HOUSE BILL 44

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

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AN ACT

RELATING TO FIREARM TRANSFERS; CREATING THE FIREARM TRANSFER ACT; REQUIRING A PROSPECTIVE RECIPIENT OF A FIREARM AT A GUN SHOW TO UNDERGO A BACKGROUND CHECK BY A FEDERAL FIREARMS LICENSEE; ALLOWING A REASONABLE FEE FOR SERVICES; PROVIDING AN EXCEPTION TO THE BACKGROUND CHECK REQUIREMENT; PROVIDING IMMUNITY IN CERTAIN SITUATIONS; PROHIBITING A REGISTRY OF FIREARM TRANSFERS OR OWNERSHIP; PROVIDING AN EXCEPTION TO THE INSPECTION OF PUBLIC RECORDS ACT; CREATING CRIMES AND IMPOSING PENALTIES; REQUIRING THE ADMINISTRATIVE OFFICE OF THE COURTS TO TRANSMIT INFORMATION FROM COURT PROCEEDINGS RELATING TO ELIGIBILITY TO RECEIVE OR POSSESS A FIREARM TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, INCLUDING CERTAIN MENTAL HEALTH ADJUDICATION INFORMATION; REQUIRING THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT INFORMATION REGARDING A PERSON WHO HAS BEEN ADJUDICATED AS A MENTAL
DEFECTIVE OR COMMITTED TO A MENTAL HEALTH INSTITUTION TO THE
FEDERAL BUREAU OF INVESTIGATION FOR ENTRY INTO THE NATIONAL
INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; LIMITING INFORMATION
REPORTED; PROVIDING PROCEDURES FOR THE PERSON WHO IS THE
SUBJECT OF THE REPORT TO SEEK A REDETERMINATION OF MENTAL
CONDITION AND RESTORATION OF THE RIGHT TO RECEIVE OR POSSESS
ANY FIREARM OR AMMUNITION; SETTING STANDARDS FOR A COURT TO
RESTORE THE RIGHT TO RECEIVE OR POSSESS ANY FIREARM OR
AMMUNITION; REQUIRING THE COURT TO SEAL THE RECORD OF SUCH
PROCEEDINGS; MAKING THE REPORT TRANSMITTED BY THE
ADMINISTRATIVE OFFICE OF THE COURTS TO THE FEDERAL BUREAU OF
INVESTIGATION CONFIDENTIAL; PERMITTING DISCLOSURE ONLY TO THE
PERSON WHO IS THE SUBJECT OF SUCH REPORT OR THAT PERSON'S
AUTHORIZED REPRESENTATIVE; LIMITING THE USE OF SUCH REPORT;
PROVIDING THAT NO CAUSE OF ACTION SHALL BE BROUGHT FOR
TRANSMISSION, FAILURE TO TRANSMIT, DELAY IN TRANSMITTING OR
INACCURATE INFORMATION CONTAINED IN SUCH REPORT; PROVIDING A
RIGHT TO INSPECT AND CORRECT RECORDS; AUTHORIZING THE
ADMINISTRATIVE OFFICE OF THE COURTS TO PROMULGATE RULES;
PROVIDING A CONTINGENT REPEAL.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 9 of this act may be cited as the "Firearm Transfer
Act".

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SECTION 2. [NEW MATERIAL] FIREARM TRANSFER CONDITIONS

OVERVIEW.--A firearm shall not be transferred in a sale between two persons at a gun show without a firearm transfer background check of the transferee that authorizes the transfer pursuant to Section 4 of the Firearm Transfer Act, unless the transaction or transferee meets the exception pursuant to Section 5 of that act.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the Firearm Transfer Act:

A. "federal firearms licensee" means a person who is engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm and who is licensed by the United States attorney general pursuant to 18 U.S.C. 923;

B. "firearm" means a weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or a firearm muffler or firearm silencer. "Firearm" includes a handgun, rifle or shotgun;

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

D. "transfer" means the sale, lease, delivery or other passing of possession or control of a firearm.

SECTION 4. [NEW MATERIAL] GUN SHOW TRANSFER--BACKGROUND
CHECK--NOTICE.--

A. A vendor at a gun show, who is not a federal firearms licensee, shall not transfer or attempt to transfer a firearm to another person who is not a federal firearms licensee or the holder of a current and valid concealed handgun license issued by the state of New Mexico unless the transfer is conducted through the services of a federal firearms licensee. The federal firearms licensee shall conduct the federal firearm transfer background check required by federal law and complete the paperwork required for that check.

B. If the background check conducted pursuant to Subsection A of this section reveals that the transferee is prohibited from receiving a firearm, the federal firearms licensee shall inform the vendor and the transferee of that fact, and the transfer shall not take place.

C. The person responsible for organizing or promoting a gun show, as reflected on promotional material or advertising for the gun show, shall:

   (1) arrange for one or more federal firearms licensees, including arranging for a fee, if desired, not to exceed twenty-five dollars ($25.00) per transfer for the licensees' services, to be on the premises of the gun show to obtain the background checks required by this section; and

   (2) prominently display at the immediate entrance to the gun show venue and within that venue signs
providing notice to gun show participants of the background check requirements of this section and the fee to be charged, if any.

SECTION 5. [NEW MATERIAL] EXCEPTION FROM BACKGROUND CHECK REQUIREMENT.--The provisions of Section 4 of the Firearm Transfer Act requiring a background check do not apply to the transfer of an antique or relic firearm. For the purpose of this section, "antique or relic firearm" means a matchlock, flintlock, percussion cap or similar type of ignition system firearm manufactured in or before 1898, a replica of those firearms or a muzzle loading rifle, shotgun or pistol designed to use black powder or black powder substitute; but "antique or relic firearm" does not mean a firearm listed in this section that uses or can readily be converted to use fixed ammunition.

SECTION 6. [NEW MATERIAL] IMMUNITY.--A transferor or federal firearms licensee who fulfills the provisions of Section 4 of the Firearm Transfer Act for the transfer of a firearm is immune from civil liability from the time of the transfer for any use of the firearm, unless the transferor or federal firearms licensee knows, or reasonably should know, that the transferee:

A. is likely to commit an unlawful act involving the firearm; or

B. intends to deliver the firearm to a third person who the transferor or federal firearms licensee knows, or
reasonably should know, is prohibited from purchasing or
receiving the firearm.

SECTION 7. [NEW MATERIAL] UNLAWFULLY TRANSFERRING A
FIREARM AT A GUN SHOW--PENALTY.--

A. A person commits the crime of unlawfully
transferring a firearm at a gun show if the person transfers or
receives a firearm or attempts to transfer or receive a firearm
without the firearm transfer background check required by
Section 4 of the Firearm Transfer Act or if the person
transfers or receives a firearm or attempts to transfer or
receive a firearm after the background check reveals that the
transferee is prohibited from receiving a firearm.

B. A person who commits the crime of unlawfully
transferring a firearm at a gun show is guilty of a misdemeanor
and shall be sentenced pursuant to the provisions of Section

SECTION 8. [NEW MATERIAL] FAILURE TO ARRANGE FOR FEDERAL
FIREARMS LICENSEE OR TO PROVIDE NOTICE.--A person who fails to
arrange for a federal firearms licensee to be on the premises
of a gun show or who fails to display the notice at a gun show
as required by the Firearm Transfer Act is guilty of a petty
misdemeanor and shall be sentenced pursuant to the provisions
of Section 31-19-1 NMSA 1978.

SECTION 9. [NEW MATERIAL] CONSTRUCTION OF FIREARM
TRANSFER ACT--PUBLIC RECORDS INSPECTION.--
A. Nothing in the Firearm Transfer Act shall be construed to require or authorize an agency, officer or agent of the state or a political subdivision of the state to compile or maintain a registry, roster, list or other compilation of firearms transfers or firearms owners from any record required to be created or kept by the Firearm Transfer Act. This section shall not prohibit disclosure or access to a firearms transfer record for a criminal investigation.

B. No record created or maintained pursuant to the Firearm Transfer Act shall be subject to inspection or disclosure pursuant to the Inspection of Public Records Act.

SECTION 10. [NEW MATERIAL] REPORTING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.--

A. The administrative office of the courts shall obtain and electronically transmit information from court proceedings relating to eligibility to receive or possess a firearm pursuant to state or federal law to the federal bureau of investigation's national instant criminal background check system. The administrative office of the courts shall also be responsible for notifying, as soon as practicable, the federal bureau of investigation to update, correct, modify or remove information affecting a person's eligibility to receive or possess a firearm pursuant to state or federal law in the national instant criminal background check system.

B. The administrative office of the courts shall
electronically transmit information to the federal bureau of investigation for entry into the national instant criminal background check system regarding each person who has been adjudicated as a mental defective or committed to a mental institution and subject to the disabilities of 18 U.S.C. 922(d)(4) and (g)(4).

C. Upon entry of a court order, judgment or verdict referred to in Subsection B of this section, the administrative office of the courts shall forward only such information as necessary to identify the person to the federal bureau of investigation for the sole purpose of inclusion in the national instant criminal background check system.

D. Consistent with federal law, a person reported to the federal bureau of investigation by the administrative office of the courts pursuant to Subsection B of this section may petition the court that originated the order, judgment or verdict that was reported to the federal bureau of investigation, or any other court of competent jurisdiction, for a redetermination of the person's mental condition for the purpose of restoring the person's right to receive or possess any firearm or ammunition. A copy of the petition seeking a redetermination of mental condition shall be served upon the office of the attorney general and upon all parties to the proceeding resulting in a court order, judgment or verdict described in Subsection B of this section. The court's
redetermination shall be de novo.

E. Upon completion of the hearing on the petition, the court shall grant the person's petition to restore the person's right to receive or possess any firearm or ammunition if the court finds that the person will not be likely to act in a manner dangerous to public safety and that restoration of the person's right to receive or possess any firearm or ammunition is not contrary to the public interest.

F. A record shall be kept of the proceeding to redetermine the person's mental condition for the purpose of restoring the person's right to receive or possess any firearm or ammunition, but it shall be sealed and shall be disclosed only to a court or the parties in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be on the record.

G. A person may petition for restoration of that person's right to receive or possess any firearm or ammunition under this section not more than once every two years and, in the case of a person who was committed to a mental institution, not before the person has been discharged from such commitment.

H. The administrative office of the courts shall promptly notify the federal bureau of investigation upon the entry of a court order restoring the person's right to receive or possess any firearm or ammunition.

I. Information transmitted by the administrative
office of the courts pursuant to the provisions of this section shall be confidential and may only be disclosed to the person who is the subject of the report, or an authorized representative of the person who is the subject of the report, and shall not be used for any other purpose than inclusion in the national instant criminal background check system. No cause of action shall be brought for transmission, failure to transmit, delay in transmitting or inaccurate information contained in such report.

J. A person who is the subject of a report made by the administrative office of the courts under this section, or the person's authorized representative, has a right to inspect and correct information contained in such report.

K. The administrative office of the courts shall promulgate rules relating to the inspection and correction of information contained in such report and relating to reporting of corrected information by the office to the federal bureau of investigation and such other rules as necessary to implement the provisions of this section.

SECTION 11. CONTINGENT REPEAL.--Sections 1 through 10 of this act are repealed on the effective date of a federal law:

A. requiring a background check for the transfer of a firearm, other than a firearm defined in 26 U.S.C. 5845(a), between two persons who are not federal firearms licensees and who reside in the same state, whether or not the transfer takes
place at a gun show, which requirement shall be certified by
the secretary of public safety and sent to the director of the
legislative council service and the New Mexico compilation
commission; or

B. that expressly preempts the state from enforcing
the provisions of Sections 1 through 10 of this act, which
preemption shall be certified by the secretary of public safety
to the director of the legislative council service and the New
Mexico compilation commission.

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