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Legislative Document

No. 810

S.P. 246

In Senate, February 14, 2019

An Act To Require Background Checks for All Private Firearm Sales or Transfers Except between Family Members

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MIRAMANT of Knox.
Cosponsored by Representative COLLINGS of Portland and
Senators: CARSON of Cumberland, CHENETTE of York, LIBBY of Androscoggin,
Representatives: BEEBE-CENTER of Rockland, DOUDERA of Camden, RYKERSON of
Kittery, SYLVESTER of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 25 MRSA §2015** is enacted to read:

3 **§2015. Background checks for sales and transfers of firearms**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Corrections officer" has the same meaning as in section 2801-A, subsection 2.

7 B. "Family member" means a husband, wife, domestic partner, parent by blood,
8 parent by adoption, child by blood, child by adoption, sibling by blood, sibling by
9 adoption, grandparent, grandchild, niece, nephew, aunt, uncle, first cousin, father-in-
10 law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
11 stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother,
12 half-sister or intimate partner.

13 C. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

14 D. "Firearm dealer" means a person that holds any federal firearms license under 18
15 United States Code, Section 923(a).

16 E. "Intimate partners" means individuals in a dating relationship who are currently
17 living with each other.

18 F. "Law enforcement agency" has the same meaning as in section 3701, subsection
19 1.

20 G. "Law enforcement officer" has the same meaning as in section 3701, subsection
21 3.

22 H. "Person" means an individual, corporation, partnership, firm, trust, organization
23 or other legal entity.

24 I. "Transfer" means to sell, furnish, give, lend, deliver or otherwise provide, with or
25 without consideration.

26 J. "Transferee" means a person who receives or intends to receive a firearm in a
27 transfer.

28 K. "Transferor" means a person who delivers or intends to deliver a firearm in a
29 transfer.

30 L. "Unlicensed person" means any person who is not a firearm dealer.

31 **2. Transfer of firearm; background check required; procedure.** Except as
32 provided in subsection 4, an unlicensed person may transfer a firearm to another
33 unlicensed person only if the transferee submits to and passes a background check in
34 compliance with this subsection.

35 A. A transferor and transferee shall meet jointly at the premises of a firearm dealer
36 and request that the firearm dealer facilitate the transfer.

1 B. A firearm dealer that agrees to facilitate a transfer under this subsection shall
2 process the transfer as though transferring the firearm from its own inventory to the
3 transferee, complying with all requirements of federal and state law that would apply
4 if the firearm dealer were making such a transfer including all background check and
5 record-keeping requirements.

6 C. A transferor may remove a firearm from the premises of a firearm dealer while a
7 background check is being conducted. Before the transferor transfers the firearm to
8 the transferee, the transferor and the transferee must return to the premises of the
9 firearm dealer, and the firearm dealer shall take possession of the firearm in order to
10 complete the transfer.

11 D. A transferor may remove a firearm from the premises of a firearm dealer if the
12 results of a background check indicate that a transferee is disqualified to possess
13 firearms under state or federal law.

14 E. A firearm dealer that agrees to facilitate a transfer pursuant to this subsection may
15 charge a reasonable fee for services rendered.

16 F. A transferor and a transferee must each complete, sign and submit all federal and
17 state forms necessary to complete the transfer of a firearm.

18 **3. No transfer if transferee disqualified.** A firearm dealer or a transferor is
19 prohibited from transferring a firearm to a transferee if the results of the background
20 check conducted pursuant to subsection 2 indicate that the transferee is disqualified to
21 possess firearms under state or federal law.

22 **4. Exemptions.** Notwithstanding the provisions of subsections 2 and 3, the
23 provisions of this section do not apply to a transfer of a firearm between unlicensed
24 persons if:

25 A. The transfer is between family members;

26 B. The firearm is a curio or relic, as defined in 27 Code of Federal Regulations,
27 Section 478.11, and the transfer is between collectors of firearms as curios or relics,
28 as defined by 18 United States Code, Section 921(a)(13), who both have in their
29 possession a valid collector of curios and relics license issued by the United States
30 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

31 C. The transfer is of an antique firearm, as defined in 18 United States Code, Section
32 921(a)(16);

33 D. The transfer is temporary and is necessary to prevent imminent death or great
34 bodily harm and:

35 (1) The transfer lasts only as long as necessary to prevent the threat; and

36 (2) The transferor has no reason to believe that the transferee is disqualified to
37 possess firearms under state or federal law and has no reason to believe that the
38 transferee intends to use the firearm in the commission of a crime;

39 E. Either the transferor or the transferee is a law enforcement agency or the
40 Department of Corrections or is, to the extent the person is acting within the course of
41 the person's employment or official duties, a peace officer, a law enforcement officer,

1 a corrections officer, a member of the Armed Forces of the United States, a member
2 of the National Guard, a member of the Reserves of the United States Armed Forces,
3 a federal law enforcement officer or a person licensed as a security guard or
4 employed by a contract security company or proprietary security organization under
5 Title 32, chapter 93;

6 F. The transfer is temporary, the transferor has no reason to believe that the
7 transferee intends to use the firearm in the commission of a crime and the transfer and
8 the transferee's possession of the firearm take place exclusively in the actual presence
9 of the transferor:

10 (1) At an established shooting range authorized by the governing body of the
11 jurisdiction in which the range is located or, if no such authorization is required,
12 is operated consistently with local law in the jurisdiction;

13 (2) At a lawfully organized competition involving the use of a firearm or for
14 participation in or practice for a performance by an organized group that uses
15 firearms as a part of the performance; or

16 (3) While the transferee is hunting or trapping if that activity is legal in all places
17 where the transferee possesses the firearm and the transferee holds any license or
18 permit required for that activity.

19 A transfer allowed by this paragraph is permitted only if the transferor has no reason
20 to believe that the transferee is disqualified to possess firearms under state or federal
21 law or, if the transferee is under 18 years of age and is receiving the firearm under
22 direct supervision and control of an adult, that the adult is disqualified to possess
23 firearms under state or federal law; or

24 G. The transfer occurs by operation of law upon the death of a person for whom the
25 transferee is an executor, administrator, trustee or personal representative of an estate
26 or a trust created in a will.

27 **5. Violations.** A person that knowingly delivers or receives a firearm without
28 complying with this section commits:

29 A. For a first conviction involving the transfer of one or more firearms, a Class D
30 crime; and

31 B. For a 2nd or subsequent conviction involving the transfer of one or more firearms,
32 a Class C crime.

33 **SUMMARY**

34 This bill allows the transfer or sale of a firearm between 2 individuals who are not
35 licensed as firearm dealers if the person to whom the firearm is being transferred submits
36 to a background check conducted by a licensed firearm dealer; the dealer must conduct a
37 background check and complete the sale or transfer as though selling or transferring the
38 dealer's own inventory. This bill does not restrict transfers to a family member, which is
39 broadly defined to include a spouse, domestic partner, intimate partner, child, parent,
40 sibling, grandparent, grandchild, stepchild, stepparent, niece, nephew, first cousin, aunt,
41 uncle and in-law; temporary transfers between persons who are hunting or sport shooting

1 together; transfers done for emergency self-defense; the transfer of an antique weapon or
2 curio; a transfer involving a law enforcement officer or agency, member of the military or
3 licensed security guard; or a transfer that occurs by operation of law upon a person's
4 death.