subchapter VII. Expungement of Criminal Records***

#### **§ 4371. Statement of policy.**

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, obtain an education or to obtain credit. This subchapter is intended to protect innocent persons from unwarranted damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven. (62 Del. Laws, c. 317, § 2.)

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**§ 4372. Termination of criminal action in favor of accused.**

- (a) If a person is charged with the commission of a crime and
  - (1) Is acquitted; or
  - (2) A nolle prosequi is taken, or the charge is otherwise dismissed, he may file a petition setting forth the relevant facts and requesting expungement of the police records, and the court records relating to the charge.
- (b) The petition shall be filed in the Superior Court in the county where the case was terminated, disposed of or concluded.
- (c) A copy of the petition shall be served on the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on him. (62 Del. Laws, c. 317, § 2.)

**§ 4373. Hearing by Court; granting or denial of expungement.**

- (a) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.
- (b) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.
- (c) If an order expunging the records is granted by the Court, all the records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. (62 Del. Laws, c. 317, § 2.)

**§ 4374. Disclosure of expunged records.**

- (a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged

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court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason.

(f) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor, and shall be punished accordingly. (62 Del. Laws, c. 317, § 2.)

### § 4375. Notification to federal government.

Upon the granting by the Court for an order for the expungement of records in accordance with this subchapter, a copy of such order shall be forwarded to the federal Department of Justice. (62 Del. Laws, c. 317, § 2.)

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## PART X

## Public Records and Meetings

## CHAPTER 100. FREEDOM OF INFORMATION ACT

Sec.

10001. Declaration of policy.

10002. Definitions.

10003. Examination and copying of public records.

Sec.

10004. Open meetings.

10005. Enforcement.

## § 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are made by such officials in formulating and executing public policy. Toward this end, this chapter is adopted, and shall be construed. (60 Del. Laws, c. 641, § 1.)

## § 10002. Definitions.

(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State including, but not limited to, any board, bureau, commission, department, agency, committee, counsel, legislative committee, association or any other entity established by an act of the General Assembly of the State, which: (1) Is supported in whole or in part by public funds; (2) expends or disburses public funds; or (3) is specifically charged by any other public body to advise or make recommendations.

(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(c) "Public funds" are those funds derived from the State or any political subdivision of the State, but not including grants-in-aid.

(d) "Public record" is written or recorded information made or received by a public body relating to public business. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of

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identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court;

(10) Any record of discussions allowed by § 10004(b) of this title to be held in executive session; or

(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers.

(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used.

(e) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.

(f) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting.

(g) "Public body," "public record" and "meeting" shall not include activities of the Farmers' Bank of the State of Delaware or the University of Delaware, except that the Board of Trustees of the University shall be a "public body," and University documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees shall be a "meeting." (60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1.)

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### § 10003. Examination and copying of public records.

(a) All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expediently as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.

(b) It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. (60 Del. Laws, c. 641, § 1.)

### § 10004. Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (g) of this section.

(b) A public body at any meeting may call for an executive session closed to the public pursuant to subsection (c) of this section for any of the following purposes:

(1) Discussion of individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions with respect to collective bargaining, pending or potential litigation, when an open meeting would have effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed;

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- (10) Training and orientation sessions conducted to assist members of the public body in the fulfillment of their responsibilities;
  - (11) Discussion of potential or actual emergencies related to preservation of the public peace, health and safety;
  - (12) Where the public body has requested an attorney-at-law to render his legal advice or opinion concerning an issue or matter under discussion by the public body and where it has not yet taken a public stand or reached a conclusion in the matter; or
  - (13) Preliminary discussions resulting from tentative information relating to the management of the public schools in the following areas: School attendance zones; personnel needs; and fiscal requirements.
- (c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The purpose for such executive session shall be announced ahead of time and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must be made at a public meeting and the results of the vote made public, unless disclosure of the existence or results of the vote would disclose information properly the subject of an executive session pursuant to subsection (b) of this section.
- (d) This section shall not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting.
- (e) (1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.
- (2) All public bodies shall give public notice of their regular meetings at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items or the deletion of items at the time of the public body's meeting.
- (3) All public bodies shall give public notice of the type set forth in paragraph (2) of this subsection of any special or rescheduled meeting no later than 24 hours before such meeting.
- (4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available.
- (5) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting.



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(f) Each public body shall make available for public inspection and copying as a public record minutes of all regular, special and emergency meetings. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer.

(g) This section shall not apply to the proceedings of:

- (1) Grand juries;
- (2) Petit juries;
- (3) Special juries;
- (4) The deliberations of any court;
- (5) The board of Pardons and Parole; and
- (6) Public bodies having only 1 member. (60 Del. Laws, c. 641, § 1.)

### § 10005. Enforcement.

Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 30 days of the citizen's learning of such action but in no event later than 6 months after the date of the action. Any citizen denied access to public records as provided in this chapter may bring suit within 10 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Remedies permitted by this section include a declaratory judgment, writ of mandamus and other appropriate relief. (60 Del. Laws, c. 641, § 1.)

**§ 6412. Public information.**

(a) Each agency shall make available promptly to the public upon request, for inspection, originals or legible copies of the following:

- (1) Its regulations, orders, decisions, opinions and licenses;
- (2) Any documents, papers and other materials considered by the agency in taking agency action; or
- (3) Any records of the agency reasonably specified by the requesting person.

(b) When making its documents and other materials available to the public, the agency may:

- (1) Take reasonable precautions to preserve the integrity and security of such documents or materials;
- (2) Make available only at reasonable, specified intervals documents and materials being actively used by the agency;
- (3) Limit the availability of information to its regular business hours and place of business;
- (4) Decline to make available documents and other materials which:
  - a. Relate solely to the agency's internal procedural and personnel practices;
  - b. Pertain to ongoing enforcement investigations which have not yet resulted in agency action;
  - c. Are specifically exempted from disclosure by law; or
  - d. Are confidential or privileged for the same or similar reasons as the Court would hold its records confidential or privileged;
- (5) Make a reasonable charge for the cost of reproducing or copying such documents or materials.

(c) The Court shall have jurisdiction of all actions to compel an agency to produce or disclose any documents, materials or information and the agency shall have the burden of sustaining its refusal to produce or disclose as requested. (60 Del. Laws, c. 585, § 1.)

# DELAWARE

## Delaware State Police State Bureau of Identification Dover, Delaware

### PROPOSED REGULATIONS PROVIDING FOR ADMINISTRATIVE REVIEW, CHALLENGE, AND APPEAL OF THE ACCURACY OF AN INDIVIDUAL'S CRIMINAL HISTORY RECORD.

- 1.1 **PURPOSE** - It is the purpose of these rules to provide individuals the right to access and review of criminal history record information maintained about that individual for purposes of insuring the accuracy and completeness of such information; to insure administrative review when the accuracy of such information is challenged; and to provide administrative appeal procedures in conformity with L.E.A.A. regulations, 28 C.F.R. 20.
- 1.2 **AUTHORITY** - These rules are issued by the Secretary of Public Safety pursuant to the authority vested in him by 29 Del.C. §8203(7) to establish and promulgate rules and regulations governing the administration and operation of his department.
- 1.3 **DEFINITIONS** - (A) Criminal History Record Information - means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arriving therefrom, including post-judgment, appellate proceeding as well as corrections, probation, parole and release data. The term does not include:
- (i) Identification information such as fingerprint records or photographs to the extent that such information does not indicate involvement of the individual in the criminal justice system.
  - (ii) Posters, announcements or lists for identifying or apprehending fugitives or wanted persons.
  - (iii) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed on a chronological basis.
  - (iv) Court records of public judicial proceedings compiled chronologically.
  - (v) Published court opinions or public judicial proceedings.
  - (vi) Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation or renewal of operator's licenses.

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(vii) Announcements of executive clemency.

(B) Secretary means the Secretary of Public Safety.

1.4 INDIVIDUAL RIGHT OF ACCESS AND REVIEW - Any individual, upon adequate verification of his identity, who desires to review criminal history record information relating to him, or who believes that the information maintained is inaccurate, incomplete or maintained in violation of state or federal law shall be entitled to review such information in accordance with the following procedures:

(a) Verification of such individual's identity shall be effected through submission of name, date of birth, and a set of rolled fingerprints to the State Bureau of Identification.

(b) The request for review may be made at the headquarters of the State Bureau of Identification in Dover or in the case of incarcerated prisoner at any facility maintained by the Department of Corrections.

Such requests shall be accompanied by payment of a fee of \$5.00 payable to the State Police and shall be made between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday (excepting state holidays).

1.5 INDIVIDUAL'S RIGHT TO CHALLENGE - (DELETED)

1.6 ADMINISTRATIVE APPEAL - (a) Any individual after challenging the accuracy and completeness of his criminal history record information file as provided for in Section 1.5 and whose record is not removed, modified, or corrected as he may request, or who is otherwise dissatisfied with the decision or action taken by the State Bureau of Identification may appeal to the Secretary within 30 days of the decision rendered by the State Bureau of Identification.

(b) The individual's request for review shall be made in writing to the Secretary alleging the nature of his appeal.

(c) Failure of the State Bureau of Identification to act within the time prescribed in Section 1.5 shall be deemed a decision adverse to the challenging individual.

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1.7 PROCEDURE FOR HEARING APPEAL - (a) The Secretary in each case in which he finds a prima facie basis for complaint shall conduct a hearing.

(b) The complaining individual may appear with counsel, present evidence, examine and cross-examine witnesses. In testimony at this hearing the technical rules of evidence shall not apply. The complaining individual must show by a preponderance of the evidence the inaccuracy or incompleteness of the criminal history record being challenged.

(c) A written decision shall be issued by the Secretary within 60 days of the complaining individual's request for review. Such decision shall include the reasons therefore.

(d) If the record in question is found by the Secretary to be inaccurate, incomplete, or misleading, the State Bureau of Identification shall delete, amend, supplement, or modify the records accordingly and shall immediately notify criminal justice agencies not having direct access to C.L.U.E.S to which the records in question have been disseminated as well as the individual whose records have been corrected of said corrections and shall order such disseminates to conform their records to the corrected data.



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## HOUSE OF REPRESENTATIVES

## 135TH GENERAL ASSEMBLY

## HOUSE BILL NO. 588

## AS AMENDED BY

## HOUSE AMENDMENTS NO. 1, 3, 4

AN ACT TO AMEND TITLE 11, DELAWARE CODE RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR SALES OF FIREARMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 11, Delaware Code by adding thereto a new Section 1448A as follows:

"§1448A Criminal History Record Checks for Sales of Firearms.

(a) No licensed importer, licensed manufacturer, or licensed dealer shall sell or deliver from his inventory any firearm, as defined in 11 Del. C. 222 (9), to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until he has:

(1) 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 has inspected identification containing a photograph of the potential buyer or transferee;

(2) requested, by means of a toll-free telephone call pursuant to subsection (e) herein, the SBI to conduct a criminal history record check; and

(3) received a unique approval number for that inquiry from the SBI, and has recorded the date and approval number on the consent form.

(b) Upon receipt of a request for a criminal history record check, the SBI during the licensee's call or by return call, shall;

(1) review its criminal history records to determine if the potential buyer or

transferee is prohibited from receipt or possession of a firearm pursuant to 11 Del. C. §1448 or federal law; and

(2) inform the licensee making the inquiry either (i) that its records demonstrate that the potential buyer or transferee is so prohibited, or (ii) 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 third business day following a request for a criminal history 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 11 Del. C. §1448 or federal law, or

(2) provide the licensee with a unique approval number. Unless notified by the end of the third business day following a request for a records check that the potential buyer or transferee is so prohibited, and without regard to whether he 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 11 Del. C. §1448 or federal law shall be confidential and may not be disclosed by any officer or employee of SBI to any person or to another agency. The SBI shall destroy any such records after it communicates the corresponding approval number to the licensee and such records shall be destroyed within 30 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 one year.

(3) Nothing in this section shall be construed to allow the State of Delaware 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 11 Del. C. §1448 and federal law from the receipt or possession of firearms.

(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. and 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 SBI shall employ and train 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 him by petitioning the SBI. If the SBI fails to amend the record within thirty (30) days, the person requesting the amendment may petition the Superior Court in the county of his 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 S.B.I. 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 11 Del. C. §1448 or federal law, the SBI shall destroy any records it maintains which contain any information derived from the criminal history records check set forth in subsection (a)(1).

(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 subsection (b) and (c) of this section.

Within seventy-two (72) hours of the normalization of telephone service the licensed importer, licensed manufacturer or licensed dealer shall communicate to S.B.I. the identifying data as set forth in paragraph (1) of subsection (a) for each sale or delivery of a firearm during the unavailability of telephone service.

(1) 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 one 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 subparagraph (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.

(6) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license pursuant to 11 Del. C. , §1441; and

(7) Transactions involving a law enforcement officer as defined by 11 Del. C., §222 (12);

(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), 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 the subsection (a) 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 importer, 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 11 Del. C. §1448 or federal law, and the estimated costs of administering this section.

(o) This section shall become effective six months from the date of enactment 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 Superior Court.

(q) Notwithstanding 11 Del. C., Chapter 89, 29 Del. C., Chapter 10, and other Delaware laws the S.B.I. is authorized and directed to release records and data required by this Section. The S.B.I. shall not release or disclose criminal records or data except as specified in subsections (b) and (c).



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SPONSOR: Sen. Sharp & Rep. Gilligan; Reps. Houghton, Roy, Van Sant

DELAWARE STATE SENATE

137th GENERAL ASSEMBLY

SENATE BILL NO. 70 MAR 31 1993

AN ACT TO AMEND CHAPTER 101, TITLE 3, DELAWARE CODE, RELATING TO THE DELAWARE THOROUGHBRED RACING COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Section 10128(b), Chapter 101, Title 3 of the Delaware  
2 Code by deleting it in its entirety and inserting in lieu thereof the  
3 following:

4 "The Commission may use the services of the Thoroughbred Racing  
5 Protection Bureau and county, state, or federal law-enforcement  
6 agencies. An individual making application to a licensee for a permit  
7 to participate in or be employed at a meet held by a licensee shall be  
8 fingerprinted by the Thoroughbred Racing Protection Bureau for purposes  
9 of a criminal record check on the applicant."

10 Section 2. This amendment shall become effective 90 days after becoming  
11 law.

SYNOPSIS

This bill mandates the fingerprinting of an individual making application to a licensee for a permit to participate in or be employed at a meet held by a licensee. The fingerprinting will be done by the Thoroughbred Racing Protection Bureau and will be used to make a criminal record check on the applicant. The Federal Bureau of Investigation is prohibited from disseminating identification records outside the federal government for licensing and related purposes, unless the state organization requesting such information is so authorized by state statute.

Author: Sen. Sharp

§ 10123. Rules, regulations and special powers of Commission.

- (a) The Commission may make rules governing, restricting or regulating the rate or charge by a licensee for admission or for the performance of any service or the sale of any article on the premises of a licensee.
- (b) The Commission may use the services of the Thoroughbred Racing Protection Bureau and county, state or federal law-enforcement agencies.
- (c) The Commission may authorize a licensee to appoint, subject to the approval and control of the Commission: (1) Racing officials; (2) chemists; (3) accountants; (4) engineers; (5) stewards; and (6) veterinarians; and grant licenses to all participants in the racing meet.
- (d) No Commissioner, racing official, steward or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission, have any financial or primary interest in the outcome of any race regulated by the Commission, or have any financial interest in a thoroughbred and/or Arabian horse race track or in the operation of any such track within this State.
- (e) All proposed extensions, additions or improvements to the buildings, stables or improvements on tracks or property owned or leased by a licensee under this chapter shall be subject to the approval of the Commission.
- (f) The Commission may compel the production of any and all books, memoranda or documents showing the receipts and disbursements of any person licensed under the provisions of this chapter to conduct racing meets.
- (g) The Commission may at any time require the removal of any employee or official employed by any licensee hereunder.
- (h)(1) The Commission may require that the books, records and financial or other statements of any person licensed under the provisions of this chapter shall be kept in such form or in such manner as the Commission prescribes.
- (2) The Commission may visit, investigate and place expert accountants and such other persons as it deems necessary in the offices, tracks or places of business of any such person for the purpose of satisfying itself that the Commission's rules and regulations are strictly complied with. The salaries and expenses of such expert accountants or other persons shall be paid by the person to whom they are assigned.
- (i) The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents before the Commission and may administer oaths or affirmations to the witnesses whenever in the judgment of the Commission it may be necessary for the effectual discharge of its duties.
- (j) If any person refuses to obey any subpoena or to testify or to produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting, and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or to produce the books, papers or documents.
- (k) Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.
- (l) False swearing on the part of any witness shall be deemed perjury and shall be punished as such.
- (m)(1) The Commission shall adopt regulations governing the operation of thoroughbred and Arabian racing including the regulation of betting in connection therewith and the regulation of the conduct of all participants in any racing meet, to insure the integrity and security of the conduct of meetings held pursuant to this chapter. Such regulations shall include provisions for disciplinary measures for violations thereof including the imposition of fines, suspension or revocation of licenses or permits, and ejection or expulsion from a licensee's premises.
- (2)a. The Commission shall have the authority to impose a fine of up to \$5,000 for any violation of its regulations.
- b. The stewards of a race meeting acting in accordance with such regulations if authorized by the Commission shall have the authority to impose disciplinary measures, including fines, suspension or revocation of licenses or permits, and ejection or exclusion from a licensee's premises.
- c. All fines imposed pursuant to this section shall be paid over to the General Fund upon receipt by the Commission.
- d. A person fined or otherwise disciplined by the stewards of a racing meeting shall have a right of appeal to the Commission and for a hearing before the Commission. Any person fined or otherwise disciplined by the Commission shall have a right of appeal to the Superior Court of the State.
- e. The action of the Commission shall stand unless and until reversed by the Court. (38 Del. Laws c. 62, § 10; Code 1933, § 5503; 43 Del. Laws c. 242; 23 Del. C. 1953, § 328; 63 Del. Laws c. 143, § 6; 64 Del. Laws c. 266, §§ 2, 3; 68 Del. Laws c. 40, § 1.)