

HB 201-FN - AS INTRODUCED

2017 SESSION

17-0012

04/05

HOUSE BILL

201-FN

AN ACT requiring background checks for commercial firearms sales.

SPONSORS: Rep. Rogers, Merr. 28; Rep. M. Smith, Straf. 6; Rep. Berrien, Rock. 18; Rep. Heath, Hills. 14; Rep. Horrigan, Straf. 6; Rep. Berch, Ches. 1; Rep. Newman, Hills. 29; Rep. Mulligan, Graf. 12; Rep. Gagnon, Sull. 5; Sen. Lasky, Dist 13

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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Seventeen

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

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

BACKGROUND CHECKS FOR COMMERCIAL FIREARMS 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.

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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 Exception. 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:4 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.

1 159-E:5 Other Laws.

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

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

7 3 Applicability. The provisions of section 2 of this act shall apply to the sale of a firearm on or
8 after the effective date of this act and shall not apply to sales completed prior to the effective date of
9 this act.

10 4 Effective Date. This act shall take effect January 1, 2018.

**HB 201-FN- FISCAL NOTE
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FISCAL IMPACT: ☒ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Class B Misdemeanor	\$49	\$50
Class A Misdemeanor	\$71	\$72
Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

This bill requires commercial sales and transfers of firearms to take place through licensed dealers who are required to perform background checks, and private transfers involving "prohibited persons" to take place through a licensed firearm dealer. The Judicial Council assumes persons prohibited by law from possessing firearms would be unlikely to avail themselves of the services of a licensed firearm dealer. The indigent defense system does not typically provide representation to someone who violates laws governing business and industry. The Council assumes if a licensed firearm dealer were to violate this legislation, the violation would occur within the context of his or her occupation, they would not meet the eligibility standard for the appointment of counsel, and the business would defend or indemnify the employee or agent. Therefore, the bill would not affect Judicial Council indigent defense expenditures.

Misdemeanor offenses are prosecuted by local and county prosecutors. If the Department of Justice were involved in an appeal, the Department would likely absorb the cost within its existing budget. There would be no additional costs to the Department of Justice.

The Department of Safety maintains a "gun line" within the Permits and License Section to provide timely criminal background checks to federally registered gun dealers throughout the state. Fee revenue from criminal background checks is deposited in the state general fund. While records are maintained for these federally regulated sales, the private sale of firearms in New Hampshire has not been regulated. The Department of Safety does not have information on the number of additional sales or transfers for which a criminal background check would be performed.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Departments of Safety and Justice and New Hampshire Association of Counties