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HOUSE BILL 44

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

INTRODUCED BY

Miguel P. Garcia

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

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1 DEFECTIVE OR COMMITTED TO A MENTAL HEALTH INSTITUTION TO THE
2 FEDERAL BUREAU OF INVESTIGATION FOR ENTRY INTO THE NATIONAL
3 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; LIMITING INFORMATION
4 REPORTED; PROVIDING PROCEDURES FOR THE PERSON WHO IS THE
5 SUBJECT OF THE REPORT TO SEEK A REDETERMINATION OF MENTAL
6 CONDITION AND RESTORATION OF THE RIGHT TO RECEIVE OR POSSESS
7 ANY FIREARM OR AMMUNITION; SETTING STANDARDS FOR A COURT TO
8 RESTORE THE RIGHT TO RECEIVE OR POSSESS ANY FIREARM OR
9 AMMUNITION; REQUIRING THE COURT TO SEAL THE RECORD OF SUCH
10 PROCEEDINGS; MAKING THE REPORT TRANSMITTED BY THE
11 ADMINISTRATIVE OFFICE OF THE COURTS TO THE FEDERAL BUREAU OF
12 INVESTIGATION CONFIDENTIAL; PERMITTING DISCLOSURE ONLY TO THE
13 PERSON WHO IS THE SUBJECT OF SUCH REPORT OR THAT PERSON'S
14 AUTHORIZED REPRESENTATIVE; LIMITING THE USE OF SUCH REPORT;
15 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 9 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 in a sale between
3 two persons at a gun show without a firearm transfer background
4 check of the transferee that authorizes the transfer pursuant
5 to Section 4 of the Firearm Transfer Act, unless the
6 transaction or transferee meets the exception pursuant to
7 Section 5 of that 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;

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

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

25 SECTION 4. ~~[NEW MATERIAL]~~ GUN SHOW TRANSFER--BACKGROUND

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1 CHECK--NOTICE.--

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

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

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

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

24 (2) prominently display at the immediate
25 entrance to the gun show venue and within that venue signs

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1 providing notice to gun show participants of the background
2 check requirements of this section and the fee to be charged,
3 if any.

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

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

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

24 B. intends to deliver the firearm to a third person
25 who the transferor or federal firearms licensee knows, or

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1 reasonably should know, is prohibited from purchasing or
2 receiving the firearm.

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

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

13 B. A person who commits the crime of unlawfully
14 transferring a firearm at a gun show is guilty of a misdemeanor
15 and shall be sentenced pursuant to the provisions of Section
16 31-19-1 NMSA 1978.

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

24 SECTION 9. [NEW MATERIAL] CONSTRUCTION OF FIREARM
25 TRANSFER ACT--PUBLIC RECORDS INSPECTION.--

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

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

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

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

25 B. The administrative office of the courts shall

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1 electronically transmit information to the federal bureau of
2 investigation for entry into the national instant criminal
3 background check system regarding each person who has been
4 adjudicated as a mental defective or committed to a mental
5 institution and subject to the disabilities of 18 U.S.C.
6 922(d)(4) and (g)(4).

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

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

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1 redetermination shall be de novo.

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

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

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

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

25 I. Information transmitted by the administrative

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

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

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

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

22 A. requiring a background check for the transfer of
23 a firearm, other than a firearm defined in 26 U.S.C. 5845(a),
24 between two persons who are not federal firearms licensees and
25 who reside in the same state, whether or not the transfer takes

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1 place at a gun show, which requirement shall be certified by
2 the secretary of public safety and sent to the director of the
3 legislative council service and the New Mexico compilation
4 commission; or

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