

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 77

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

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; 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

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

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. SHORT TITLE.--Sections 1 through 8 of this act
21 may be cited as the "Firearm Transfer Act".

22 SECTION 2. FIREARM TRANSFER CONDITIONS OVERVIEW.--A
23 firearm shall not be transferred in a sale between two persons
24 at a gun show without a firearm transfer background check of
25 the transferee that authorizes the transfer pursuant to Section

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1 4 of the Firearm Transfer Act, unless the transaction or
2 transferee meets the exception pursuant to Section 5 of that
3 act.

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

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

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

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

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

21 SECTION 4. GUN SHOW TRANSFER--BACKGROUND CHECK--NOTICE.--

22 A. A vendor at a gun show, who is not a federal
23 firearms licensee, shall not transfer or attempt to transfer a
24 firearm to another person who is not a federal firearms
25 licensee or the holder of a current and valid concealed handgun

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1 license issued by the state of New Mexico unless the transfer
2 is conducted through the services of a federal firearms
3 licensee. The federal firearms licensee shall conduct the
4 federal firearm transfer background check required by federal
5 law and complete the paperwork required for that check.

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

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

14 (1) arrange for one or more federal firearms
15 licensees, including arranging a fee for the licensees'
16 services if desired, to be on the premises of the gun show to
17 obtain the background checks required by this section; and

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

23 **SECTION 5. EXCEPTION FROM BACKGROUND CHECK REQUIREMENT.--**

24 The provisions of Section 4 of the Firearm Transfer Act
25 requiring a background check do not apply to the transfer of an

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1 antique or relic firearm. For the purpose of this section,
 2 "antique or relic firearm" means a matchlock, flintlock,
 3 percussion cap or similar type of ignition system firearm
 4 manufactured in or before 1898, a replica of those firearms or
 5 a muzzle loading rifle, shotgun or pistol designed to use black
 6 powder or black powder substitute, but "antique or relic
 7 firearm" does not mean a firearm listed in this section that
 8 uses or can readily be converted to use fixed ammunition.

9 **SECTION 6. IMMUNITY.--**A transferor or federal firearms
 10 licensee who fulfills the provisions of Section 4 of the
 11 Firearm Transfer Act for the transfer of a firearm is immune
 12 from civil liability from the time of the transfer for any use
 13 of the firearm, unless the transferor or federal firearms
 14 licensee knows, or reasonably should know, that the transferee:

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

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

21 **SECTION 7. UNLAWFULLY TRANSFERRING A FIREARM AT A GUN**
 22 **SHOW--PENALTY.--**

23 A. A person commits the crime of unlawfully
 24 transferring a firearm at a gun show if the person transfers or
 25 receives a firearm or attempts to transfer or receive a firearm

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1 without the firearm transfer background check required by
2 Section 4 of the Firearm Transfer Act or if the person
3 transfers or receives a firearm or attempts to transfer or
4 receive a firearm after the background check reveals that the
5 transferee is prohibited from receiving a firearm.

6 B. A person who commits the crime of unlawfully
7 transferring a firearm at a gun show is guilty of a misdemeanor
8 and shall be sentenced pursuant to the provisions of Section
9 31-19-1 NMSA 1978.

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

17 SECTION 9. REPORTING TO THE NATIONAL INSTANT CRIMINAL
18 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.

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

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

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1 redetermination of mental condition shall be served upon the
2 office of the attorney general and upon all parties to the
3 proceeding resulting in a court order, judgment or verdict
4 described in Subsection B of this section.

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

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

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

24 H. The administrative office of the courts shall
25 promptly notify the federal bureau of investigation upon the

1 entry of a court order restoring the person's right to receive
2 or possess any firearm or ammunition.

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

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

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