

**HB 1379-FN - AS INTRODUCED**

2020 SESSION

20-2002  
04/10**HOUSE BILL 1379-FN**

AN ACT requiring a background check for commercial firearms sales.

SPONSORS: Rep. Rogers, Merr. 28; Rep. Huot, Belk. 3; Rep. Butler, Carr. 7; Rep. Berch, Ches. 1; Rep. Mulligan, Graf. 12; Rep. Heath, Hills. 14; Rep. Wallner, Merr. 10; Rep. Berrien, Rock. 18; Rep. M. Smith, Straf. 6

COMMITTEE: Criminal Justice and Public Safety

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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 struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

20-2002  
04/10

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT requiring a background check for commercial firearms sales.

*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. "Immediate family member" means a spouse, parent, stepparent, child, stepchild, sibling, stepsibling, grandparent, step-grandparent, grandchild, step-grandchild, great-grandparent, step-great-grandparent, great-grandchild, and step-great-grandchild.

IV. "Individual" means a natural person.

V. "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.

VI. "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.

VII. "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.

VIII. "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 commercial sale where the transfer of ownership is:

- (a) Between individuals, provided neither party to the transaction is a prohibited person. If the status of an individual'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;
- (b) Between immediate family members;
- (c) To a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, as those terms are defined by 18 USC section 921;
- (d) By or to a law enforcement agency; or
- (e) By or to a law enforcement officer or member of the United States Armed Forces acting within the course of his or her official duties.

#### 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, 2021.

LBAO  
20-2002  
10/29/19

### HB 1379-FN- FISCAL NOTE

#### AS INTRODUCED

AN ACT requiring a background check for commercial firearms sales.

**FISCAL IMPACT:**    ☒ State            ☒ County            ☐ Local            ☐ None

| STATE:                 | Estimated Increase / (Decrease)             |                                    |                                  |                                |
|------------------------|---------------------------------------------|------------------------------------|----------------------------------|--------------------------------|
|                        | FY 2020                                     | FY 2021                            | FY 2022                          | FY 2023                        |
| <b>Appropriation</b>   | \$0                                         | \$0                                | \$0                              | \$0                            |
| <b>Revenue</b>         | \$0                                         | \$0                                | \$0                              | \$0                            |
| <b>Expenditures</b>    | \$0                                         | Indeterminable Increase            | Indeterminable Increase          | Indeterminable Increase        |
| <b>Funding Source:</b> | <input checked="" type="checkbox"/> General | <input type="checkbox"/> Education | <input type="checkbox"/> Highway | <input type="checkbox"/> Other |

#### COUNTY:

|                     |     |                         |                         |                         |
|---------------------|-----|-------------------------|-------------------------|-------------------------|
| <b>Revenue</b>      | \$0 | \$0                     | \$0                     | \$0                     |
| <b>Expenditures</b> | \$0 | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |

#### METHODOLOGY:

This bill, effective January 1, 2021, requires commercial firearm sales or transfers in the state to be subject to a criminal background check. The Department of Safety anticipates this will result in additional background checks to process, however is unable to estimate additional staffing and related expenses as it is unable to estimate how many requests it will receive. Therefore, this bill will result in an indeterminable increase to general fund expenditures in FY 2021 and each year thereafter.

This bill contains penalties, including a class B misdemeanor for first offense and a class A misdemeanor for subsequent offenses, 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 2021                                      | FY 2022                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|----------------------------------------------|
| Class B Misdemeanor                                                                                                                                                                                                                                                                                                                                                                              | \$54                                         | \$56                                         |
| Class A Misdemeanor                                                                                                                                                                                                                                                                                                                                                                              | \$77                                         | \$79                                         |
| Simple Criminal Case                                                                                                                                                                                                                                                                                                                                                                             | \$300                                        | \$314                                        |
| Appeals                                                                                                                                                                                                                                                                                                                                                                                          | Varies                                       | Varies                                       |
| It should be noted that average case cost estimates for FY 2021 and FY 2022 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. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor. |                                              |                                              |
| Judicial Council                                                                                                                                                                                                                                                                                                                                                                                 |                                              |                                              |
| Public Defender Program                                                                                                                                                                                                                                                                                                                                                                          | Has contract with State to provide services. | Has contract with State to provide services. |

|                                                                                                                                                                                                                                                                                                                                            |                         |                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-------------------------|
| Contract Attorney – Misdemeanor                                                                                                                                                                                                                                                                                                            | \$300/Case              | \$300/Case              |
| Assigned Counsel – Misdemeanor                                                                                                                                                                                                                                                                                                             | \$60/Hour up to \$1,400 | \$60/Hour up to \$1,400 |
| It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). |                         |                         |
| NH Association of Counties                                                                                                                                                                                                                                                                                                                 |                         |                         |
| County Prosecution Costs                                                                                                                                                                                                                                                                                                                   | Indeterminable          | Indeterminable          |
| Estimated Average Daily Cost of Incarcerating an Individual                                                                                                                                                                                                                                                                                | \$105 to \$120          | \$105 to \$120          |

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

**AGENCIES CONTACTED:**

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