

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 50

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

AN ACT

RELATING TO CRIME; REQUIRING CRIMINAL BACKGROUND CHECKS ON GUN  
TRANSFERS BETWEEN CERTAIN PERSONS; PROVIDING EXCEPTIONS;  
PROVIDING PENALTIES.

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

SECTION 1. A new section of Chapter 30, Article 7 NMSA  
1978 is enacted to read:

"[NEW MATERIAL] FIREARM TRANSFERS BETWEEN UNLICENSED  
PERSONS--BACKGROUND CHECKS.--

A. Except as provided in Subsection E of this  
section, a firearm shall not be transferred between two  
unlicensed persons in a commercial transaction or in a transfer  
for a period of more than five days without a background check  
performed by a firearm dealer that authorizes the transfer to  
the transferee as described in this section.

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underscored material = new  
[bracketed material] = delete

1           B. Before unlicensed persons transfer a firearm  
2 between them, the transferor and the transferee shall appear  
3 together at a firearm dealer with the firearm to be transferred  
4 and request that the firearm dealer facilitate the transfer.  
5 If the firearm dealer agrees to facilitate the transfer, the  
6 dealer shall process the transfer using the same procedures and  
7 complying with all federal and state laws, including 18 U.S.C.  
8 Section 922(t), that would apply if the dealer transferred the  
9 firearm from the dealer's own inventory to the transferee. The  
10 transferor and transferee shall complete and sign all forms  
11 required by state and federal law to process the transferee's  
12 background check and to complete the transfer. The firearm  
13 dealer shall indicate on the forms that the transfer is between  
14 unlicensed persons and may charge a reasonable fee for  
15 facilitating the transfer.

16           C. If the results of a transferee's background  
17 check indicate that the transferee is prohibited by federal or  
18 state law from possessing or receiving a firearm, the firearm  
19 shall not be transferred to the transferee by the firearm  
20 dealer or the transferor, but the transferor may remove the  
21 firearm from the premises of the firearm dealer.

22           D. While a background check is being conducted, the  
23 transferor may remove the firearm from the premises of the  
24 firearm dealer, but before the transferor transfers the firearm  
25 to the transferee, the transferor and transferee shall return

1 to the firearm dealer and the firearm dealer shall take  
2 possession of the firearm to complete the transfer.

3 E. The provisions of this section do not apply to  
4 the transfer of a firearm:

5 (1) between family members;

6 (2) by or to a firearm dealer;

7 (3) by or to a law enforcement agency;

8 (4) by or to a law enforcement officer, a  
9 member of the armed forces or a level three security guard  
10 licensed pursuant to Section 61-27B-15 NMSA 1978, if the  
11 officer, member or security guard is acting within the course  
12 and scope of employment and official duties; or

13 (5) to an executor, administrator, trustee or  
14 personal representative of an estate or trust, which transfer  
15 occurs by operation of law upon the death of the owner of the  
16 firearm.

17 F. An unlicensed person may lend or allow another  
18 unlicensed person to use a firearm for a period of not more  
19 than five days with or without a background check performed by  
20 a firearm dealer; provided, however, that if the transferor and  
21 transferee do not transfer the firearm through a firearm dealer  
22 as described in Subsection B of this section, and the  
23 transferee is prohibited from possessing or receiving firearms  
24 by federal or state law, the transferor is strictly liable for  
25 a violation of this section.

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1           G. An unlicensed person who violates the provisions  
2 of this section is guilty of:

- 3                   (1) for a first offense, a misdemeanor; and  
4                   (2) for a second or subsequent offense, a  
5 fourth degree felony.

6           H. As used in this section:

7                   (1) "background check" means the process  
8 described in 18 U.S.C. Section 922(t) that uses the national  
9 instant criminal background check system to determine whether a  
10 person is prohibited from possessing or receiving firearms  
11 under federal or state law;

12                   (2) "commercial transaction" means the sale,  
13 delivery or passing of ownership, possession or control of a  
14 firearm for a fee or other consideration;

15                   (3) "family member" means:

16                           (a) a spouse; or

17                           (b) a parent, child, sibling,  
18 grandparent or grandchild, whether by consanguinity, affinity,  
19 adoption or step-relation;

20                   (4) "firearm" means any weapon that will or is  
21 designed to or may readily be converted to expel a projectile  
22 by the action of an explosion;

23                   (5) "firearm dealer" means a person who holds  
24 a federal firearms license issued pursuant to 18 U.S.C. Section  
25 923(a);

1 (6) "person" means an individual, corporation,  
2 trust, company, firm, partnership, association, club,  
3 organization, society, joint stock company or other legal  
4 entity;

5 (7) "transfer" means to sell, furnish, give,  
6 lend, deliver or otherwise provide, with or without  
7 consideration;

8 (8) "transferee" means an unlicensed person  
9 who intends to receive a firearm from another unlicensed  
10 person;

11 (9) "transferor" means an unlicensed person  
12 who intends to transfer a firearm to another unlicensed person;  
13 and

14 (10) "unlicensed person" means a person who is  
15 not a firearm dealer."

16 SECTION 2. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2017.