

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 77

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO FIREARMS; CREATING THE FIREARM TRANSFER ACT;
PROHIBITING CERTAIN PERSONS FROM PURCHASING OR RECEIVING
FIREARMS; REQUIRING BACKGROUND CHECKS BY THE DEPARTMENT OF
PUBLIC SAFETY PRIOR TO THE TRANSFER OF FIREARMS BY PERSONS
OTHER THAN LICENSED GUN DEALERS; ESTABLISHING PROCEDURES FOR
THE CONDUCT OF BACKGROUND CHECKS; ADDRESSING PRIVATE TRANSFERS
AND TRANSFERS AT GUN SHOWS; CREATING IMMUNITY FROM CIVIL
LIABILITY; PROVIDING EXCLUSIONS FROM THE REQUIREMENTS OF THE
FIREARM TRANSFER ACT; PROVIDING FOR RULEMAKING; ALLOWING
ASSESSMENT OF AN ADMINISTRATIVE FEE; CREATING CRIMES AND
IMPOSING CRIMINAL PENALTIES FOR VIOLATIONS OF PROVISIONS OF THE
FIREARM TRANSFER ACT; CREATING THE FIREARM TRANSFER FUND;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

.190232.3

underscoring material = new
~~[bracketed material] = delete~~

1 SECTION 1. SHORT TITLE.--This act may be cited as the
2 "Firearm Transfer Act".

3 SECTION 2. DEFINITIONS.--As used in the Firearm Transfer
4 Act:

5 A. "background check" means determining the
6 eligibility of a person to own or possess a firearm by checking
7 relevant databases and information sources to discover whether
8 the person:

9 (1) is at least eighteen years of age;
10 (2) is a fugitive from justice;
11 (3) has been convicted of or is under
12 indictment for a felony in any jurisdiction;

13 (4) has been adjudicated mentally incompetent
14 or has been committed to a mental institution;

15 (5) is an unlawful user of, or addicted to,
16 alcohol or a controlled substance;

17 (6) was discharged from the armed forces under
18 dishonorable circumstances;

19 (7) is subject to a restraining order
20 regarding, or convicted of a misdemeanor for, domestic
21 violence; or

22 (8) is prohibited by federal law or the law of
23 another jurisdiction from purchasing or possessing a firearm;

24 B. "department" means the department of public
25 safety;

.190232.3

underscoring material = new
~~[bracketed material] = delete~~

1 C. "firearm" means a weapon that will, is designed
2 to or may readily be converted to expel a projectile by the
3 action of an explosion;

4 D. "gun show" means an event at which more than
5 twenty-five firearms are on site and available for transfer;

6 E. "handgun" means a firearm that will, is designed
7 to or may readily be converted to expel a projectile by the
8 action of an explosion and the barrel length of which, not
9 including a revolving, detachable or magazine breech, does not
10 exceed twelve inches; and

11 F. "licensed gun dealer" means a person engaged in
12 the business, as defined in 18 U.S.C. 921, of selling, leasing
13 or otherwise transferring a firearm and who is licensed by the
14 United States attorney general pursuant to 18 U.S.C. 923.

15 **SECTION 3. PERSONS PROHIBITED FROM PURCHASING OR**
16 **RECEIVING A FIREARM.--**A person is prohibited from purchasing or
17 receiving a firearm if that person:

18 A. is less than eighteen years of age;

19 B. is a fugitive from justice;

20 C. has been convicted of or is under indictment for
21 a felony in any jurisdiction;

22 D. has been adjudicated mentally incompetent or has
23 been committed to a mental institution;

24 E. is an unlawful user of, or addicted to, alcohol
25 or a controlled substance;

.190232.3

underscoring material = new
~~[bracketed material] = delete~~

1 F. was discharged from the armed forces under
2 dishonorable circumstances;

3 G. is subject to a restraining order regarding, or
4 was convicted of a misdemeanor for, domestic violence; or

5 H. is prohibited by federal law or the law of
6 another jurisdiction from purchasing or possessing a firearm.

7 SECTION 4. TRANSFER BY A PERSON OTHER THAN A LICENSED GUN
8 DEALER--BACKGROUND CHECKS.--

9 A. Except for transfers that take place at a gun
10 show pursuant to Section 5 of the Firearm Transfer Act, prior
11 to transferring a firearm, a transferor other than a licensed
12 gun dealer shall request by telephone that the department
13 conduct a background check on the recipient to determine if the
14 recipient is qualified to purchase or receive a firearm and
15 shall provide the following information to the department:

16 (1) the name, address and telephone number of
17 the transferor;

18 (2) the make, model, caliber and
19 manufacturer's number of the firearm being transferred;

20 (3) the name, date of birth, race, sex and
21 address of the recipient;

22 (4) the social security number of the
23 recipient if the recipient voluntarily provides that number;

24 (5) the address of the place where the
25 transfer is occurring; and

.190232.3

underscored material = new
~~[bracketed material] = delete~~

1 (6) the type, issuer and identification number
2 of a current piece of identification bearing a recent
3 photograph of the recipient presented by the recipient. The
4 identification presented by the recipient shall include one
5 piece of current identification bearing a photograph and the
6 date of birth of the recipient that:

7 (a) is issued under the authority of the
8 United States government, a state, a political subdivision of a
9 state, a foreign government, a political subdivision of a
10 foreign government, an international governmental organization
11 or an international quasi-governmental organization; and

12 (b) is intended to be used for
13 identification of an individual or is commonly accepted for the
14 purpose of identification of an individual.

15 B. If the identification presented by the recipient
16 under Subsection A of this section does not include the current
17 address of the recipient, the recipient shall present a second
18 piece of current identification that contains the purchaser's
19 current address.

20 C. The department shall establish a telephone
21 number that shall be operational seven days a week between the
22 hours of 8:00 a.m. and 10:00 p.m. for the purpose of responding
23 to inquiries for a background check under this section.

24 D. Upon receipt of a request for a background check
25 under the Firearm Transfer Act, the department shall

.190232.3

underscoring material = new
~~[bracketed material] = delete~~

1 immediately, during the telephone call or by return call:

2 (1) determine from the records available to it
3 whether the recipient is prohibited by state or federal law
4 from purchasing or receiving a firearm and is disqualified from
5 completing the transfer; and

6 (2) notify the transferor when a recipient is
7 disqualified from completing the transfer or provide the
8 transferor with a unique approval number indicating that the
9 recipient is qualified to complete the transfer. The unique
10 approval number is a permit valid for twenty-four hours for the
11 requested transfer. If the firearm is not transferred from the
12 transferor to the recipient within twenty-four hours after
13 receipt of the unique approval number, a new request must be
14 made by the transferor.

15 E. If the department is unable to determine whether
16 the recipient is qualified for or disqualified from completing
17 the transfer within thirty minutes of receiving the request,
18 the department shall notify the transferor and provide the
19 transferor with an estimate of the time when the department
20 will provide the requested information.

21 F. The recipient of the firearm must be present
22 when the transferor requests a background check under the
23 Firearm Transfer Act.

24 G. The department shall retain a record of the
25 information obtained during a request for a background check

.190232.3

underscoring material = new
~~[bracketed material]~~ = delete

1 pursuant to this section for five years.

2 SECTION 5. TRANSFERS AT A GUN SHOW--BACKGROUND CHECKS.--

3 A. A transferor other than a licensed gun dealer
4 shall not transfer a firearm at a gun show unless the
5 transferor:

6 (1) requests a background check of the
7 recipient pursuant to Section 4 of the Firearm Transfer Act
8 prior to completing the transfer;

9 (2) receives notification from the department,
10 including a unique approval number, that the recipient is
11 qualified to complete the transfer; and

12 (3) has the recipient complete the form
13 described in Section 6 of the Firearm Transfer Act.

14 B. The recipient of the firearm must be present
15 when the transferor requests a background check pursuant to the
16 Firearm Transfer Act.

17 C. The transferor shall retain the completed form
18 described in Section 6 of the Firearm Transfer Act for five
19 years and shall make the completed form available to law
20 enforcement agencies for the purpose of criminal
21 investigations.

22 D. A person responsible for organizing a gun show
23 shall prominently display at the gun show a notice explaining
24 the requirements of Subsections A, B and C of this section and
25 shall provide the form described in Section 6 of the Firearm

.190232.3

underscored material = new
[bracketed material] = delete

1 Transfer Act to any person transferring a firearm at a gun
2 show.

3 SECTION 6. GUN SHOW TRANSFER FORM.--The department shall
4 create a form to be completed, under penalty of perjury, by a
5 person seeking to obtain a firearm at a gun show from a
6 transferor other than a licensed gun dealer. The form shall:

7 A. include the requests for disclosure of
8 information and similar warnings and certifications, consistent
9 with state law, as are required by federal law for over-the-
10 counter firearm transactions;

11 B. include a conspicuous warning that it is
12 executed under penalty of perjury and that a materially false
13 answer or the submission of a materially false document to the
14 department may subject the applicant to criminal prosecution
15 for perjury as provided in Section 30-25-1 NMSA 1978; and

16 C. be made available by the department to the
17 public, including gun show organizations, at no cost and at
18 locations designated by the department.

19 SECTION 7. IMMUNITY.--

20 A. A transferor who, pursuant to Section 4 of the
21 Firearm Transfer Act, receives notification, including a unique
22 approval number, from the department that the recipient is
23 qualified to complete the transfer of a firearm is immune from
24 civil liability for any use of the firearm from the time of the
25 transfer unless the transferor knows, or reasonably should

.190232.3

underscored material = new
[bracketed material] = delete

1 know, that the recipient:

2 (1) is likely to commit an unlawful act
3 involving the firearm; or

4 (2) intends to deliver the firearm to a third
5 person who the transferor knows, or reasonably should know, may
6 not purchase or receive the firearm.

7 B. If the transferor is required to request a
8 background check pursuant to Section 5 of the Firearm Transfer
9 Act, the immunity provided by Subsection A of this section
10 applies only if, in addition to receiving the notification
11 required by this section, the transferor has the recipient
12 complete the form and the transferor retains that form, as
13 identified in and required by Section 5 of the Firearm Transfer
14 Act.

15 C. A public employee or public agency incurs no
16 criminal or civil liability for performing the background
17 checks required by this section; provided that the employee or
18 agency acts in good faith and without malice.

19 **SECTION 8. EXCLUSIONS.**--The Firearm Transfer Act does not
20 apply to the:

21 A. parent or guardian of a minor, or another person
22 with the consent of the parent or guardian, transferring to the
23 minor a firearm other than a handgun;

24 B. temporary transfer of any firearm to a minor for
25 hunting, target practice or any other lawful purpose; or

.190232.3

underscored material = new
[bracketed material] = delete

1 C. transfer of a firearm to a licensed gun dealer;
2 provided that the transferor maintains a copy of the
3 recipient's applicable license for five years from the date of
4 transfer.

5 SECTION 9. RULES--DEPARTMENT TO ADMINISTER.--The
6 department shall promulgate rules necessary to implement and
7 administer the provisions of the Firearm Transfer Act. The
8 rules shall include:

9 A. provision for the assessment of a reasonable fee
10 to conduct background checks; provided that the fee for a
11 private transfer shall not exceed twenty-five dollars (\$25.00)
12 and the fee for a gun show transfer shall not exceed thirty-
13 five dollars (\$35.00);

14 B. creation of a unique approval numbering system
15 for use in responses to background check requests that a
16 recipient is qualified to complete the transfer of a firearm;

17 C. provision for the type of identification that
18 may be used to establish a recipient's current address; and

19 D. a description of the type of notice to be
20 displayed at a gun show that reflects the background check and
21 approval requirements of the Firearm Transfer Act.

22 SECTION 10. UNLAWFULLY PURCHASING OR RECEIVING A
23 FIREARM.--

24 A. A person commits the crime of unlawfully
25 purchasing or receiving a firearm if the person, knowing that

underscoring material = new
~~[bracketed material] = delete~~

1 the person is prohibited by state law from purchasing or
2 receiving the firearm, purchases or receives, or attempts to
3 purchase or receive, the firearm.

4 B. A person who commits the crime of unlawfully
5 purchasing or receiving a firearm is guilty of a misdemeanor.

6 SECTION 11. UNLAWFULLY TRANSFERRING A FIREARM.--

7 A. A person commits the crime of unlawfully
8 transferring a firearm if the person knowingly transfers or
9 attempts to transfer, either in a private transaction or at a
10 gun show, a firearm to another person without receiving notice
11 from the department, including a unique approval number for
12 that transaction, that the recipient is qualified to complete
13 the transfer or, in the case of a transfer at a gun show, if
14 the person fails to have the recipient complete the form
15 required by Section 6 of the Firearm Transfer Act.

16 B. A person who commits the crime of unlawfully
17 transferring a firearm is guilty of a misdemeanor.

18 SECTION 12. FAILURE TO RETAIN FORMS OR POST NOTICE.--A

19 person who fails to retain a gun show transfer form or who
20 fails to display the notice at a gun show as required by
21 Section 6 of the Firearm Transfer Act is guilty of a petty
22 misdemeanor.

23 SECTION 13. FUND CREATED.--

24 A. The "firearm transfer fund" is created in the
25 state treasury.

.190232.3

