

HB 334 - FINAL VERSION

05/27/2021 1769s
24Jun2021... 2030CofC

2021 SESSION

21-0354
04/10

HOUSE BILL 334

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

SPONSORS: Rep. Burt, Hills. 39; Rep. Nunez, Hills. 37; Rep. Kelsey, Hills. 7; Rep. Silber, Belk. 2; Rep. Rhodes, Ches. 15; Rep. Gorski, Hills. 7; Rep. Kofalt, Hills. 4; Rep. Roy, Rock. 32; Sen. Daniels, Dist 11; Sen. Giuda, Dist 2

COMMITTEE: Criminal Justice and Public Safety

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; and abolishes certain positions in the department of safety.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

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

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

1 Off Highway Recreational Vehicles; Loaded Firearms Prohibited. Amend RSA 215-A:20 to read as follows:

215-A:20 Loaded Firearms Forbidden. No person shall carry on an OHRV, or a trailer towed by same, any firearms unless said firearm is unloaded. This section shall not apply to law enforcement officers carrying firearms in the course of duty or to ~~[pistols carried under a permit issued pursuant to the authority of RSA 159]~~ ***any person carrying a pistol or revolver who is not prohibited from possessing a firearm by a New Hampshire statute.***

2 Snowmobiles; Loaded Firearms Forbidden. Amend RSA 215-C:35 to read as follows:

215-C:35 Loaded Firearms Forbidden. No person shall carry on a snowmobile, or a trailer towed by same, any firearms unless said firearm is unloaded. This section shall not apply to law enforcement officers carrying firearms in the course of duty or to ~~pistols carried under a permit issued pursuant to the authority of RSA 159~~ **any person carrying a pistol or revolver who is not prohibited from possessing a firearm by a New Hampshire statute.**

3 Findings. The general court finds that:

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

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

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

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

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

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

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

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

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

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

(b) Within 15 business days of the date of filing of the motion or other pleading requesting the return of firearms, the county sheriff's office shall provide a conclusive decision to the court stating either "proceed" or "deny." This decision will be based solely on whether or not the individual is prohibited from possessing or owning a firearm according to state or federal statute. Should the NICS background check fail to demonstrate that the petitioner is prohibited from

firearm possession within the 15-business-day time period stated in this chapter, the sheriff's office shall provide a "proceed" decision to the court.

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

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

- (1) The expiration of the deadline for filing a petition or notice of appeal in the trial court; or
- (2) The exhaustion or expiration of all appeal rights included in RSA 159-D:2.

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

159-D:2 Appeal of Denials.

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

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

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

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

- (a) Any modification or dismissal of a firearm relinquishment.
- (b) Any modification or dismissal of an order prohibiting firearm possession.
- (c) The dismissal of any temporary restraining order.
- (d) The dismissal of any final restraining order.

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

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

- (a) Any modification or dismissal of a firearm relinquishment.
- (b) Any modification or dismissal of an order prohibiting firearm possession.
- (c) The dismissal of any temporary restraining order.
- (d) The dismissal of any final restraining order.

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

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

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

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

9 Department of Safety; County Sheriffs Offices; Appropriation for Computer Hardware, Software, and Training. The sum of \$100,000 for the fiscal year ending June 30, 2022, is hereby appropriated to the department of safety for the purpose of distributing the sum of \$10,000 to each county sheriff's office for the purchase of hardware and software and to defray training costs required to comply with the provisions of RSA 159-D. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

10 Department of Safety; Positions Abolished; Budget Reduction.

I. The following positions budgeted in accounting unit 02-23-23-234010-2913 (permits and licensing) are hereby abolished:

- (a) Program Assistant II
- (b) Program Assistant II
- (c) Supervisor I

II. In addition to any other required reductions, the department of safety is hereby directed to reduce state general fund appropriations in accounting unit 02-23-23-234010-2913 (permits and licensing) by \$401,650 for the biennium ending June 30, 2023.

11 Contingency. If SB 141-FN of the 2021 regular legislative session becomes law, sections 3-8 of this act shall not take effect and section 7 of SB141-FN shall not take effect. If SB141-FN does not become law, sections 3-8 of this act shall take effect June 1, 2022.

12 Effective Date.

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

II. Sections 3-8 of this act shall take effect as provided in section 11 of this act.

III. Sections 9-10 of this act shall take effect July 1, 2021.

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

VETOED 8/10/21