

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 792 Session of 2013

INTRODUCED BY TALLMAN, METCALFE, DAVIDSON, EMRICK, GABLER, GROVE, C. HARRIS, HESS, KAUFFMAN, F. KELLER, LAWRENCE, MAJOR, MILLARD, MULLERY, PICKETT, READSHAW, REESE, ROAE AND STEVENSON, FEBRUARY 25, 2013

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 25, 2013

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
 2 Consolidated Statutes, in firearms and other dangerous
 3 articles, providing for the offense of unlawful firearm
 4 records; and prescribing a penalty.

5 The General Assembly of the Commonwealth of Pennsylvania
 6 hereby enacts as follows:

7 Section 1. Title 18 of the Pennsylvania Consolidated
 8 Statutes is amended by adding a section to read:

9 § 6143. Unlawful firearm records.

10 (a) Prohibition.--Except as otherwise provided under
 11 subsection (b), no State governmental agency or political
 12 subdivision or official, agent or employee thereof or any other
 13 person, public or private, may knowingly and willfully keep or
 14 cause to be kept any list, database, record or registry of
 15 privately owned firearms or any list, database, record or
 16 registry of the owners of those firearms.

17 (b) Exceptions.--Subsection (a) shall not apply to any of
 18 the following:

1 (1) Records of firearms that have been used in
2 committing a crime.

3 (2) Records relating to a person who has been convicted
4 of a crime.

5 (3) Records of firearms that have been reported stolen.
6 These records may be retained for a period not in excess of
7 ten days after such firearms are recovered and any criminal
8 prosecution related to the stolen firearms has ended,
9 including any period during which an appeal may be filed.
10 Official documentation recording the theft of a recovered
11 weapon may be maintained no longer than the balance of the
12 year entered plus two years.

13 (4) Firearm records that are required to be retained by
14 firearms dealers or manufacturers under Federal or State law,
15 including copies of such records transmitted to law
16 enforcement agencies, provided that no State governmental
17 agency or political subdivision or official, agent or
18 employee thereof or any other person, private or public, may
19 accumulate, compile, computerize or otherwise collect or
20 convert such written records into any form of list, database
21 or registry for any purpose.

22 (5) Records kept by the Pennsylvania State Police to the
23 extent required by Federal law and a log of dates of requests
24 for criminal history record checks, unique approval and
25 nonapproval numbers, license identification numbers and
26 transaction numbers corresponding to such dates.

27 (6) Records of an insurer that, as a condition to
28 providing insurance against theft or loss of a firearm,
29 identify such firearm, provided that the records are not
30 sold, commingled with records relating to other firearms or

1 transferred to any person or entity other than the insured
2 and that the insurer does not keep a record of the firearm,
3 unless part of an ongoing claim, more than 60 days after
4 either the policy of insurance expires or notification by the
5 insured that the insured is no longer the owner of the
6 firearm.

7 (7) Lists of customers of a firearms dealer retained by
8 the dealer, provided that the lists do not disclose the
9 particular firearms purchased, and lists or any parts thereof
10 are not sold, commingled with records relating to other
11 firearms or transferred to any other person or entity.

12 (8) Sales receipts retained by the seller of firearms or
13 by a person providing credit for the purchase, provided that
14 the receipts do not serve as or are used for the creation of
15 a database for registration of firearms.

16 (9) Personal records of firearms maintained by the owner
17 of the firearms or at the request of the owner of the
18 firearms.

19 (10) Records maintained by a business or person that
20 stores or acts as the selling agent of firearms on behalf of
21 the lawful owner of the firearms.

22 (11) Membership lists of organizations comprised of
23 owners of firearms.

24 (12) Records maintained by an employer or contracting
25 entity of the firearms owned or used by its officers,
26 employees or agents, if the firearms are used in the course
27 of business performed on behalf of the employer or
28 contracting entity.

29 (13) Records of firearms involved in criminal
30 investigations, criminal prosecutions, criminal appeals and

1 postconviction motions, civil proceedings relating to the
2 ownership, surrender, seizure or safekeeping of firearms,
3 including protection orders and sheriff executions, and
4 voluntary surrender by the owner or custodian of the firearm
5 for safekeeping or otherwise.

6 (14) Paper documents relating to firearms involved in
7 criminal cases, criminal investigations and criminal
8 prosecutions, civil proceedings relating to the ownership,
9 surrender, seizure or safekeeping of firearms, including
10 protection orders and sheriff executions, and voluntary
11 surrender by the owner or custodian of the firearm for
12 safekeeping or otherwise.

13 (15) Noncriminal records relating to the receipt,
14 storage or return of firearms, including, but not limited to,
15 records relating to firearms impounded or surrendered for
16 storage or safekeeping, receipts proving that a firearm was
17 returned to its lawful owner and supporting records of
18 identification and proof of ownership, or records relating to
19 firearms impounded pursuant to sheriff execution or court
20 orders, provided that the records are not compiled, sorted or
21 otherwise arranged into any lists, indexes or registries of
22 firearms or owners of firearms.

23 (16) Records required to be maintained and reported by
24 eligible organizations licensed under the act of December 19,
25 1988 (P.L.1262, No.156), known as the Local Option Small
26 Games of Chance Act, provided that the records are not
27 compiled, sorted or otherwise arranged into any lists,
28 indexes or registries of firearms or owners of firearms.

29 (c) Right of action.--A person adversely affected by a
30 violation of subsection (a) may seek declarative and injunctive

1 relief and the actual damages attributable to the violation in
2 an appropriate court.

3 (d) Attorney fees and costs.--The court shall award
4 reasonable expenses to a person adversely affected if an action
5 under subsection (c) results in a final determination by a court
6 in favor of the person adversely affected.

7 (e) Construction.--This section shall be construed to
8 effectuate its remedial and deterrent purposes. This section may
9 not be construed to grant any substantive, procedural privacy
10 right or civil claim to any criminal defendant, and a violation
11 of this section may not be grounds for the suppression of
12 evidence in any criminal case.

13 (f) Destruction of existing records.--Unless otherwise
14 prohibited by law, a list, database, record or registry subject
15 to subsection (a) and kept on the effective date of this section
16 shall be destroyed within 60 days after the effective date of
17 this section. After that 60-day time period, the failure to
18 destroy such list, database, record or registry may result in
19 prosecution under this section.

20 (g) Confidentiality.--Information retained in compliance
21 with subsection (b) (3), (4), (5), (12), (13), (14), (15) and
22 (16) shall not be subject to public access under the act of
23 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

24 (h) Definitions.--As used in this section, the following
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "Firearm." Any weapon which is designed to or may readily be
28 converted to expel any projectile by the action of an explosive
29 or the frame or receiver of such weapon.

30 "Person adversely affected." Any of the following:

1 (1) A person who has standing under the laws of this
2 Commonwealth to bring an action under subsection (c).

3 (2) A membership organization, the members of which
4 include a person described under paragraph (1).

5 "Reasonable expenses." The term includes, but is not limited
6 to, attorney fees, expert witness fees, court costs and
7 compensation for loss of income.

8 Section 2. This act shall take effect in 60 days.