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HOUSE BILL 40

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

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CRIME; ENACTING THE GUN SHOW FIREARM TRANSFER ACT;
REQUIRING CRIMINAL BACKGROUND CHECKS ON GUN TRANSFERS BETWEEN
CERTAIN PERSONS; PROVIDING EXCEPTIONS; PROVIDING PENALTIES;
PROVIDING A CONTINGENT REPEAL.

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

SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--This act may be
cited as the "Gun Show Firearm Transfer Act".

SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
Gun Show Firearm Transfer Act:

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

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

5 "Firearm" includes a handgun, rifle or shotgun;

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

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

11 "Transfer" does not include the temporary conveyance of a
12 firearm to a potential transferee for the limited purpose of
13 inspection of the firearm when the firearm vendor is present
14 during the inspection.

15 SECTION 3. [NEW MATERIAL] GUN SHOW TRANSFER--BACKGROUND
16 CHECK--NOTICE.--

17 A. A vendor at a gun show, who is not a federal
18 firearms licensee, shall not transfer or attempt to transfer a
19 firearm to another person who is not a federal firearms
20 licensee or the holder of a current and valid concealed handgun
21 license issued or recognized by the department of public safety
22 pursuant to the Concealed Handgun Carry Act unless the transfer
23 is conducted through the services of a federal firearms
24 licensee. The federal firearms licensee shall conduct the
25 federal firearm transfer background check required by federal

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1 law and complete the paperwork required for that check.

2 B. If the background check conducted pursuant to
3 Subsection A of this section reveals that the potential
4 transferee is prohibited from receiving a firearm, the federal
5 firearms licensee shall inform the vendor and the potential
6 transferee of that fact and the transfer shall not take place.
7 The firearm shall be returned to the vendor.

8 C. The person responsible for organizing or
9 promoting a gun show, as reflected on promotional material or
10 advertising for the gun show, shall:

11 (1) arrange for one or more federal firearms
12 licensees to be on the premises of the gun show to obtain the
13 background checks required by this section. The arrangement
14 may include a fee, not to exceed twenty-five dollars (\$25.00)
15 per transfer, for a licensee's service; and

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

21 SECTION 4. [NEW MATERIAL] EXCEPTION FROM BACKGROUND CHECK
22 REQUIREMENT.--The provisions of Section 3 of the Gun Show
23 Firearm Transfer Act requiring a background check do not apply
24 to the transfer of an antique or relic firearm. For the
25 purpose of this section, "antique or relic firearm" means a

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

8 SECTION 5. [NEW MATERIAL] IMMUNITY.--A transferor or
9 federal firearms licensee who fulfills the provisions of
10 Section 3 of the Gun Show Firearm Transfer Act for the transfer
11 of a firearm is immune from civil liability from the time of
12 the transfer for any use of the firearm, unless the transferor
13 or federal firearms licensee knows, or reasonably should know,
14 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 6. [NEW MATERIAL] UNLAWFULLY TRANSFERRING A
22 FIREARM AT A GUN 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 3 of the Gun Show 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 7. [NEW MATERIAL] FAILURE TO ARRANGE FOR FEDERAL
11 FIREARMS LICENSEE OR TO PROVIDE NOTICE.--A person who fails to
12 arrange for a federal firearms licensee to be on the premises
13 of a gun show or who fails to display the notice at a gun show
14 as required by the Gun Show Firearm Transfer Act is guilty of a
15 petty misdemeanor and shall be sentenced pursuant to the
16 provisions of Section 31-19-1 NMSA 1978.

17 SECTION 8. [NEW MATERIAL] CONSTRUCTION OF GUN SHOW
18 FIREARM TRANSFER ACT--PUBLIC RECORDS INSPECTION.--

19 A. Nothing in the Gun Show Firearm Transfer Act
20 shall be construed to require or authorize an agency, officer
21 or agent of the state or a political subdivision of the state
22 to compile or maintain a registry, roster, list or other
23 compilation of firearms transfers or firearms owners from any
24 record required to be created or kept by the Gun Show Firearm
25 Transfer Act. This section shall not prohibit disclosure or

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1 access to a firearms transfer record for a criminal
2 investigation.

3 B. No record created or maintained pursuant to the
4 Gun Show Firearm Transfer Act shall be subject to inspection or
5 disclosure pursuant to the Inspection of Public Records Act.

6 SECTION 9. CONTINGENT REPEAL.--Sections 1 through 8 of
7 this act are repealed on the effective date of a federal law:

8 A. requiring a background check for the transfer of
9 a firearm, other than a firearm defined in 26 U.S.C. 5845(a),
10 between two persons who are not federal firearms licensees and
11 who reside in the same state, whether or not the transfer takes
12 place at a gun show, which requirement shall be certified by
13 the secretary of public safety and sent to the director of the
14 legislative council service and the New Mexico compilation
15 commission; or

16 B. that expressly preempts the state from enforcing
17 the provisions of Sections 1 through 8 of this act, which
18 preemption shall be certified by the secretary of public safety
19 to the director of the legislative council service and the New
20 Mexico compilation commission.

21 SECTION 10. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2019.