

Unlawful Transfer of a Firearm Without a Background Check

Section 1. Short Title.

This act may be cited as the Unlawful Firearms Transfer and Background Check Enforcement Act.

Section 2. Definitions.

As used in this section:

- A. "Firearm" means any weapon, whether loaded or unloaded, that will expel a projectile by the action of an explosive, including the frame or receiver of such a weapon.
- B. "Background check" means a determination by the federal national instant criminal background check system (NICS) or a successor system required by state or federal law prior to the transfer of a firearm.
- C. "Prohibited person" means any individual who:
 - 1. Has been convicted of a felony offense in any jurisdiction;
 - 2. Is under indictment or information for a felony offense;
 - 3. Has been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921;
 - 4. Is subject to a court order restraining them from harassing, stalking, or threatening an intimate partner, child, or household member, and that order was issued after a hearing of which the person received notice and had an opportunity to participate;
 - 5. Has been adjudicated as a mental defective or committed to a mental institution;
 - 6. Is an unlawful user of or addicted to a controlled substance as defined in federal or state law;
 - 7. Is unlawfully present in the United States;
 - 8. Has been discharged from the armed forces under dishonorable conditions;
 - 9. Has renounced United States citizenship;
 - 10. Is subject to an extreme risk firearm protection order under New Mexico law; or
 - 11. Is under nineteen (19) years of age, except where possession or transfer is specifically authorized by state or federal law for hunting, training, or supervised sporting purposes.

Section 3. Unlawful Sale or Transfer Without Background Check.

A. It is unlawful for any person to sell, trade, barter, gift, or otherwise transfer a firearm to another person without first ensuring that a background check has been conducted and approved in accordance with state or federal law, unless the transfer is exempt under Section 30-7-7.1 NMSA 1978 (lawful exceptions for immediate family members, law enforcement, or temporary sporting/hunting purposes).

B. Any person who knowingly violates this section is guilty of a misdemeanor.

Section 4. Enhanced Penalties for Prohibited Person Transactions.

A. Any person who knowingly sells, trades, or transfers a firearm to a prohibited person is guilty of a fourth-degree felony.

B. Any prohibited person who knowingly purchases, attempts to purchase, trades, or otherwise acquires a firearm is guilty of a fourth-degree felony.

C. If the firearm transferred under Subsection A or B is later used in the commission of a violent felony offense, the person who transferred the firearm shall be guilty of a third-degree felony, provided that the state proves the unlawful transfer was a substantial contributing factor to the prohibited person's acquisition of the firearm.

Section 5. Severability.

If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.