HB 1668 - AS INTRODUCED

2022 SESSION

22-2017
04/05

HOUSE BILL ***1668***

AN ACT requiring a background check prior to any commercial firearm sale.

SPONSORS: Rep. Rogers, Merr. 28

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires commercial firearms sales or transfers in this state to be subject to a criminal background check and provides a criminal penalty for a violation. The bill excludes private, noncommercial sales or transfers between individuals, provided neither individual is prohibited from owning or possessing a firearm under state or federal law.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT requiring a background check prior to any commercial firearm sale.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Purpose. It is the purpose and intent of the general court in enacting RSA 159-E to require commercial firearm sales in New Hampshire to be processed through a licensed firearms dealer, who will conduct a background check and create a record of each sale. The general court believes this law will protect public safety by helping to keep firearms out of the hands of felons, domestic abusers, and those adjudicated to be mentally ill.

2 New Chapter; Background Checks for Commercial Firearms Sales. Amend RSA by inserting after chapter 159-D the following new chapter:

CHAPTER 159-E

BACKGROUND CHECKS FOR COMMERCIAL FIREARMS SALES

159-E:1 Definitions. In this chapter:

I. "Commercial sale" means a transfer of ownership of a firearm, including but not limited to, a sale, exchange, or gift.

II. "Firearm" means any weapon or device designed to be used as a weapon, which will, is designed to, or may be readily converted to, expel a projectile by the action of an explosive, explosion, or other means of combustion, or the frame or receiver of such a device, provided the term "firearm" shall not include the term "antique firearm" as defined in 18 U.S.C. section 921(a)(16), or a weapon that has been rendered permanently inoperable and is incapable of being readily restored to a firing condition.

III. "Individual" means a natural person.

IV. "Law enforcement" means any person employed by the United States, or a state, county, city, or town, or other political subdivision as a police officer, peace officer, or another position involving the enforcement of the law and protection of the public interest.

V. "Licensed firearms dealer," "licensed dealer," or "dealer" means a person who has a valid federal firearms dealer license under 18 U.S.C. section 923(a), and all additional licenses required by state or local law to engage in the business of selling or transferring firearms.

VI. "Person" means any corporation, company, association, firm, partnership, club, organization, society, joint stock company or other entity, and shall include any entity that engages in business in this state, in whole or part, through Internet or mail order sales.

VII. "Prohibited person" means any individual or person who is prohibited from owning or possessing a firearm pursuant to 18 U.S.C. section 922(d) or pursuant to state law.

159-E:2 Firearms Sales to be Conducted Through a Licensed Dealer.

I. No individual or person shall engage in the commercial sale of a firearm unless:

(a) The individual or person is a licensed firearms dealer;

(b) The purchaser is a licensed firearms dealer; or

(c) The requirements of paragraph II are met.

II. If neither party to a prospective firearms transaction is a licensed firearms dealer, the parties to the transaction shall complete the commercial sale through a licensed firearms dealer as follows:

(a) The seller shall deliver the firearm to the dealer, who shall process the sale as if he or she were the seller, except that the seller may remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser and the seller shall return to the business premises of the licensed dealer, and the seller shall again deliver the firearm to the licensed dealer prior to completing the sale.

(b) Except as provided in subparagraph (a), the dealer shall comply with all requirements of federal, state, and local law that would apply if the licensed dealer were selling the firearm from his or her inventory to the purchaser, including but not limited to, conducting a background check on the prospective purchaser, which shall include a check of the National Instant Criminal Background Check System (NICS), and compliance with all federal, state, and local recordkeeping requirements.

(c) If the transaction is not prohibited, the dealer shall deliver the firearm to the buyer after all legal requirements are met.

(d) If the dealer cannot legally deliver the firearm to the buyer, the dealer shall return the firearm to the seller without requiring a background check and the transfer to the buyer shall not take place.

(e) The dealer may impose on the purchaser a reasonable fee to cover administrative costs incurred by the dealer for facilitating the transfer of the firearm, plus any applicable fees permitted under state or federal law.

159-E:3 Successful Completion of Background Check. No firearm shall be delivered to an individual pursuant to a commercial sale until NICS has issued a "proceed" response.

159-E:4 Exceptions. This chapter shall not apply to a noncommercial, private sale, transfer, or exchange of a firearm between individuals, provided neither party to the transaction is a prohibited person. If the status of either party's eligibility to own or possess a firearm cannot be ascertained, the transaction shall be completed through a licensed firearm dealer pursuant to RSA 159-E:2, II.

159-E:5 Penalties.

I. Any individual or person who violates any provision of this chapter shall be guilty of a class B misdemeanor for a first offense, and a class A misdemeanor for a second or subsequent offense.

II. The local law enforcement agency shall report all violations of this chapter by a licensed firearms dealer to the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives.

159-E:6 Other Laws.

I. Nothing in this chapter shall be construed to modify or change the duties of the department of safety pursuant to RSA 159-D.

II. Nothing in this chapter shall be construed to require or authorize any state, county, or local law enforcement agency to establish or maintain a registry of firearms sold or transferred in accordance with this chapter.

3 Applicability. The provisions of section 2 of this act shall apply to the sale of a firearm on or after the effective date of this act and shall not apply to sales completed prior to the effective date of this act.

4 Effective Date. This act shall take effect January 1, 2023.