

Sen. Giuda, Dist 2
May 26, 2021
2021-1769s
04/05

Floor Amendment to HB 334

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to prohibitions on carrying a loaded firearm on an OHRV or snowmobile and
4 relative to the procedure for conducting firearm background checks.

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6 Amend the bill by replacing all after section 2 with the following:

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8 3 Findings. The general court finds that:

9 I. The New Hampshire gun line, in the department of safety, permits and licensing unit,
10 currently performs all background checks in relation to the store purchase of handguns. It also
11 performs background checks regarding the transfer of firearms from law enforcement agencies back
12 to individual owners in relation to restraining order and criminal proceedings. The gun line uses the
13 National Instant Criminal Background Check System (“NICS”) to perform these tasks, serving as
14 the partial “Point of Contact” system for the FBI.

15 II. The gun line’s inefficiencies have created significant delays in the orderly processing of
16 firearm- related background checks. Courts and Federal Firearm Licensed Dealers have faced
17 incredible backlogs of pending background checks that are intended to be “instant.” Many
18 background checks have remained pending for several months. This has come at a great cost to the
19 economic wellbeing of dealers and the constitutional rights of firearm owners and purchasers.
20 Additionally, the gun line has, on multiple occasions, failed to timely deny firearm transfers to
21 prohibited individuals.

22 III. Sections 4-9 of this act allow the FBI to conduct all National Instant Criminal
23 Background Check System (“NICS”) searches concerning the purchase, sale and transfer of firearms
24 through Federal Firearm Licensed Dealers operating in the state of New Hampshire. Sections 4-9 of
25 this act effectively repeal the state’s partial Point of Contact system for handguns, allowing the
26 authority to remain exclusively with the FBI. The FBI is federally funded to perform this task and
27 has a long history of accuracy and efficiency with its use of NICS. The FBI provides faster responses
28 in regard to approving the background checks of nonprohibited purchasers, while simultaneously
29 issuing faster denials of attempted purchases by prohibited individuals. Sections 4-9 of this act save
30 state tax dollars while producing better results, protecting the rights of law-abiding citizens and
31 protecting the safety of domestic violence victims. Also, sections 4-9 of this act provide the sheriff’s
32 office for each county with the authority and obligation to conduct background searches using NICS

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1 for the purpose of approving or denying the return of firearms to individuals who have been the
2 subject of restraining order proceedings or criminal proceedings.

3 4 Criminal Background Checks; Sale of Firearms. RSA 159-D:1 and 159-D:2 are repealed and
4 reenacted to read as follows:

5 159-D:1 Sale of Firearms; Criminal History Record and Protective Order Check.

6 I.(a) The Federal Bureau of Investigation (“FBI”) shall have the exclusive authority and
7 jurisdiction to conduct background checks in relation to the sale or transfer of firearms involving
8 Federal Firearms Licensed Dealers (“FFL”) in New Hampshire. This provision and the FBI’s
9 exclusive jurisdiction pertain to all firearms, as defined by federal law pursuant to 18 U.S.C. section
10 921(a)(3), regardless of caliber, barrel length, or firearm type.

11 (b) No state agency or political subdivision shall access the National Instant Criminal
12 Background Check System (“NICS”) unless specifically authorized by this chapter.

13 (c) Nothing in this chapter shall be construed to limit, prevent, or impose background
14 check requirements on the private transfer of firearms as otherwise not prohibited by RSA 159 or
15 federal law.

16 II. For the purpose of determining whether an individual is prohibited by federal or state
17 statute from firearm possession or ownership in relation to a motion or requested return of firearms
18 in connection with a restraining order under RSA 173-B or RSA 633:3-a, or criminal proceeding in
19 any state court of competent jurisdiction, the sheriff’s office for the county in which the court is
20 situated shall access NICS to perform a background check. The following conditions, process and
21 time constraints shall apply to all such background checks:

22 (a) The county sheriff’s office shall initiate the NICS background check within 10
23 business days of the date of filing of the motion or other pleading requesting the return of firearms.

24 (b) Within 15 business days of the date of filing of the motion or other pleading
25 requesting the return of firearms, the county sheriff’s office shall provide a conclusive decision to the
26 court stating either “proceed” or “deny.” This decision will be based solely on whether or not the
27 individual is prohibited from possessing or owning a firearm according to state or federal statute.
28 Should the NICS background check fail to demonstrate that the petitioner is prohibited from firearm
29 possession within the 15-business-day time period stated in this chapter, the sheriff’s office shall
30 provide a “proceed” decision to the court.

31 (c) If the county sheriff’s office determines that an individual is prohibited from owning
32 or possessing a firearm, a specific citation to statute, such as one of the prohibited categories listed
33 under 18 U.S.C. section 922(g), and the specific facts relied upon for finding that the individual is a
34 prohibited person must be supplied in a narration with the “deny” response. The narration
35 supporting a deny response shall be held in a confidential record with the court and only accessible
36 to court staff, the individual seeking the return of firearms and his or her designated legal counsel.

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1 (d) All records retained by any county sheriff's office or court concerning a background
2 check conducted pursuant to this chapter shall be destroyed within one business day of transmitting
3 a "proceed" determination to the court. Should a "deny" determination be made, all records shall be
4 destroyed by the county sheriff's office within 30 days of the later of the following:

5 (1) The expiration of the deadline for filing a petition or notice of appeal in the trial
6 court; or

7 (2) The exhaustion or expiration of all appeal rights included in RSA 159-D:2.

8 (e) For the purpose of carrying out the requirements of this chapter, each county sheriff's
9 office shall register with NICS and obtain sufficient training so that each office is situated to begin
10 fully fulfilling its limited background check functions required by this chapter by January 1, 2022.

11 159-D:2 Appeal of Denials.

12 I. Any person who has received a denial of a motion or other pleading requesting the return
13 of firearms shall have the right to request a further hearing on the matter within 30 days of the date
14 of denial. The request may be made by written or oral motion to the court. Any requested hearing
15 shall occur within 10 business days after the date of the request. During the hearing, the burden
16 will be placed on the county sheriff, or his or her designee, to prove by clear and convincing evidence
17 that the petitioning party is prohibited from possessing or owning a firearm pursuant to state or
18 federal statute. The court shall issue a decision on the matter within 10 business days after the
19 hearing occurs.

20 II. Should any person seeking the return of firearms be aggrieved by the ruling made by the
21 trial court regarding a motion or other request for the return of firearms, such individual shall be
22 entitled to appeal and have his or her case heard by the New Hampshire supreme court. In any such
23 case, a transcript of the proceedings and the trial court's record shall be transmitted to the supreme
24 court in full, without any fee charged to the petitioner.

25 5 New Paragraph; Protection of Persons From Domestic Violence; Notification. Amend RSA
26 173-B:8 by inserting after paragraph III the following new paragraph:

27 IV. Any temporary or final court order requiring the relinquishment of firearms or
28 prohibiting the possession of firearms under RSA 173-B or RSA 633:3-a shall, within 24 hours of
29 issuance, be submitted by the court into the NICS system directly or, alternatively, be transmitted to
30 the New Hampshire department of safety to be added to the NICS system within 24 hours of receipt.
31 Additionally, when any of the following events occur, the court will update the NICS system directly
32 or transmit the updated information to the New Hampshire department of safety to be updated in
33 NICS within 24 hours of receipt:

34 (a) Any modification or dismissal of a firearm relinquishment.

35 (b) Any modification or dismissal of an order prohibiting firearm possession.

36 (c) The dismissal of any temporary restraining order.

37 (d) The dismissal of any final restraining order.

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1 6 New Paragraph; Interference With Freedom; Stalking. Amend RSA 633:3-a by inserting after
2 paragraph III-d the following new paragraph:

3 III-e. Any temporary or final court order requiring the relinquishment of firearms or
4 prohibiting the possession of firearms under RSA 173-B or RSA 633:3-a shall, within 24 hours of
5 issuance, be submitted by the court into the NICS system directly or, alternatively, be transmitted to
6 the New Hampshire department of safety to be added to the NICS system within 24 hours of receipt.
7 Additionally, when any of the following events occur, the court will update the NICS system directly
8 or transmit the updated information to the New Hampshire department of safety to be updated in
9 NICS within 24 hours of receipt:

10 (a) Any modification or dismissal of a firearm relinquishment.

11 (b) Any modification or dismissal of an order prohibiting firearm possession.

12 (c) The dismissal of any temporary restraining order.

13 (d) The dismissal of any final restraining order.

14 7 Department of Safety; Division of State Police; Permits and Licensing Unit; New Hampshire
15 State Gun Line Abolished. The New Hampshire state gun line, in the permits and licensing unit of
16 the division of state police, department of safety, is hereby abolished.

17 8 New Sections; Criminal Background Checks; Immunity for Sheriffs and Sheriff's Employees.
18 Amend RSA 159-D by inserting after section 3 the following new sections:

19 159-D:4 Civil or Criminal Liability of Sheriffs and Sheriff's Employees. The county sheriff and
20 county sheriff's office employees shall not be liable in a civil or criminal action for any act or
21 omission in the performance of their powers and duties under this chapter.

22 159-D:5 Use of Federal Government Information Systems. Nothing in this chapter shall
23 prohibit any law enforcement agency or its personnel from utilizing the federal National Instant
24 Criminal Background Check System, or any of its component or successor systems, or any other
25 government information system necessary to perform their duties as permitted by New Hampshire
26 statute.

27 9 County Sheriff's Offices; Appropriation for Hardware, Software and Training. The sum of
28 \$100,000 for the fiscal year ending June 30, 2021 is hereby appropriated as follows: the sum of
29 \$10,000 shall be appropriated to each county sheriff's office for the purchase of hardware and
30 software and to defray training costs required to comply with the provisions of RSA 159-D. The sum
31 shall be a charge against the department of safety, permits and licensing account 02-23-23-234010-
32 2913, line 050.

33 10 Effective Date.

34 I. Sections 1 and 2 of this act shall take effect 60 days after its passage.

35 II. Sections 3-8 of this act shall take effect June 1, 2022.

36 III. The remainder of this act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill creates an exception to the prohibition on carrying a loaded firearm on an OHRV or snowmobile for any person carrying a pistol or revolver who is not prohibited from possessing a firearm by a New Hampshire statute. The bill also authorizes the FBI to conduct all National Instant Criminal Background Check System (NICS) searches concerning the purchase, sale, and transfer of firearms through Federal Firearm Licensees operating in New Hampshire; abolishes the "gun line" in the division of state police; repeals the state's partial point of contact system for handguns, allowing the authority to remain exclusively with the FBI; and authorizes county sheriffs to conduct background searches using NICS for the purpose of approving or denying the return of firearms to individuals who are subject to a protective order for domestic violence or stalking; and makes an appropriation to the county sheriff's offices for hardware and software equipment purchase and training.