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SENATE BILL 201

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO FIREARM TRANSFERS; ENACTING THE FIREARM TRANSFER
ACT; REQUIRING A PROSPECTIVE RECIPIENT OF A FIREARM TO UNDERGO
A BACKGROUND CHECK BY A FEDERAL FIREARMS LICENSEE; ALLOWING A
REASONABLE FEE FOR SERVICES; PROVIDING AN EXCEPTION TO THE
BACKGROUND CHECK REQUIREMENT; CREATING CIVIL LIABILITY AND
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

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1 ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL
2 HEALTH INSTITUTION TO THE FEDERAL BUREAU OF INVESTIGATION FOR
3 ENTRY INTO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
4 SYSTEM; LIMITING INFORMATION REPORTED; PROVIDING PROCEDURES FOR
5 THE PERSON WHO IS THE SUBJECT OF THE REPORT TO SEEK A
6 REDETERMINATION OF MENTAL CONDITION AND RESTORATION OF THE
7 RIGHT TO RECEIVE OR POSSESS ANY FIREARM OR AMMUNITION; SETTING
8 STANDARDS FOR A COURT TO RESTORE THE RIGHT TO RECEIVE OR
9 POSSESS ANY FIREARM OR AMMUNITION; REQUIRING THE COURT TO SEAL
10 THE RECORD OF SUCH PROCEEDINGS; MAKING THE REPORT TRANSMITTED
11 BY THE ADMINISTRATIVE OFFICE OF THE COURTS TO THE FEDERAL
12 BUREAU OF INVESTIGATION CONFIDENTIAL; PERMITTING DISCLOSURE
13 ONLY TO THE PERSON WHO IS THE SUBJECT OF SUCH REPORT OR THAT
14 PERSON'S AUTHORIZED REPRESENTATIVE; LIMITING THE USE OF SUCH
15 REPORT; PROVIDING THAT NO CAUSE OF ACTION SHALL BE BROUGHT FOR
16 TRANSMISSION, FAILURE TO TRANSMIT, DELAY IN TRANSMITTING OR
17 INACCURATE INFORMATION CONTAINED IN SUCH REPORT; PROVIDING A
18 RIGHT TO INSPECT AND CORRECT RECORDS; AUTHORIZING THE
19 ADMINISTRATIVE OFFICE OF THE COURTS TO PROMULGATE RULES;
20 PROVIDING A CONTINGENT REPEAL.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
24 through 8 of this act may be cited as the "Firearm Transfer
25 Act".

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1 SECTION 2. ~~[NEW MATERIAL]~~ FIREARM TRANSFER CONDITIONS

2 OVERVIEW.--A firearm shall not be transferred from one person
3 to another person without a firearm transfer background check
4 of the transferee that authorizes the transfer pursuant to
5 Section 4 of the Firearm Transfer Act, unless the transaction
6 or transferee meets the exception pursuant to Section 5 of that
7 act.

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

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

15 B. "firearm" means a weapon that will or is
16 designed to or may readily be converted to expel a projectile
17 by the action of an explosive; the frame or receiver of any
18 such weapon; or a firearm muffler or firearm silencer.

19 "Firearm" includes a handgun, rifle or shotgun; and

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

22 SECTION 4. ~~[NEW MATERIAL]~~ BACKGROUND CHECK--NOTICE.--

23 A. A person who is not a federal firearms licensee
24 shall not transfer or attempt to transfer a firearm to another
25 person who is not a federal firearms licensee unless the

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1 transfer is conducted through the services of a federal
2 firearms licensee. The federal firearms licensee shall conduct
3 the federal firearm transfer background check required by
4 federal law and complete the paperwork required for that check
5 and may charge a reasonable fee to conduct the background check
6 and complete the paperwork.

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

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

23 SECTION 6. [NEW MATERIAL] IMMUNITY--CIVIL LIABILITY.--

24 A. A transferor or federal firearms licensee who
25 fulfills the provisions of Section 4 of the Firearm Transfer

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1 Act for the transfer of a firearm is immune from civil
2 liability from the time of the transfer for any use of the
3 firearm, unless the transferor or federal firearms licensee
4 knows, or reasonably should know, that the transferee:

5 (1) is likely to commit an unlawful act
6 involving the firearm; or

7 (2) intends to deliver the firearm to a third
8 person who the transferor or federal firearms licensee knows,
9 or reasonably should know, is prohibited from purchasing or
10 receiving the firearm.

11 B. A transferor of a firearm to a person who does
12 not fulfill the provisions of Section 4 of the Firearms
13 Transfer Act is liable in a civil suit for any damages caused
14 or proximately caused by the use or handling of the firearm.

15 SECTION 7. [NEW MATERIAL] UNLAWFULLY TRANSFERRING A
16 FIREARM--PENALTY.--

17 A. A person commits the crime of unlawfully
18 transferring a firearm if the person transfers or receives a
19 firearm or attempts to transfer or receive a firearm without
20 the firearm transfer background check required by Section 4 of
21 the Firearm Transfer Act or if the person transfers or receives
22 a firearm or attempts to transfer or receive a firearm after
23 the background check reveals that the transferee is prohibited
24 from receiving a firearm.

25 B. A person who commits the crime of unlawfully

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1 transferring a firearm is guilty of a misdemeanor and shall be
2 sentenced pursuant to the provisions of Section 31-19-1 NMSA
3 1978.

4 SECTION 8. [NEW MATERIAL] CONSTRUCTION OF FIREARM
5 TRANSFER ACT--PUBLIC RECORDS INSPECTION.--

6 A. Nothing in the Firearm Transfer Act shall be
7 construed to require or authorize an agency, officer or agent
8 of the state or a political subdivision of the state to compile
9 or maintain a registry, roster, list or other compilation of
10 firearms transfers or firearms owners from any record required
11 to be created or kept by the Firearm Transfer Act. This
12 section shall not prohibit disclosure or access to a firearms
13 transfer record for a criminal investigation.

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

17 SECTION 9. [NEW MATERIAL] REPORTING TO THE NATIONAL
18 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.--

19 A. The administrative office of the courts shall
20 obtain and electronically transmit information from court
21 proceedings relating to eligibility to receive or possess a
22 firearm pursuant to state or federal law to the federal bureau
23 of investigation's national instant criminal background check
24 system. The administrative office of the courts shall also be
25 responsible for notifying, as soon as practicable, the federal

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1 bureau of investigation to update, correct, modify or remove
2 information affecting a person's eligibility to receive or
3 possess a firearm pursuant to state or federal law in the
4 national instant criminal background check system.

5 B. The administrative office of the courts shall
6 electronically transmit information to the federal bureau of
7 investigation for entry into the national instant criminal
8 background check system regarding each person who has been
9 adjudicated as a mental defective or committed to a mental
10 institution and subject to the disabilities of 18 U.S.C.
11 922(d)(4) and (g)(4).

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

18 D. Consistent with federal law, a person reported
19 to the federal bureau of investigation by the administrative
20 office of the courts pursuant to Subsection B of this section
21 may petition the court that originated the order, judgment or
22 verdict that was reported to the federal bureau of
23 investigation, or any other court of competent jurisdiction,
24 for a redetermination of the person's mental condition for the
25 purpose of restoring the person's right to receive or possess

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1 any firearm or ammunition. A copy of the petition seeking a
2 redetermination of mental condition shall be served upon the
3 office of the attorney general and upon all parties to the
4 proceeding resulting in a court order, judgment or verdict
5 described in Subsection B of this section. The court's
6 redetermination shall be de novo.

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

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

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

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

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

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

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

25 **SECTION 10. CONTINGENT REPEAL.**--Sections 1 through 9 of

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1 this act are repealed on the effective date of a federal law:

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

9 B. that expressly preempts the state from enforcing
10 the provisions of Sections 1 through 9 of this act, which
11 preemption shall be certified by the secretary of public safety
12 to the director of the legislative council service and the New
13 Mexico compilation commission.